

AGENDA
JEFFERSON COUNTY COMMISSION
THURSDAY, JUNE 9, 2011
9:30 A.M.

County Commission Meeting Room
located at the Old Charles Town Library
200 E. Washington Street, Charles Town, WV

CALL TO ORDER

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

- Jefferson County Commission Public Hearing - June 1, 2011
- Jefferson County Commission Regular Meeting- June 2, 2011

APPROVAL OF PURCHASE ORDERS

APPROVAL OF ACCOUNTS PAYABLE

PUBLIC COMMENT

PRESENTATIONS:

1. 9:45 a.m. Jennifer Maghan, County Clerk
- Budget Revision
2. 10:00 a.m. Roger Goodwin, Chief County Engineer
- Approval of complete release of the remaining \$25,000.00 construction bond amount for Southern States Cooperative, Inc. - Discussion/Action
3. 10:15 a.m. Carolyn Zdziera, Community Alternatives to Violence
- Update on program activities in Jefferson County, utilizing County Commission award from July, 2010
4. 10:30 a.m. **Break**
5. 10:45 a.m. Mark Schiavone, Director Capital Planning & Management
- Approval of Final Budget Revision to the General Fund for FY 2011 - Discussion/Action

6. 11:00 a.m. Ray A. Byrd, Esquire - Estate of John J. Warfield - Request that the Commission address the Report of Fiduciary Commissioner, David A. DeJarnett regarding Objections and Exceptions to the second accounting for the period ended 12/31/2008, along with Exceptions, Objections and Assignment of Errors to the Report of Fiduciary Commissioner, David A. DeJarnett - Discussion/Action

COUNTY ADMINISTRATOR REPORTS

COUNTY COMMISSION REPORTS

7. 11:45 a.m. Break for Lunch

~~~~~ EVENING SESSION ~~~~~

8. 7:00 p.m. Public Hearing - Policy Neutral Zoning Ordinance Amendments

**CORRESPONDENCE:**

Reminder that County offices will be closed on Monday, June 20, 2011 for West Virginia Day.

Received from Mark Schiavone, Impact Fee Status Report for May 2011, along with Memoranda regarding Transfer of Funds from Office of Impact Fees General Account to Sheriff's School Impact Fee Account, Sheriff's Law Enforcement Impact Fee Account, Sheriff's Park and Recreation Impact Fee Account and Sheriff's Fire & EMS Impact Fee Account.

Weekly settlement reports for the Charles Town Races received from the West Virginia Lottery, week ending May 28, 2011.

Correspondence received from Christine Palank regarding the May 19, 2011 Jefferson County Zoning Board of Zoning Appeals hearing.

**SPECIAL SESSION:**

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

At a Special Session of the County Commission of said County and State continued and held at the Old Charles Town Library Ground Floor meeting room thereof on Wednesday, June 1, 2011, beginning at 7:00 o'clock p.m.

**PRESENT:** Commissioners: Patricia Noland, Dale Manuel, Frances Morgan, Lyn Widmyer and Walt Pellish

**In re: PUBLIC HEARING - Proposed Purchase of the Cement Mill Property**

Commissioner Noland opened the Public Hearing for the purchasing of the Cement Mill Property.

Kirk Davis, Capital Projects Manager, gave a brief presentation via PowerPoint.

Written comments were provided by the following individuals:

|                   |                    |               |
|-------------------|--------------------|---------------|
| Amy Matthews Amos | Peter Carmichael   | Todd Metzgar  |
| Richard A. Zigler | Beverly Hughes     | Rana Harmon   |
| Zenia Kuzma       | Diana Suttentfield | Cris Kinsella |
| Emily Wilson      |                    |               |

Verbal comments were provided by the following individuals:

|                     |                 |                 |
|---------------------|-----------------|-----------------|
| Delegate John Doyle | Gary Capriotti  | Joe Coakley     |
| Nicholas Redding    | Cindy Jo Feeser | Emily Wilson    |
| David Fox           | Beverly Hughes  | Robert Reynolds |
| Dennis Wark         | Tom Clemens     | Curt Mason      |
| Lois C. Turco       | Debbie Royalty  | David Hammer    |
| Mike Musik          | Mark Dyck       | John Maxey      |
| Grant Smith         | Nathaniel Hitt  | Dick Latterell  |

Delegate Doyle read written comment from Mark Snell.

The Commission agreed to receive written comment concerning the purchasing of the Cement Mill Property until Thursday, June 16, 2011.

A decision for this topic will be held on Thursday, June 23, 2011 during the regular scheduled Commission meeting.

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

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PATRICIA NOLAND, COMMISSION PRESIDENT

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PATRICIA NOLAND, COMMISSION PRESIDENT

|                            |         |
|----------------------------|---------|
| Commission Office Use Only |         |
| Date on Agenda:            | 6/9/11  |
| Appt Time or New Business: | 11:15am |

**AGENDA REQUEST FORM**

Name: Roger Goodwin

Department or Entity: Department of Engineering

Estimation of amount of time needed for appointment: 5 minutes

Date Requested – 1<sup>st</sup> Choice: June 9, 2011

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

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

Subject: Bond reduction and/or release.

Please provide the County Commission with a description of your request or presentation, including any background information: Complete release of the Construction Bond security for Southern States Cooperative, Inc. – Cash in Escrow with Branch Banking & Trust, Ranson, West Virginia.

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): I authorize a complete release of the remaining \$25,000.00 construction bond amount for Southern States Cooperative, Inc.

Attachments: Bond Release Letter  
Bond Reduction or Release Request Report



## JEFFERSON COUNTY COMMISSION

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

Phone: (304) 728-3284 - Fax: (304) 725-9716

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

PRESIDENT

*Patricia Noland*

June 9, 2011

VICE PRESIDENT

*Dale Manuel*

Mr. Preston W. Bergen

Senior Vice President

COMMISSIONER

*Franco Morgan*

Branch Banking & Trust

COMMISSIONER

*Walt Pellish*

301 Mildred Street

COMMISSIONER

*Lyn Widmeyer*

RE: Escrow Agreement dated April 28, 2010 Construction Bond for Southern States Cooperative, Inc.

Dear Mr. Bergen:

The Jefferson County Commission authorizes a complete release of the remaining \$25,000.00 construction bond amount for Southern States Cooperative, Inc. The project was located on the west side of North Mildred Street (Route 115) within the old Shawley's True Value Building. The work appears to be 100% complete.

In summary, you are hereby authorized to fully release the remaining amount for the above referenced Escrow Agreement, originally issued in the amount of \$25,000.00.

Please contact the Engineering Department at (304)-728-3257 if you have any questions.

Sincerely,

Patricia A. Noland, President  
Jefferson County Commission

PAN:rfb

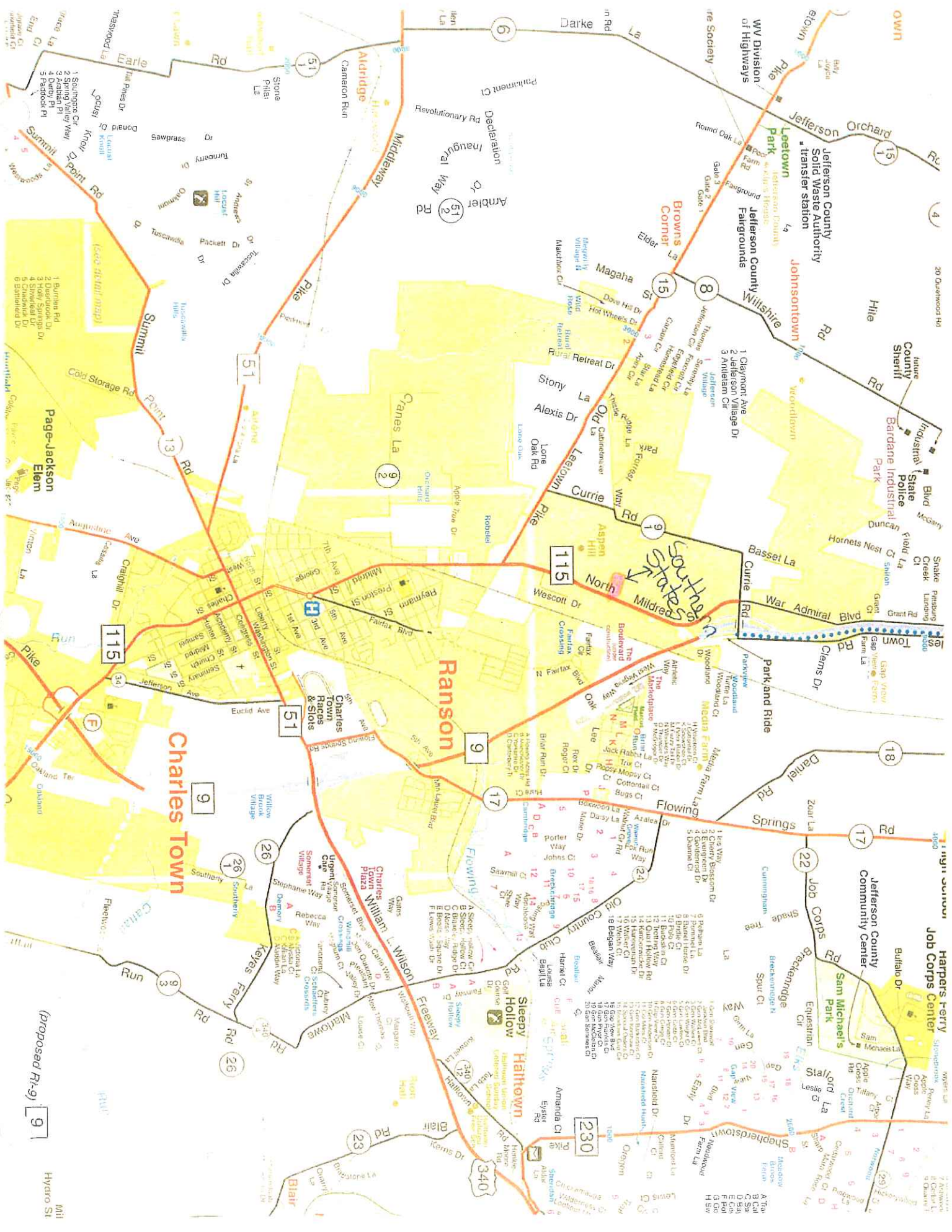
cc: Mr. Fred Jezouit, Vice President Finance  
Mr. Ken Tate, Manager Real Estate & Construction  
Southern States Cooperative  
6606 West Broad Street  
Richmond, VA 23260  
Department of Engineering

COUNTY ADMINISTRATOR

*Tim Boyd*

DEPUTY COUNTY ADMINISTRATOR

*Sandy Shusher McDonald*



Charles Town

Ranson

Flowing

Sleepy Hollow

Hawthorn

Jefferson County Community Center

Job Corps Center

Sam Michael's

Proposed Rt-9

Southern States

Hydro St

Harper's Ferry

Job Corps Center

Sam Michael's

Jefferson County Community Center

Job Corps Center

Commission Office Use Only  
 Date on Agenda: 6/9/11  
 Appt Time or New Business: 11:30 a.m.

AGENDA REQUEST FORM

Name: Carolyn Zdziera  
 Department or Entity: Community Alternatives to Violence  
 Estimation of amount of time needed for appointment: 15 min.  
 Date Requested - 1<sup>st</sup> Choice: 6/9/11  
 Date Requested - 2<sup>nd</sup> Choice: 6/16/11  
 If a specific date is needed, please provide reason for specific date:

Subject: CAV Program Update

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

Update on program activities in Jefferson County, utilizing Commission award from 7/10

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

Attachments:

|                            |         |
|----------------------------|---------|
| Commission Office Use Only |         |
| Date on Agenda:            | 6/9/11  |
| Appt Time or New Business: | 10:45am |

**AGENDA REQUEST FORM**

**Name:** F Mark Schiavone

**Department or Entity:** DCPM

**Estimation of amount of time needed for appointment:** 15 minutes

**Date Requested – 1<sup>st</sup> Choice:** 9 June 2011

**Date Requested – 2<sup>nd</sup> Choice:** 15 June 2011

**If a specific date is needed, please provide reason for specific date:** The State Auditor’s Office will not accept budget revisions for the current fiscal year after 15 June 2011.

**Subject:** Final budget revision to the General Fund for FY 2011

**Please provide the County Commission with a description of your request or presentation, including any background information:** This is a set of two budget revisions: (1) is a major revision that accounts for projected shortfalls in salary lines in some departments – related to an error in applying the 2% salary increase. Also manages rebudget of Hotel Occupancy Tax revenue (2) is a minor budget revision (no department total changes) made on the behalf of department heads and elected officials to keep specific lines from going over budget prior to year’s end.

**Recommended motion (Please type out the wording of the motion that you would like the Commission to approve):** Move to approve request to amend budget (revision 10) for the General Fund.

Move to approve Budget Revision C to the General Fund.

**Attachments:** SAO documents for Budget Revision 10, with detail sheets. Documents related to Budget Revision C.

RESOLUTION

At a regular session of the Jefferson County Commission, held 9th June, 2011, the following order was made and entered:

SUBJECT: The revision of the General Fund (Fund 001) Levy Estimate (Budget) for the County of Jefferson. The following resolution was offered:

RESOLVED: That subject to approval of the State Auditor as ex officio chief inspector of public offices, the county commission does hereby direct the budget be revised PRIOR TO THE EXPENDITURE OR OBLIGATION OF FUNDS FOR WHICH NO APPROPRIATION OR INSUFFICIENT APPROPRIATION CURRENTLY EXISTS, as shown on budget revision number 010, a copy of which is entered as part of this record.

The adoption of the foregoing resolution having been moved by \_\_\_\_\_, and duly seconded by \_\_\_\_\_, the vote thereon was as follows:

|       |     |
|-------|-----|
| _____ | Yes |
| _____ | Yes |
| _____ | Yes |
| _____ | Yes |
| _____ | Yes |

WHEREUPON, Patricia Noland, declared said resolution duly adopted, and it is therefore ADJUDGED and ORDERED that said resolution be, and the same is, hereby adopted as so stated above, and F. Mark Schiavone is authorized to fix his signature on the attached "Request for Revision to Approved Budget" to be sent to the State Auditor for approval.

**REQUEST FOR REVISION TO APPROVED BUDGET**

CONTROL NUMBER

Ora Ash, Director  
 West Virginia State Auditor's Office  
 200 West Main Street  
 Clarksburg, WV 26302  
 Phone: 627-2415 ext. 5114  
 Fax: 627-2417

Subject to approval of the state auditor, the governing body requests that the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists. (§ 11-8-26a)

2011  
 FY  
001  
 FUND  
010  
 REV. NO.  
 \_\_\_\_\_  
 PG. OF NO.

JEFFERSON COUNTY  
 GOVERNMENT ENTITY

Person To Contact Regarding  
 Budget Revision: F. Mark Schiavone  
 Phone: (304) 728-3331  
 Fax: \_\_\_\_\_

124 E. WASHINGTON STREET PO BOX 250  
 STREET OR PO BOX  
CHARLES TOWN 25414  
 CITY ZIP CODE

County  
 Government Type

**REVENUES: (net each acct.)**

| ACCOUNT NUMBER                                      | ACCOUNT DESCRIPTION                       | PREVIOUSLY APPROVED AMOUNT | (INCREASE)    | (DECREASE) | REVISED AMOUNT |
|-----------------------------------------------------|-------------------------------------------|----------------------------|---------------|------------|----------------|
| 309                                                 | Hotel Occupancy Tax                       | 500,000                    | 60,000        |            | 560,000        |
| 382                                                 | Refunds/Reimbursements (External Sources) | 143,000                    | 13,100        |            | 156,100        |
|                                                     | #N/A                                      |                            |               |            |                |
|                                                     | #N/A                                      |                            |               |            |                |
|                                                     | #N/A                                      |                            |               |            |                |
|                                                     | #N/A                                      |                            |               |            |                |
| <b>NET INCREASE/(DECREASE) Revenues (ALL PAGES)</b> |                                           |                            | <b>73,100</b> |            |                |

COUNTIES-TRANSFERS TO THE GENERAL FUND FROM OTHER FUNDS MUST HAVE PRIOR APPROVAL OF AUDITOR'S OFFICE

**EXPENDITURES: (net each account category)**

(WV CODE 7-1-9)

| ACCOUNT NUMBER                              | ACCOUNT DESCRIPTION  | PREVIOUSLY APPROVED AMOUNT | (INCREASE)    | (DECREASE) | REVISED AMOUNT |
|---------------------------------------------|----------------------|----------------------------|---------------|------------|----------------|
| 401                                         | County Commission    | 2,876,392                  |               | 56,233     | 2,820,159      |
| 403                                         | Circuit Clerk        | 552,953                    | 2,926         |            | 555,879        |
| 404                                         | Sheriff-Treasurer    | 508,455                    | 906           |            | 509,361        |
| 405                                         | Prosecuting Attorney | 1,544,994                  | 1,444         |            | 1,546,438      |
| 406                                         | Assessor             | 923,061                    | 4,095         |            | 927,156        |
| 412                                         | Agricultural Agent   | 124,846                    | 116           |            | 124,962        |
| 422                                         | Infrastructure       | 295,778                    | 596           |            | 296,374        |
| 424                                         | Courthouse           | 1,619,844                  | 44,908        |            | 1,664,752      |
| 431                                         | Economic Development | 262,831                    | 845           |            | 263,676        |
| 439                                         | Planning & Zoning    | 380,089                    | 5,643         |            | 385,732        |
| 440                                         | Engineering          | 644,057                    | 974           |            | 645,031        |
| 451                                         | Zoning Board         | 139,257                    | 4,957         |            | 144,214        |
| <b>NET INCREASE/(DECREASE) Expenditures</b> |                      |                            | <b>73,100</b> |            |                |

APPROVED BY THE STATE AUDITOR  
 BY: \_\_\_\_\_  
 Director, Local Government Services Division Date

AUTHORIZED SIGNATURE  
 OF ENTITY

APPROVAL  
 DATE

EXPENDITURES (CONT'D)

JEFFERSON COUNTY

LGSD: BR030810 JEFFERSON COUNTY

CONTROL NUMBER 2011

001

010

BUDGET REVISION REQUEST-SUPPLEMENT

FY

FUND

REV#

| ACCOUNT NUMBER | ACCOUNT CATEGORY          | PREVIOUSLY APPROVED AMOUNT | FY INCREASE | FUND DECREASE | REVISED AMOUNT |
|----------------|---------------------------|----------------------------|-------------|---------------|----------------|
| 711            | Emergency Services        | 232,827                    | 938         |               | 233,765        |
| 716            | Dog Warden/Humane Society | 247,068                    | 985         |               | 248,053        |
| 911            | Visitor's Bureau          | 250,000                    | 30,000      |               | 280,000        |
| 900            | Parks & Recreation        | 336,556                    | 25,000      |               | 361,556        |
| 903            | Arts & Humanities         | 28,830                     | 2,500       |               | 31,330         |
| 909            | Historical Commission     | 288,830                    | 2,500       |               | 291,330        |
|                | #N/A                      |                            |             |               |                |
|                | #N/A                      |                            |             |               |                |
|                | #N/A                      |                            |             |               |                |
|                | #N/A                      |                            |             |               |                |
|                | #N/A                      |                            |             |               |                |
|                | #N/A                      |                            |             |               |                |
|                | #N/A                      |                            |             |               |                |
|                | #N/A                      |                            |             |               |                |
|                | #N/A                      |                            |             |               |                |
|                | #N/A                      |                            |             |               |                |
|                | #N/A                      |                            |             |               |                |
|                | #N/A                      |                            |             |               |                |
|                | #N/A                      |                            |             |               |                |
|                | #N/A                      |                            |             |               |                |
|                | #N/A                      |                            |             |               |                |
|                | #N/A                      |                            |             |               |                |
|                | #N/A                      |                            |             |               |                |
|                | #N/A                      |                            |             |               |                |
|                | #N/A                      |                            |             |               |                |
|                | #N/A                      |                            |             |               |                |

NET INCREASE/(DECREASE) Expenditures (this page)

61,923

DRAFT BUDGET REVISION 010 TO GENERAL FUND

REVENUES

| Object         | Description         | Current Approved | Debit | Credit | Final Approved |
|----------------|---------------------|------------------|-------|--------|----------------|
| 001-309-OT-000 | HOTEL OCCUPANCY TAX | 500,000          |       | 60,000 | 560,000        |
| 001-382-MM-000 | REIMBURSEMENTS      | 143,000          |       | 13,100 | 156,100 /1     |

REVENUE TOTALS

73,100

EXPENDITURES

|                           |                          |         | Credit | Debit  |            |
|---------------------------|--------------------------|---------|--------|--------|------------|
| 001-401-01-103-000-GG-000 | CO COMM SALARY/WAGES     | 232,552 |        | 28,802 | 203,750 /2 |
| 001-401-01-104-000-GG-000 | CO COMM FICA EXPENSE     | 27,116  |        | 1,786  | 25,330     |
| 001-401-01-104-001-GG-000 | CO COMM MEDICARE EXPENSE | 6,342   |        | 418    | 5,924      |
| 001-401-01-106-000-GG-000 | CO COMM RETIREMENT       | 54,671  |        | 3,600  | 51,071     |

|                           |                          |                  |               |               |                  |
|---------------------------|--------------------------|------------------|---------------|---------------|------------------|
| 001-401-02-223-000-GG-000 | CO COMM PROF SERVICES    | 50,000           | 13,100        | 34,727        | 28,373           |
| 001-401-05-568-000-GG-000 | CO COMM OTHR CONTRIBUTIO | 1,867,514        |               |               | 1,867,514        |
|                           | <b>401 TOTAL</b>         | <b>2,876,392</b> | <b>13,100</b> | <b>69,333</b> | <b>2,820,159</b> |

|                           |                          |                |              |  |                |
|---------------------------|--------------------------|----------------|--------------|--|----------------|
| 001-403-01-103-000-GG-000 | CIR CLK SALARY AND WAGES | 285,772        | 2,436        |  | 288,208 /3     |
| 001-403-01-104-000-GG-000 | CIR CLK FICA EXPENSE     | 21,962         | 151          |  | 22,113         |
| 001-403-01-104-001-GG-000 | CIR CLK MEDICARE EXPENSE | 5,136          | 35           |  | 5,171          |
| 001-403-01-106-000-GG-000 | CIR CLK RETIREMENT       | 44,277         | 304          |  | 44,581         |
|                           | <b>403 TOTAL</b>         | <b>552,953</b> | <b>2,926</b> |  | <b>555,879</b> |

|                           |                          |                |            |  |                |
|---------------------------|--------------------------|----------------|------------|--|----------------|
| 001-404-01-103-000-GG-000 | SHRF TAX SALARY/WAGES    | 247,584        | 754        |  | 248,338        |
| 001-404-01-104-000-GG-000 | SHRF TAX FICA EXPENSE    | 19,994         | 47         |  | 20,041         |
| 001-404-01-104-001-GG-000 | SHRF TAX MEDICARE EXPENS | 4,677          | 11         |  | 4,688          |
| 001-404-01-106-000-GG-000 | SHRF TAX RETIREMENT      | 32,823         | 94         |  | 32,917         |
|                           | <b>404 TOTAL</b>         | <b>508,455</b> | <b>906</b> |  | <b>509,361</b> |

|                           |                          |                  |              |  |                  |
|---------------------------|--------------------------|------------------|--------------|--|------------------|
| 001-405-01-103-000-GG-000 | PROS ATTY SALARY/WAGES   | 975,160          | 1,202        |  | 976,362 /4       |
| 001-405-01-104-000-GG-000 | PROS ATTY FICA EXPENSE   | 66,451           | 75           |  | 66,526           |
| 001-405-01-104-001-GG-000 | PROS ATTY MEDICARE EXPEN | 15,541           | 17           |  | 15,558           |
| 001-405-01-106-000-GG-000 | PROS ATTY RETIREMENT     | 132,085          | 150          |  | 132,235          |
|                           | <b>405 TOTAL</b>         | <b>1,544,994</b> | <b>1,444</b> |  | <b>1,546,438</b> |

|                           |                       |                |              |  |                |
|---------------------------|-----------------------|----------------|--------------|--|----------------|
| 001-406-01-103-000-GG-000 | ASSR SALARY AND WAGES | 505,595        | 3,409        |  | 509,004        |
| 001-406-01-104-000-GG-000 | ASSR FICA EXPENSE     | 39,171         | 211          |  | 39,382         |
| 001-406-01-104-001-GG-000 | ASSR MEDICARE EXPENSE | 9,162          | 49           |  | 9,211          |
| 001-406-01-106-000-GG-000 | ASSR RETIREMENT       | 73,972         | 426          |  | 74,398         |
|                           | <b>406 TOTAL</b>      | <b>923,061</b> | <b>4,095</b> |  | <b>927,156</b> |

|                           |                         |                |            |  |                |
|---------------------------|-------------------------|----------------|------------|--|----------------|
| 001-412-01-103-000-GG-000 | AG AGT SALARY AND WAGES | 52,718         | 97         |  | 52,815         |
| 001-412-01-104-000-GG-000 | AG AGT FICA EXPENSE     | 3,269          | 6          |  | 3,275          |
| 001-412-01-104-001-GG-000 | AG AGT MEDICARE EXPENSE | 765            | 1          |  | 766            |
| 001-412-01-106-000-GG-000 | AG AGT RETIREMENT       | 6,591          | 12         |  | 6,603          |
|                           | <b>412 TOTAL</b>        | <b>124,846</b> | <b>116</b> |  | <b>124,962</b> |

|                           |                           |                |            |  |                |
|---------------------------|---------------------------|----------------|------------|--|----------------|
| 001-422-01-103-000-GG-000 | CPTL PLNNG&MGMT-SALARY/W  | 215,886        | 496        |  | 216,382        |
| 001-422-01-104-000-GG-000 | CPTL PLNNG&MGMT-FICA EXPN | 13,385         | 31         |  | 13,416         |
| 001-422-01-104-001-GG-000 | CPTL PLNNG&MGMT-MEDICARE  | 3,131          | 7          |  | 3,138          |
| 001-422-01-106-000-GG-000 | CPTL PLNNG&MGMT-RETIREMN  | 26,986         | 62         |  | 27,048         |
|                           | <b>422 TOTAL</b>          | <b>295,778</b> | <b>596</b> |  | <b>296,374</b> |

|                           |                        |                  |               |  |                  |
|---------------------------|------------------------|------------------|---------------|--|------------------|
| 001-424-01-103-000-GG-000 | CTHSE SALARY/WAGES     | 402,707          | 37,377        |  | 440,084 /2       |
| 001-424-01-104-000-GG-000 | CTHSE FICA EXPENSE     | 26,207           | 2,317         |  | 28,524           |
| 001-424-01-104-001-GG-000 | CTHSE MEDICARE EXPENSE | 6,129            | 542           |  | 6,671            |
| 001-424-01-106-000-GG-000 | CTHSE RETIREMENT       | 52,839           | 4,672         |  | 57,511           |
|                           | <b>424 TOTAL</b>       | <b>1,619,844</b> | <b>44,908</b> |  | <b>1,664,752</b> |

|                           |                      |                |            |  |                |
|---------------------------|----------------------|----------------|------------|--|----------------|
| 001-433-01-103-000-GG-000 | GIS SALARY AND WAGES | 113,358        | 703        |  | 114,061 /7     |
| 001-433-01-104-000-GG-000 | GIS FICA EXPENSE     | 8,880          | 44         |  | 8,924          |
| 001-433-01-104-001-GG-000 | GIS MEDICARE EXPENSE | 2,079          | 10         |  | 2,089          |
| 001-433-01-106-000-GG-000 | GIS RETIREMENT       | 14,171         | 88         |  | 14,259         |
|                           | <b>433 TOTAL</b>     | <b>262,831</b> | <b>845</b> |  | <b>263,676</b> |

DRAFT BUDGET REVISION 010 TO GENERAL FUND

| Object                    | Description              | Current Approved | Debit          | Credit         | Final Approved |
|---------------------------|--------------------------|------------------|----------------|----------------|----------------|
| 001-439-01-103-000-GG-000 | PLANNING SALARY AND WAGE | 231,442          | 4,697          |                | 236,139 /5 /6  |
| 001-439-01-104-000-GG-000 | PLANNING FICA EXPENSE    | 15,062           | 291            |                | 15,353         |
| 001-439-01-104-001-GG-000 | PLANNING MEDICARE EXPENS | 3,524            | 68             |                | 3,592          |
| 001-439-01-106-000-GG-000 | PLANNING RETIREMENT      | 29,368           | 587            |                | 29,955         |
|                           | <b>439 TOTAL</b>         | <b>380,089</b>   | <b>5,643</b>   |                | <b>385,732</b> |
|                           |                          |                  |                |                | -              |
| 001-440-01-103-000-GG-000 | ENGINEER SALARY & WAGES  | 418,539          | 811            |                | 419,350        |
| 001-440-01-104-000-GG-000 | ENGINEER FICA EXPENSE    | 26,259           | 50             |                | 26,309         |
| 001-440-01-104-001-GG-000 | ENGINEER MEDICARE EXPENS | 6,141            | 12             |                | 6,153          |
| 001-440-01-106-000-GG-000 | ENGINEER RETIREMENT      | 52,944           | 101            |                | 53,045         |
|                           | <b>440 TOTAL</b>         | <b>644,057</b>   | <b>974</b>     |                | <b>645,031</b> |
|                           |                          |                  |                |                | -              |
| 001-451-01-103-000-GG-000 | ZONING SALARY AND WAGES  | 80,351           | 4,125          |                | 84,476 /5      |
| 001-451-01-104-000-GG-000 | ZONING FICA EXPENSE      | 5,230            | 256            |                | 5,486          |
| 001-451-01-104-001-GG-000 | ZONING MEDICARE EXPENSE  | 1,224            | 60             |                | 1,284          |
| 001-451-01-106-000-GG-000 | ZONING RETIREMENT        | 10,545           | 516            |                | 11,061         |
|                           | <b>451 TOTAL</b>         | <b>139,257</b>   | <b>4,957</b>   |                | <b>144,214</b> |
|                           |                          |                  |                |                | -              |
| 001-711-01-103-000-PS-000 | EMERG SVC SALARY/WAGES   | 139,092          | 781            |                | 139,873        |
| 001-711-01-104-000-PS-000 | EMERG SVC FICA EXPENSE   | 8,624            | 48             |                | 8,672          |
| 001-711-01-104-001-PS-000 | EMERG SVC MEDICARE EXPNS | 2,017            | 11             |                | 2,028          |
| 001-711-01-106-000-PS-000 | EMERG SVC RETIREMENT     | 17,386           | 98             |                | 17,484         |
|                           | <b>711 TOTAL</b>         | <b>232,827</b>   | <b>938</b>     |                | <b>233,765</b> |
|                           |                          |                  |                |                | -              |
| 001-716-01-103-000-PS-000 | DOG WARD SALARY/WAGES    | 134,388          | 820            |                | 135,208        |
| 001-716-01-104-000-PS-000 | DOG WARD FICA EXPENSE    | 9,076            | 51             |                | 9,127          |
| 001-716-01-104-001-PS-000 | DOG WARD MEDICARE EXP    | 2,123            | 12             |                | 2,135          |
| 001-716-01-106-000-PS-000 | DOG WARD RETIREMENT      | 18,299           | 102            |                | 18,401         |
|                           | <b>716 TOTAL</b>         | <b>247,068</b>   | <b>985</b>     |                | <b>248,053</b> |
|                           |                          |                  |                |                | -              |
| 001-911-05-567-000-CR-000 | VIS CTR CONT OTH GOV UNI | 250,000          | 30,000         |                | 280,000        |
|                           | <b>911 TOTAL</b>         | <b>250,000</b>   | <b>30,000</b>  |                | <b>280,000</b> |
|                           |                          |                  |                |                | -              |
| 001-900-05-567-000-CR-000 | P/REC HOTEL/MOTEL CONTRI | 208,300          | 25,000         |                | 233,300        |
|                           | <b>900 TOTAL</b>         | <b>336,556</b>   | <b>25,000</b>  |                | <b>361,556</b> |
|                           |                          |                  |                |                | -              |
| 001-903-05-567-000-CR-000 | ART/HMNTS HTL/MTL CONTRI | 20,830           | 2,500          |                | 23,330         |
|                           | <b>903 TOTAL</b>         | <b>20,830</b>    | <b>2,500</b>   |                | <b>23,330</b>  |
|                           |                          |                  |                |                | -              |
| 001-909-05-567-000-CR-000 | HIS COM CONT OTH GOV UNI | 20,830           | 2,500          |                | 23,330         |
|                           | <b>909 TOTAL</b>         | <b>20,830</b>    | <b>2,500</b>   |                | <b>23,330</b>  |
|                           |                          |                  |                |                | -              |
|                           |                          | Exp Credit/Debit | 142,433        | 69,333         |                |
|                           |                          | Rev Debit/Credit |                | 73,100         | -              |
|                           |                          | <b>BALANCE</b>   | <b>142,433</b> | <b>142,433</b> |                |

NOTES

- /1 BOE reimbursement for 1/2 of School Impact Fee Study - goes to 401 - Professional Services
- /2 Move admin assistant from 401 to 424
- /3 New hire
- /4 Intern extended 1 week
- /5 Interdepartmental move. Required annual leave payment for leaving employee
- /6 Approved but unbudgeted salary increase. Required annual leave payment for leaving employee
- /7 Approved salary increase - June

Budget Revision 00C PENDING

| Account                   | Description              | Current Approved |          | Final Approved   |
|---------------------------|--------------------------|------------------|----------|------------------|
| 001-401-02-230-000-GG-000 | CO COMM CONTRCTD SERVICE | 50,000           | -19155   | 30,845.00        |
| 001-401-02-223-000-GG-000 | CO COMM PROF SERVICES    | 50,000           | 19155    | 69,155.00        |
| 001-401-02-223-001-GG-000 | CO.COMM PROF SRVS - HRA  | 162,000.00       | 14800    | 176,800.00       |
| 001-401-05-568-000-GG-000 | CO COMM OTHR CONTRIBUTIO | 1,867,514        | -14800   | 1,852,714.00     |
| <b>DEPT TOTAL</b>         |                          | <b>2,129,514</b> | <b>0</b> | <b>2,129,514</b> |
| 001-403-01-101-000-GG-000 | CIR CLK OFFICIAL SALARY  | 55,440           | 13,404   | 68,844           |
| 001-403-01-104-001-GG-000 | CIR CLK MEDICARE EXPENSE | 5,136            | -50      | 5,086            |
| 001-403-01-105-000-GG-000 | CIR CLK GROUP INSURANCE  | 84,225           | 4,805    | 89,030           |
| 001-403-01-106-000-GG-000 | CIR CLK RETIREMENT       | 44,277           | 50       | 44,327           |
| 001-403-01-108-001-GG-000 | CIR CLK OVERTIME         | 3,000            | -2,074   | 926              |
| 001-403-01-108-002-GG-000 | CIR CLK P-TIME/EXTRA HEL | 10,000           | -8,320   | 1,680            |
| 001-403-02-214-000-GG-000 | CIR CLK TRAVEL           | 2,300            | -703     | 1,597            |
| 001-403-02-216-000-GG-000 | CIR CLK MAIN/REP-EQUIPMN | 3,000            | 2,021    | 5,021            |
| 001-403-02-218-000-GG-000 | CIR CLK POSTAGE          | 82               | -82      | 0                |
| 001-403-02-220-000-GG-000 | CIR CLK ADS/LEGAL PUBS   | 100              | -100     | 0                |
| 001-403-02-221-000-GG-000 | CIR CLK TRAIN/EDUCATION  | 1,000            | -1,000   | 0                |
| 001-403-02-222-000-GG-000 | CIR CLK DUES/SUBSCRIPTIO | 300              | -200     | 100              |
| 001-403-02-230-000-GG-000 | CIR CLK CONTRCTD SERVICE | 11,000           | -700     | 10,300           |
| 001-403-03-341-000-GG-000 | CIR CLK MATERIALS/SUPPLY | 20,059           | -6,030   | 14,029           |
| 001-403-03-342-000-GG-000 | CIR CLK RECORD BOOKS     | 4,000            | -584     | 3,416            |
| 001-403-03-353-000-GG-000 | CIR CLK COMPUTER SOFTWAR | 700              | -437     | 263              |
| <b>DEPT TOTAL</b>         |                          | <b>244,619</b>   | <b>0</b> | <b>244,619</b>   |
| 001-405-02-212-000-GG-000 | PROS ATTY PRINTING       | 500              | -500     | 0                |
| 001-405-02-216-000-GG-000 | PROS ATTY MAIN/REP EQUIP | 4633             | -1000    | 3633             |
| 001-405-02-218-000-GG-000 | PROS ATTY POSTAGE        | 300              | -200     | 100              |
| 001-405-02-219-000-GG-000 | PROS ATTY BLDG EQUIP REN | 300              | -300     | 0                |
| 001-405-02-222-000-GG-000 | PROS ATTY DUES/SUBSCRIPT | 41000            | 4000     | 45000            |
| 001-405-02-223-000-GG-000 | PROS ATTY PROF SERVICES  | 20895            | -10000   | 10895            |
| 001-405-02-230-000-GG-000 | PROS ATTY CONTRCTD SERVI |                  | 1000     | 1000             |
| 001-405-03-341-000-GG-000 | PROS ATTY MATERIAL/SUPPL | 19000            | 7000     | 26000            |
| <b>DEPT TOTAL</b>         |                          | <b>86628</b>     | <b>0</b> | <b>86628</b>     |
| 001-406-02-214-000-GG-000 | ASSESSOR TRAVEL          | 2000             | 1000     | 3000             |
| 001-406-03-343-000-GG-000 | ASSESSOR AUTO SUPPLIES   | 6000             | -1000    | 5000             |
| <b>DEPT TOTAL</b>         |                          | <b>8000</b>      | <b>0</b> | <b>8000</b>      |
| 001-425-02-213-001-GG-000 | OTH BLDGS ELECTRICITY    | 120,000          | 30,000   | 150,000          |
| 001-425-02-213-004-GG-000 | OTH BLDGS OTHER UTILITIE | 14,000           | 3,000    | 17,000           |
| 001-425-02-216-000-GG-000 | OTH BLDG MAIN/REP EQUIP  | 10,198           | 15,000   | 25,198           |
| 001-425-02-223-000-GG-000 | OTH BLDG PROFESSIONAL SV | 30,000           | 1,000    | 31,000           |
| 001-425-02-230-000-GG-000 | OTH BLDGS CONTRACTED SVC | 242,370          | (49,000) | 193,370          |
| <b>DEPT TOTAL</b>         |                          | <b>416,568</b>   | <b>-</b> | <b>416,568</b>   |
| 001-428-02-216-000-GG-000 | DATA PROC MAIN/REP EQUIP | 34,000           | (150)    | 33,850           |
| 001-428-02-223-000-GG-000 | DATA PROC PROFESSIONL SV | 11,300           | 3,500    | 14,800           |
| 001-428-02-230-000-GG-000 | DATA PROC CONTRACTED SVC |                  | 150      | 150              |
| 001-428-03-341-000-GG-000 | DATA PROC MATERIAL/SUPPL | 18,700           | (1,500)  | 17,200           |
| 001-428-03-353-000-GG-000 | DATA PROC COMPUTER SOFTW | 2,000            | (2,000)  | -                |
| <b>DEPT TOTAL</b>         |                          | <b>66,000</b>    | <b>-</b> | <b>66,000</b>    |

Budget Revision 00C PENDING

| Account                   | Description             | Current Approved |          | Final Approved   |
|---------------------------|-------------------------|------------------|----------|------------------|
| 001-451-03-341-000-GG-000 | ZONING MATERIAL/SUPPLY  | 3,000            | (1,050)  | 1,950            |
| 001-451-02-240-000-GG-000 | ZONING REFUND/REIMB     | -                | 1,050    | 1,050            |
|                           | <b>DEPT TOTAL</b>       | <b>3,000</b>     | <b>-</b> | <b>3,000</b>     |
| 001-440-02-108-001-GG-000 | ENGINEER OVERTIME       | 5,000            | 1,000    | 6,000            |
| 001-440-02-214-000-GG-000 | ENGINEER TRAVEL         | 3,000            | 1,000    | 4,000            |
| 001-440-02-221-000-GGG-00 | ENGINEER TRAIN/EDUC     | 8,000            | (1,000)  | 7,000            |
| 001-440-02-220-000-GG-000 | ENGINEER ADS/LEGAL PUB  | 2,000            | (1,500)  | 500              |
| 001-440-02-236-000-GG-000 | ENGINEER REFUND ERROR   | -                | 500      | 500              |
|                           | <b>DEPT TOTAL</b>       | <b>18,000</b>    | <b>-</b> | <b>18,000</b>    |
| 001-700-01-108-003-PS-000 | LAW ENF BAILIFFS        | 200,000          | 10,000   | 210,000          |
| 001-700-03-341-000-PS-00  | LAW ENF MATERIAL/SUPPLY | 42,000           | (5,000)  | 37,000           |
| 001-700-02-230-000-PS-000 | LAW ENF CONTRACTED SRV  | 9,500            | (5,000)  | 4,500            |
|                           | <b>DEPT TOTAL</b>       | <b>2,970,873</b> | <b>0</b> | <b>2,970,873</b> |

Commission Office Use Only

Date on Agenda: 6/9/11  
Appt Time or New Business: 11:00 am

05-17-11P03:58 RCVD

**AGENDA REQUEST FORM**

Name: Ray A. Byrd

Department or Entity: Schrader, Byrd & Companion, PLLC

Estimation of amount of time needed for appointment: 30-45 minutes

Date Requested – 1<sup>st</sup> Choice: June 9, 2011

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

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

**The County Commission must address the Report of Fiduciary Commissioner, David A. DeJarnett, with regard to the Objections and Exceptions to the second accounting for the period ended December 31, 2008, regarding the Estate of John J. Warfield along with EXCEPTIONS, OBJECTIONS AND ASSIGNMENT OF ERRORS TO THE REPORT OF FIDUCIARY COMMISSIONER, DAVID A. DeJARNETT.**

Subject:  
**Estate of John J. Warfield**

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

**The County Commission must address the Report of Fiduciary Commissioner, David A. DeJarnett, with regard to the Objections and Exceptions to the second accounting for the period ended December 31, 2008, regarding the Estate of John J. Warfield will be filed in your office shortly along with EXCEPTIONS, OBJECTIONS AND ASSIGNMENT OF ERRORS TO THE REPORT OF FIDUCIARY COMMISSIONER, DAVID A. DeJARNETT.**

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

In addition to the relief provided for in the Report of Fiduciary Commissioner, the Petitioners respectfully request the Jefferson County Commission to also hold that Mr. Packard-Gomez be personally liable and required to repay and/or reimburse and/or account to the Estate of John J. Warfield the following amounts unless otherwise directed or noted:

- a. That Mr. Packard-Gomez is personally liable and required to repay and/or reimburse and/or account to the Estate of John J. Warfield the sum of \$1,117,030.09 for the loan to 1519 Wisconsin Avenue, LLC, together with interest at the legal rate (equaling \$1,269,206.31 as of January 8, 2009 plus \$298.38 per day after January 8, 2009);

*Copy hand carried to Lynn Fields 5/24/11. -do*

b. That the Estate is liable to John T. Buzek, Edmond Buzek, and Jeanne Busack for their attorney fees, costs, and expenses because the actions of John T. Buzek, Edmond Buzek, and Jeanne Busack and their counsel have greatly benefitted the Estate and have resulted in an Order requiring substantial sums be paid to or delivered to the Estate;

c. That Mr. Packard-Gomez is personally liable for and shall be required to repay and/or reimburse and/or account to the Estate of John J. Warfield the amount of John T. Buzek's, Edmond Buzek's, and Jeanne Busack's attorney fees, costs, and expenses; and

d. Prejudgment and postjudgment interest on all such amounts pursuant to W.Va. Code §56-6-31, §44-6-1 *et seq.*, and §44-4-11.

Attachments:

**None**

## NOTICE OF PUBLIC HEARING

### COUNTY COMMISSION OF JEFFERSON COUNTY

#### Policy Neutral Zoning Ordinance Amendments

The County Commission of Jefferson County will hold a Public Hearing on Thursday, June 9, 2011, at 7:00 p.m. in the County Commission meeting room located at the Old Charles Town Library Meeting Room on the ground floor, 200 East Washington Street, Charles Town, WV 25414.

The purpose of the hearing is for public input for the Draft Policy-Neutral Zoning Ordinance Amendments. There will be an overview of the amendments from 7:00 p.m. to 7:30 p.m. and the Public Hearing to receive public comment would begin at 7:30 p.m. The Commission will not take action on the proposed amendments during the public hearing. A decision will be made at a later date.

Anyone wishing to provide written or oral comment may do so at this meeting or send comment to [info@jeffersoncountywv.org](mailto:info@jeffersoncountywv.org).

The Draft Policy Neutral Zoning Ordinance Amendments are available at the following website:

[http://www.jeffersoncountywv.org/uploads/forms/WORKING%20Zoning%20Ordinance%20Amendments%205-3-11%20\(2\).pdf](http://www.jeffersoncountywv.org/uploads/forms/WORKING%20Zoning%20Ordinance%20Amendments%205-3-11%20(2).pdf)

By Order of The County  
Commission of Jefferson County  
Patricia A. Noland, President

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

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

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

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**MEMO**

**TO:** Jefferson County Commission  
**FROM:** Steve Barney, Zoning Administrator  
**DATE:** May 4, 2011  
**RE:** Draft Policy-Neutral Zoning Ordinance Amendments

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**Overview**

The Planning and Zoning Departments are proposing a number of minor, policy-neutral text changes to the Jefferson County Zoning and Land Development Ordinance (July 7, 1988, as amended). The purpose of the changes is to update the Ordinance for consistency with current Subdivision Regulations, enhance the clarity of the text and improve the organization of the document.

The Planning Commission reviewed the draft amendments during several recent meetings, conducted a public hearing on April 12, 2011, and voted to recommend the draft amendments attached to the County Commission.

**Proposed Changes**

Changes proposed are intended to be "policy-neutral" in nature. As such, no significant changes are proposed for zoning or density entitlements, development requirements, or review processes.

The types of changes proposed include:

- Correction of typographical errors  
*Includes spelling, grammar, and similar errors.*
- Organizational changes  
*Includes the relocation of certain sections within the Ordinance, such as sections related to the Board of Zoning Appeals and detailed use standards.*
- Elimination of redundant or obsolete text  
*Includes amendments to site plan standards that are redundant with the adopted Subdivision and Land Development Regulations.*
- Amendment of omissions  
*Includes the addition of sections that describe the roles of the Planning Commission and the County Commission, the process for a variance application, preschools as a permitted use and definitions for terms that are currently undefined.*

- Inclusion of adopted policy  
*Includes adopted policies, such as process for minor zoning map changes.*
- Correction of references to the adopted Subdivision and Land Development Regulations  
*Includes revised citations that refer to the current regulations.*
- Amendments for consistency with the West Virginia state code  
*Includes addition of text for consistency with Senate Bill 595 regarding vesting periods for approved plans and a definition of Urban Growth Boundaries.*

Please refer to the full text of the draft amendments attached for details of all the proposed changes.

### **Next Steps**

Staff requests that the County Commission allow time for a workshop to provide an overview of the policy-neutral amendments to the County Commission at your May 12, 2011 meeting. Further staff requests that the County Commission schedule a public hearing for the proposed amendments in June. As the next US 340 Public Meeting is scheduled for Thursday June 16, 2011, it is requested that the County Commission schedule this item for a Public Hearing on Thursday, June 9, 2011 at 7 pm. It is recommended that the Commission state that there will be an overview of the amendments from 7 pm to 7:30 pm and that the Public Hearing to receive public comment would begin at 7:30pm. It is anticipated that the County Commission would not take action on the proposed amendments during the public hearing, and would schedule a future date for a vote on the adoption of the amendments.

Please let me know if you have any questions.

Draft Policy Neutral Zoning Ordinance  
Amendments

Jefferson County Commission  
May 12, 2011

Policy Neutral Zoning Ordinance  
Amendments

- Purpose of changes:
  - Update the Ordinance for consistency with current regulations;
  - Enhance the clarity of the text; and
  - Improve the organization of the document

Process to Date

The Planning Commission conducted meetings to discuss the proposed changes on:

- November 9, 2010
- January 18, 2011
- March 8, 2011
- April 12, 2011 (public hearing)

Policy Neutral Zoning Ordinance  
Amendments

- No significant changes to:
  - Zoning entitlements
  - Development requirements
  - Review process

### Articles With No Significant Amendments

ARTICLE 1: PURPOSE, JURISDICTION, APPLICATION, INTERPRETATION AND SEVERABILITY

ARTICLE 4A: HOME OCCUPATIONS AND COTTAGE INDUSTRIES  
(separate amendment process underway)

ARTICLE 4B: WIRELESS TELECOMMUNICATIONS FACILITIES  
(separate amendment process complete)

ARTICLE 9: EXCEPTIONS

ARTICLE 10: PROVISIONS FOR SIGNS

ARTICLE 11: OFF-STREET PARKING STANDARDS

ARTICLE 12: MAP AND TEXT AMENDMENTS  
(separate amendment process underway)

### Article 2: Definitions (p. 9)

- New definitions (terms currently in ordinance but undefined)
- Revised definitions
- New terms

### Article 3: Administration and Enforcement (p. 41)

#### Section 3.2 – Zoning Administrator

- Text added for consistency with SB 595, West Virginia Code §8A-5-12, re: Validity periods

#### Section 3.4 – Boards and Commissions

- New section
  - Board of Zoning Appeals
  - County Commission
  - Planning Commission

### Article 4: General Provisions (p. 40)

#### Sections 4.9, 4.10, 4.11, 4.12

- Edited for consistency with Subdivision and Land Development Regulations

#### Section 4.12 - Outdoor Lighting

- Outdoor Lighting deleted (redundant with Sub Regs); new 4.12 (Design Standards for Multi-Family) relocated from 5.5

#### Various sections

- Detailed use requirements relocated to Article 8 (Jails and Prisons, Fireworks, Model Homes)

### Article 8: ~~Appeal Process~~ Supplemental Use Regulations (p. 118)

Previous Sections 8.1 – 8.4

- Appeals Process moved to section 3.4

New Sections 8.1 – 8.13

- Relocation of detailed use standards from other sections of ordinance

### Appendices (p. 139)

New Appendices:

- Appendix A: Residential Site Development Standards Table
- Appendix B: Non-Residential Site Development Standards Table
- Appendix C: Principal Permitted Uses Table
- All appendices “for reference purposes only”

### Next Steps

- County Commission public hearing
- County Commission vote on adoption of amendments

Jefferson County  
Zoning and Land  
Development Ordinance

Jefferson County,  
West Virginia

*Draft "Policy Neutral  
Amendments"*

Prepared By  
The Jefferson County  
Planning Commission

Adopted July 7, 1988 AS AMENDED.

Includes Previously Invalidated April 8, 2005 Amendments

On September 24, 2009, the Supreme Court reversed and remanded the amendments to the Circuit Court. The Circuit Court re-instated the amendments on December 3, 2009.

Blue text = Additions

Red text = Deletions

### Office Consolidation

This document contains additions and amendments approved by the Jefferson County Commission on the following dates. For accuracy, specific reference should be made to these documents.

May 4, 1989  
August 31, 1989  
September 14, 1989  
October 12, 1989  
November 30, 1989  
September 13, 1990  
October 4, 1990  
July 15, 1993  
May 18, 1996  
January 1, 1997  
June 12, 1997  
February 11, 1998  
July 1, 1998  
August 13, 1998  
December 10, 1998  
December 10, 1998  
October 14, 1999  
January 10, 2002  
August 8, 2002  
November 7, 2002  
May 1, 2003

April 8, 2005 at 5:00 p.m., Invalidated and removed by Court Order February 26, 2008

October 3, 2005  
September, 1, 2006  
September 28, 2006

November 1, 2008, ordinance enacted to amend the ordinance adopted July 7, 1988, with all previous amendments, to replace non-traditional zoning with traditional zoning

January 8, 2009 Stay of November 1, 2008 Amended Ordinance  
(Stay due to Petition to place Ordinance on a future ballot for Referendum)

Return to Ordinance which was effective prior to November 1, 2008

Previously invalidated April 8, 2005 amendments reinstated by Court Order on December 3, 2009  
March 10, 2011

TABLE OF CONTENTS, ZONING AND LAND DEVELOPMENT REVIEW ORDINANCE

|                                                                                             |                                                                                              |      |
|---------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|------|
| <u>ARTICLE 1: PURPOSE, JURISDICTION, APPLICATION, INTERPRETATION AND SEVERABILITY</u> ..... |                                                                                              | 69   |
| Section 1.0                                                                                 | Effective Date .....                                                                         | 69   |
| Section 1.1                                                                                 | Purpose .....                                                                                | 69   |
| Section 1.2                                                                                 | Jurisdiction.....                                                                            | 740  |
| Section 1.3                                                                                 | Application and Interpretation.....                                                          | 740  |
| Section 1.4                                                                                 | Severability .....                                                                           | 740  |
| Section 1.5                                                                                 | Use of Technical Information.....                                                            | 740  |
| <u>ARTICLE 2: DEFINITIONS</u> .....                                                         |                                                                                              | 912  |
| Section 2.1                                                                                 | Definitions .....                                                                            | 912  |
| Section 2.2                                                                                 | Terms Defined .....                                                                          | 912  |
| <u>ARTICLE 3: ADMINISTRATION AND ENFORCEMENT</u> .....                                      |                                                                                              | 4144 |
| Section 3.1                                                                                 | Administration .....                                                                         | 4144 |
| Section 3.2                                                                                 | Zoning Administrator .....                                                                   | 4144 |
| Section 3.3                                                                                 | Enforcement.....                                                                             | 4346 |
| Section 3.4                                                                                 | Boards and Commissions .....                                                                 | 4447 |
| <u>ARTICLE 4: GENERAL PROVISIONS</u> .....                                                  |                                                                                              | 4952 |
| Section 4.1                                                                                 | Ordinance Deemed Minimum Regulations: Uniformity .....                                       | 4952 |
| Section 4.2                                                                                 | Compliance with Ordinance .....                                                              | 4952 |
| Section 4.3                                                                                 | Nonconforming Uses.....                                                                      | 4952 |
| Section 4.4                                                                                 | Prohibited Uses.....                                                                         | 5154 |
| Section 4.5                                                                                 | Agricultural Uses Permitted Generally.....                                                   | 5356 |
| Section 4.6                                                                                 | Distance Requirements.....                                                                   | 5356 |
| Section 4.7                                                                                 | Essential Utility Equipment.....                                                             | 5457 |
| Section 4.8                                                                                 | Buildable Lot .....                                                                          | 5457 |
| Section 4.9                                                                                 | Traffic Visibility Across Corner Lots.....                                                   | 5457 |
| Section 4.10                                                                                | Site Plan Requirements.....                                                                  | 5558 |
| Section 4.11                                                                                | Landscaping, Screening and Buffer Yard Requirements .....                                    | 5659 |
| Section 4.12                                                                                | Design Standards for Multi-Family Developments .....                                         | 5861 |
| Section 4.13                                                                                | Development Adjacent to the Potomac and Shenandoah Rivers .....                              | 5962 |
| <u>ARTICLE 4A HOME OCCUPATIONS AND COTTAGE INDUSTRIES</u> .....                             |                                                                                              | 6063 |
| Section 4A.1                                                                                | Home Occupation, Level 1 .....                                                               | 6063 |
| Section 4A.2                                                                                | Home Occupation, Level 2.....                                                                | 6063 |
| Section 4A.3                                                                                | Cottage Industry .....                                                                       | 6164 |
| Section 4A.4                                                                                | Private Covenants Running with the Land .....                                                | 6265 |
| <u>ARTICLE 4B WIRELESS TELECOMMUNICATION FACILITIES</u> .....                               |                                                                                              | 6366 |
| Section 4B.1                                                                                | Purpose and Legislative Intent .....                                                         | 6366 |
| Section 4B.2                                                                                | Classification of Wireless Telecommunication Facilities and Development Review Process ..... | 6467 |
| Section 4B.3                                                                                | Exempt Facilities Allowed by Right .....                                                     | 6467 |
| Section 4B.4                                                                                | Concealed Wireless Telecommunication Facilities.....                                         | 6568 |
| Section 4B.5                                                                                | Co-located Wireless Telecommunication Facilities.....                                        | 6669 |

|                                                                             |                                                                       |        |
|-----------------------------------------------------------------------------|-----------------------------------------------------------------------|--------|
| Section 4B.6                                                                | Temporary Wireless Telecommunication Facilities.....                  | 6770   |
| Section 4B.7                                                                | Wireless Telecommunication Towers.....                                | 6871   |
| Section 4B.8                                                                | Maintenance & Removal Bonds.....                                      | 7578   |
| Section 4B.9                                                                | Abandonment & Removal.....                                            | 7578   |
| <b>ARTICLE 5: DISTRICT ESTABLISHMENT; ZONING MAPS; DISTRICT BOUNDARIES:</b> |                                                                       |        |
| <b>DISTRICT REGULATIONS.....</b>                                            |                                                                       |        |
| Section 5.1                                                                 | Establishment of Districts.....                                       | 7679   |
| Section 5.2                                                                 | Boundaries of Districts.....                                          | 7679   |
| Section 5.3                                                                 | District Maps.....                                                    | 7679   |
| Section 5.4                                                                 | Residential-Growth District.....                                      | 7780   |
| Section 5.5                                                                 | Reserved.....                                                         | 7982   |
| Section 5.6                                                                 | Industrial - Commercial District.....                                 | 8083   |
| Section 5.7                                                                 | Rural District.....                                                   | 8487   |
| Section 5.8                                                                 | Residential/Light Industrial/Commercial District.....                 | 9194   |
| Section 5.9                                                                 | Reserved.....                                                         | 97400  |
| Section 5.10                                                                | Village District.....                                                 | 97400  |
| <b>ARTICLE 6: DEVELOPMENT REVIEW SYSTEM.....</b>                            |                                                                       |        |
| Section 6.1                                                                 | Development Review System (DRS).....                                  | 100403 |
| Section 6.2                                                                 | Issuance of a Conditional Use Permit.....                             | 100403 |
| Section 6.3                                                                 | The Soils Assessment.....                                             | 100403 |
| Section 6.4                                                                 | Amenities Assessment.....                                             | 105408 |
| Section 6.5                                                                 | Computation of Soils/Amenities Assessment.....                        | 109412 |
| <b>ARTICLE 7. PROCEDURAL REQUIREMENTS FOR REVIEW.....</b>                   |                                                                       |        |
| Section 7.1                                                                 | Purpose.....                                                          | 110413 |
| Section 7.2                                                                 | Zoning District Principal Permitted Uses.....                         | 110413 |
| Section 7.3                                                                 | General Development Review System Requirements.....                   | 110413 |
| Section 7.4                                                                 | Filing the Application.....                                           | 110413 |
| Section 7.5                                                                 | Planning and Zoning Staff Evaluation of the Development Review System |        |
|                                                                             | 112415                                                                |        |
| Section 7.6                                                                 | Compatibility Assessment Meeting.....                                 | 113416 |
| Section 7.7                                                                 | Public Hearings for Development Review System.....                    | 115418 |
| <b>ARTICLE 8. SUPPLEMENTAL USE REGULATIONS.....</b>                         |                                                                       |        |
| Section 8.1                                                                 | Adult Use Requirements.....                                           | 118424 |
| Section 8.2                                                                 | Barns and Feeding Pens.....                                           | 118424 |
| Section 8.3                                                                 | Bed and Breakfast.....                                                | 119422 |
| Section 8.4                                                                 | Kennels.....                                                          | 119422 |
| Section 8.5                                                                 | Farm Brewery or Winery.....                                           | 119422 |
| Section 8.6                                                                 | Farm Market.....                                                      | 119422 |
| Section 8.7                                                                 | Jails and Prisons.....                                                | 119422 |
| Section 8.8                                                                 | Hunting, Shooting and Fishing Clubs.....                              | 120423 |
| Section 8.9                                                                 | Industrial and Commercial Uses.....                                   | 121424 |
| Section 8.10                                                                | Model Homes/Sales Offices.....                                        | 125428 |
| Section 8.11                                                                | Petroleum products refining or storage.....                           | 125428 |
| Section 8.12                                                                | West Virginia Legal Fireworks.....                                    | 125428 |
| Section 8.13                                                                | Dormitory.....                                                        | 125428 |
| <b>ARTICLE 9. EXCEPTIONS.....</b>                                           |                                                                       |        |
|                                                                             |                                                                       | 127430 |

|              |                                                                                      |        |
|--------------|--------------------------------------------------------------------------------------|--------|
| Section 9.1  | General.....                                                                         | 127+30 |
| Section 9.2  | Building Height Limitations.....                                                     | 127+30 |
| Section 9.3  | Lot Area Modification.....                                                           | 127+30 |
| Section 9.4  | Setback Modifications.....                                                           | 128+31 |
| Section 9.5  | Projections Into Yards.....                                                          | 128+31 |
| Section 9.6  | Accessory Structures.....                                                            | 128+31 |
| Section 9.7  | Other Exceptions.....                                                                | 129+32 |
| Section 9.8  | Seasonal Uses.....                                                                   | 130+33 |
| ARTICLE 10.  | PROVISIONS FOR SIGNS.....                                                            | 131+34 |
| Section 10.1 | Purpose of Sign Provisions.....                                                      | 131+34 |
| Section 10.2 | General Provisions.....                                                              | 131+34 |
| Section 10.3 | Permitted Signs Without Zoning Permit.....                                           | 132+35 |
| Section 10.4 | Signs Requiring a Zoning Permit.....                                                 | 132+35 |
| Section 10.5 | Special Exception Uses (Requiring Board of Zoning Appeals After Public Hearing)..... | 134+37 |
| Section 10.6 | Zoning Certificate.....                                                              | 134+37 |
| ARTICLE 11.  | OFF-STREET PARKING STANDARDS.....                                                    | 135+38 |
| Section 11.1 | Non-Residential Parking Standards.....                                               | 135+38 |
| Section 11.3 | Residential Parking Standards.....                                                   | 137+40 |
| ARTICLE 12.  | MAP AND TEXT AMENDMENTS.....                                                         | 138+41 |
| Section 12.1 | Purpose.....                                                                         | 138+41 |
| Section 12.2 | Procedure for Amendment by Governing Body.....                                       | 138+41 |
| Section 12.3 | Procedure for Amendment by Petition.....                                             | 138+41 |
| APPENDIX A:  | RESIDENTIAL SITE DEVELOPMENT STANDARDS TABLE.....                                    | 139+42 |
| APPENDIX B:  | NON-RESIDENTIAL SITE DEVELOPMENT STANDARDS TABLE.....                                | 140+43 |
| APPENDIX C:  | PRINCIPAL PERMITTED USES TABLE.....                                                  | 141+44 |

**ARTICLE 1: PURPOSE, JURISDICTION, APPLICATION, INTERPRETATION AND SEVERABILITY**

**Section 1.0 Effective Date**

This Ordinance shall become effective ninety (90) days after the date on which the County Commission acts to adopt it.

**Section 1.1 Purpose**

The purpose of this Ordinance is to:

- A. Protect and encourage the health, safety, and general welfare of the present and future population of Jefferson County.
- B. Help guide the future growth and development of Jefferson County in accordance with the adopted Comprehensive Plan.
- C. Encourage growth and development in areas where sewer, water, schools, and other public facilities are or will soon be available in order to provide services in the most cost effective manner.
- D. Insure that growth and development are both economically and environmentally sound.
- E. Encourage the maintenance of an agricultural base in the County at a level sufficient to insure the continued viability of farming.
- F. Encourage and support commercial, industrial, and agricultural activities while maintaining land use, order and compatibility.
- G. Encourage an improved appearance of Jefferson County with relationship to the use and development of land and structures.
- H. Encourage the conservation of natural resources.
- I. Provide a guide for public action in the orderly and efficient provision of public facilities and services.
- J. Provide a guide for private enterprise in developing and building a strong economic community.
- K. Encourage Historic Preservation.

## Section 1.2 Jurisdiction

These regulations shall apply to all properties within Jefferson County, West Virginia; but shall not include the incorporated areas.

## Section 1.3 Application and Interpretation

- A. The terms of this Ordinance shall be applied to promote the intent in Section 1.1 and the Comprehensive Plan.
- B. Where this Ordinance imposes a greater restriction than is imposed or required by other provisions of law, or by other rules, regulations or ordinance, or by private restrictions, covenants or declarations, the provisions of this Ordinance shall control, except where stated specifically herein.
- C. Where a provision of this Ordinance is in conflict with another provision of this Ordinance the stricter regulation shall apply.
- D. If a proposed use is not one in the list of those permitted in each zoning district, it shall be prohibited as though it was included in the list of prohibitions. However, the use may be approved if the Development Review System demonstrates that the use is compatible and appropriate with the neighborhood and the use can be approved by the Board of Zoning Appeals as a conditional use.<sup>1</sup> [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE AUGUST 31, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- E. Amendments to this Ordinance shall not adversely affect specific decisions made by the Zoning Board of Zoning Appeals or conditions on a Conditional Use Permit dated prior to the adoption of such amendment. Determination of adverse affect shall be made by the Zoning Administrator. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 18, 1996. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

## Section 1.4 Severability

Should any article, section, subsection or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the Zoning OrdinanceZoning and Land Development Ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.

## Section 1.5 Use of Technical Information

Should any technical study, authorized by the Jefferson County Commission, become available after the adoption of this Ordinance, the County Commission shall authorize the Planning and Zoning Commission to scrutinize review such study to determine the extent that this Ordinance

|  
may need to be amended. Such studies may include, but, are not limited to, information on recreation, groundwater, hazardous wastes, and historic structures.

Changes that arise from this provision may include additions and/or deletions of sections in this Ordinance which would further encourage the proper management and preservation of our  
| Natural and Cultural Resources. All such recommended changes are subject to Section 12.1.

**ARTICLE 2: DEFINITIONS**

**Section 2.1 Definitions**

For the purpose of these regulations, the following terms, phrases, words and their derivations shall have the meaning given herein. Words used in the present tense include the future, the singular number includes the plural and the plural is the singular. The word “shall” is mandatory and the word “may” is permissive. The words “used for” shall include “arranged for”, “designed for”, “intended for”, “maintained for”, “constructed for”, or “occupied for”. The word “person” shall mean natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust or the manager, lease, agent, servant, officer or employee of any of them. The word “land” shall include water surface and land under water.

**Section 2.2 Terms Defined**

|                          |                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| Abandonment or Abandoned | The relinquishment of property or cessation of the use of the property by the owner or lessee without any intention of transferring rights to the property to another owner or resuming the nonconforming use of the property for a period of one year.<br>[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]                                                                        |
| Accessory Equipment      | Any equipment serving or being used in conjunction with a Wireless Telecommunications Facility. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                        |
| Accessory Use            | A structure or use which is customarily incidental and subordinate to the principal building or use which is located on the same lot as the principal building. Accessory structures include garages, tool sheds, storage buildings, swimming pools or other similar structures. An accessory structure having any part of a wall in common with a dwelling is considered part of the main building and must meet those setbacks. |
| Addition, Major          | A major addition shall include those additions which will directly affect the function of the site or those                                                                                                                                                                                                                                                                                                                       |

|                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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|                                              | <p>areas surrounding the site. Any substantial change of use classification, alteration of on-site parking requirements, potential adverse impacts of off-site storm water drainage, increased demand for public water and sewerage or additions which will cause the rerouting of traffic circulation shall be considered "major additions".</p>                                                                                                                                                      |
| Adjacent/Confronting Affected Property Owner | <p>The owner of property adjacent to or confronting a proposed development (including the properties across any road, right of way or easement) which will be impacted either positively or negatively by that proposed development. Names and addresses of affected property owners will be taken from current tax records in the Jefferson County Court House. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]</p>                                                                |
| Adult Use                                    | <p>Uses that are commonly associated with adults only, including but not limited to: bars, lounges, dance clubs, stripping establishments, adult book stores, clubs, adult arcades, adult cabarets, adult motion picture theaters, massage parlors, sexual encounter establishments or other similar businesses. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]</p>                                                                                                                |
| Adult Arcade                                 | <p>An establishment where, for any form of consideration, one or more motion picture projectors, slide projectors, or similar machines for viewing by five or fewer persons each are used to show films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE NOVEMBER 7, 2002]</p> |
| Adult Bookstore                              | <p>An establishment that has as a substantial portion of its stock-in-trade and offers for sale, for any form of consideration, any one or more of the following (1) books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations that are characterized by emphasis upon the depiction or description of specified sexual activities or specified</p>                                                     |

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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|                                   | anatomical areas; or (2) instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE NOVEMBER 7, 2002]                                                                                                                                                                                                                                                                                                                    |
| Adult Cabaret                     | A nightclub, bar, restaurant, facility, or similar establishment that regularly features live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities, or films, motion pictures, video cassettes, slides or other photographic reproductions of material that is characterized by any emphasis upon the depiction of specified sexual activities or specifies anatomical areas. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE NOVEMBER 7, 2002]                 |
| Adult Mini Motion Picture Theatre | An enclosed building with a capacity for fewer than 50 persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as herein defined, for observation by patrons therein. The phrase "used for" in this definition shall mean a regular and substantial course of conduct and not a one-time presentation of such material. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE NOVEMBER 7, 2002] |
| Adult Sauna                       | A sauna which excludes minors by reason of age, or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, using steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas as defined herein. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE NOVEMBER 7, 2002]                                                        |
| Adult Theater                     | A theater, concert hall, auditorium, or similar establishment characterized by activities featuring the exposure of specified anatomical areas or by specified sexual activities. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE NOVEMBER 7, 2002]                                                                                                                                                                                                                                                                            |

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|                               | NOVEMBER 7, 2002]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Affordable Housing            | Housing units where the occupant is paying no more than 30 percent of Jefferson County median gross income for housing costs, including taxed and utilities. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Aggrieved or Aggrieved Person | A person who is denied by the planning commission or the board of zoning appeals, in whole or in part, the relief sought in any application or appeals, or has demonstrated that he or she will suffer a peculiar injury, prejudice or inconvenience beyond that which other residents of the county or municipality may suffer. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Agricultural Use              | <p>The use of land for a bona-fide farming operation. This includes:</p> <ol style="list-style-type: none"> <li>1. Commercial Agricultural Enterprise;</li> <li>2. Agriculture, Ranching;</li> <li>3. Aquaculture;</li> <li>4. Apiculture;</li> <li>5. Horticulture;</li> <li>6. Viticulture;</li> <li>7. Fish, meat, poultry and game birds processing, provided that fifty percent (50%) of the meat processed must be raised on the site farm of the processing facility for minimum periods of three (3) months for beef and pork and two (2) months for lamb and poultry;</li> <li>8. Animal Husbandry; including, but not limited to, the care and raising of livestock, equine, and fur-bearing animals;</li> <li>9. Poultry husbandry and the production of poultry, game birds and poultry products;</li> <li>10. Dairy production and processing of dairy products;</li> <li>11. <del>Equestrian uses; Horse Breeding, boarding, riding and training facility;</del></li> <li>12. The production of field crops including but not limited to tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental</li> </ol> |

Comment [SB1]: Missing word.

Comment [SB2]: Equestrian is defined in Sec 2.2.

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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|                       | <p>trees, flowers, sod, mushrooms, timber, pasturage, Christmas trees, maple sap, woody biomass, compost;</p> <p>13. Pick your own farm products;</p> <p>14. Agricultural tourism;</p> <p>15. Farm vacation <u>enterprise</u> and farm related experience provided that there are not more than 5 lodging units;</p> <p><del>15.16. Farm brewery and winery provided that all structures associated with the operation do not exceed 10,000 square feet subject to the requirements for such a use in Article 8;</del></p> <p><del>16.17. Rental of garden plots;</del></p> <p><del>17.18. Community supported agriculture;</del></p> <p>19. The warehousing; processing, value added, drying, storage, distribution and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, husbandry or production;</p> <p><del>18.20. Forestry;</del></p> <p><del>Rental of existing farm building, for commercial storage (structure must have existed for 5 years);</del></p> <p>[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]</p> |
| Alternative Structure | <p>For antenna-mounting purposes, a structure which is not primarily constructed for the purpose of holding antennas but on which one or more antennas may be mounted. The term Alternative Structure includes, but is not limited to, buildings, silos, water tanks, pole signs, lighting standards, steeples and electric distribution, electric transmission or other utility poles. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Amenities             | <p>Utilities, roadways, and public services which make a particular site more attractive for development. Section 6.4 governs the assessment of amenities as it relates to the Development Review System.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Antenna               | <p>Any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, Personal Communications Services (PCS) and microwave communications. Such structures and</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

**Comment [SB3]:** Farm vacation standards moved to definition of this land use.

**Comment [SB4]:** Brewery/Winery standards moved to Article 8.

**Comment [SB5]:** Forestry added from Rural district uses.

**Comment [SB6]:** Rental of farm building moved to Rural District principal permitted uses.

|                                    |                                                                                                                                                                                                                                                                                                                                                  |
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|                                    | devices include, but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omni-directional antennas, such as whip antennas. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                                                            |
| Antenna Array                      | Two or more antennas that operate as components of a complete antenna suite for a single Wireless Telecommunication Facility. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                                                                                                          |
| Antenna, Concealed                 | An antenna that is designed and/or erected on or in a building or alternative structure in such a way that it blends in with the existing façade and/or is located in such a way that it is not readily visible or discernible to the average individual at the adjacent street level. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011] |
| Appalachian Trail Overlay District | For purposes of the Wireless Telecommunication Facilities Ordinance, the area within one mile of the centerline of the Appalachian Trail. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                                                                                              |
| Applicant                          | Any person <del>commencing seeking</del> to develop land, <del>initiate a land use, obtain approval pursuant to under</del> the Development Review System Ordinance, <del>or of any person requesting</del> an appeal <del>from or variance</del> to this Ordinance.                                                                             |
| Area, Land                         | Land area refers to new land area, exclusive of streets and other public space.                                                                                                                                                                                                                                                                  |
| <u>Barber/beauty shop, limited</u> | <u>A barber or beauty shop limited to no more than two chairs.</u>                                                                                                                                                                                                                                                                               |
| <u>Bed and Breakfast</u>           | <u>A single-family dwelling where lodging is offered for compensation, having no more than seven (7) bedrooms for this purpose, and meeting the requirements for such a use in Article 8 of this ordinance.</u>                                                                                                                                  |
| Billboard                          | A structure on which is portrayed information which directs attention to a business commodity, service or entertainment not necessarily related to the other uses permitted on the premises upon which the structure is located. (See Sign, Outdoor Advertising)                                                                                 |

**Comment [SB7]:** Revised use name and new definition (currently not defined), currently named "2-chair barber/beauty shop."

**Comment [SB8]:** Use currently not defined.

|                            |                                                                                                                                                                                                                                                                                                                                                                                                               |
|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Blue Ridge Line            | The common surveyed boundary between Jefferson County, West Virginia and Loudoun County, Virginia. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE AUGUST 13, 1998]                                                                                                                                                                                                                                       |
| Board                      | The Jefferson County Board of <u>Zoning Appeals</u> . [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]                                                                                                                                                                                                                                                         |
| Broadcast Tower            | A structure situated on a lot that is intended for transmitting television or AM/FM radio signals. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                                                                                                                                                                                                  |
| Buffer                     | An area on a property defined by a distance from the property line or other specifically designed line such as flood plain, wetland limit or stream bank. Said area is intended to absorb, lessen or neutralize the impacts of one land use from another. The nature of the buffer will depend on the impact(s) being neutralized.<br>[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990] |
| Building                   | Any structure which is permanently affixed to the land and has one or more floors and a roof. The term building shall include manufactured homes.                                                                                                                                                                                                                                                             |
| Building, Height of        | The vertical distance measured from the level of approved street grade opposite the middle of the front of the building to the highest point of the coping of a flat roof; to the deck line of a mansard roof; and to the mean height level between eaves and ridge of a gable, hip or gambrel roof.                                                                                                          |
| Building Line              | The line established by law beyond which a building shall not extend as determined by front, side and rear yards, herein.                                                                                                                                                                                                                                                                                     |
| <u>Caretaker Residence</u> | <u>An accessory residential structure for the use of a caretaker or security guard.</u>                                                                                                                                                                                                                                                                                                                       |
| Cell on Wheels "COW"       | A portable self-contained cell site that can be moved to a location and set up to provide personal wireless                                                                                                                                                                                                                                                                                                   |

**Comment [SB9]:** Currently an accessory use to an industrial use, not defined.

|               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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|               | services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna support structure. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Change of Use | Any use which is different than the previous use of a building or land or any change in the <a href="#">North American Industry Classification System (NAICS) Standard Industrial Code</a> code in utilizing the Development Review System.                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Church        | <a href="#">A building or site wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. Includes synagogue, temple, mosque, or other such place for worship and religious activities.</a>                                                                                                                                                                                                                                                                              |
| Clustering    | Grouping structures in closely related groups at higher densities than normally permitted in certain areas in order to preserve other areas as parks, recreational areas or sensitive natural areas. Overall density of the total parcel remains within acceptable limits. See <a href="#">Chart (5.5.b) Section 5.7</a> for minimum area per dwelling unit and minimum lot area. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990]                                                                                                                                                                                                               |
| Co-location   | For purposes of regulating commercial wireless telecommunication facilities, co-location means the placement of additional antennas or antenna arrays on an existing or approved telecommunication tower or support structure (or alternative structure), or otherwise sharing a common location by two or more FCC licensed providers of personal wireless services. Co-location includes antennas, combiners, transmitters, receivers and related electronic equipment, cabling, wiring, equipment enclosures and other components or improvements associated with a wireless telecommunication facility. [AMENDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011] |
| Commercial    | Any wholesale, retail or service business activity                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

**Comment [SB10]:** NAICS is the industry classification system now in use. It was released in 1997.

**Comment [SB11]:** Currently not defined.

**Comment [SB12]:** Reference corrected.

|                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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|                                      | established to carry on trade whether or not for profit.<br>[AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 4, 1989]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Commercial Agricultural Enterprise   | Farm operations which will:<br>A. Contribute in a substantial way to the area's existing agricultural economy; and<br>B. Help maintain agricultural processors and established farm markets. When determining whether a farm is a part of a commercial agricultural enterprise, not only what is produced, but how much and how it is marketed shall be considered.<br>[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]                                                                                                                                                                                                                                                                                                                    |
| Commercial Wireless Service Provider | Persons or entities who operate radio systems requiring an FCC license and who employ those facilities to provide point-to-point microwave links for wireline communication services (or connectivity between adjacent antenna sites), fixed wireless (including microwave), or mobile wireless communication services to third parties for compensation. Commercial Wireless Service Providers include, but are not limited to Cellular, Personal Communication Services (PCS), Specialized Mobile Radio (SMR), Enhanced Specialized Mobile Radio (ESMR), paging, Competitive Local Exchange Carriers (CLEC) utilizing point-to-point microwave, and other point-to-point microwave links for wireline communication services. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011] |
| Commission                           | The Jefferson County Planning <del>and Zoning</del> Commission.<br>[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Comprehensive Plan                   | A composite of mapped and written text, the purpose of which is to guide the systematic physical development of the County and is adopted by the County Commission.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

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| Conditional Use        | A use which because of special requirements or characteristics may be permitted in a particular zoning district only after review by the <del>b</del> Board of <del>#</del> Zoning <del>a</del> Appeals and upon issuance of a conditional use permit, and subject to the limitations and conditions specified in the <del>zoning ordinance</del> Zoning and Land Development Ordinance. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]                                                                                                                                                                                                                                                                    |
| Conditional Use Permit | A permit issued upon completion of the Development Review System which allows for the proper integration of compatible uses into the community.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Condominium            | A common interest community in which portions of the real estate are designated for separate fee simple ownership of cubic air interior spaces and the remainder of the real estate is designated for common ownership solely by the owners of those portions. Said common interest community may be residential, commercial or industrial depending on other provisions of this Ordinance. All such projects are subject to the West Virginia Uniform Common Interest Ownership Act. In the event that a specific requirement within the Uniform Common Interest Ownership Act is inconsistent with a commercial or industrial project, that specific requirement shall not apply. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990] |
| Contiguous             | Lots, parcels, municipal boundaries or county boundaries that are next to, abutting and having a boundary, or portion thereof, that is coterminous. Streets, highways, roads or other traffic or utility easements, streams, rivers, and other natural topography are not to be used to determine lots, parcels, municipal boundaries or county boundaries as contiguous. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]                                                                                                                                                                                                                                                                                   |
| Cottage Industry       | An occupation at a residential premises anywhere except the Residential Growth District and existing                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

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|                               | residential subdivisions; with a limited number of employees, accessory structures and with specific setbacks. See Article 4A for standards.<br>[AMENDED BY ACT OF THE COUNTY COMMISSION EFFECTIVE MAY 18, 1996]                                                                                                                                                                                                        |
| <u>Country Inn</u>            | <u>A private residence at least 50 years old that offers sleeping accommodations to lodgers in 30 or fewer rooms for rent. For the purpose of this definition, a lodger means a person who rents a room in a country inn establishment for fewer than 30 consecutive days. The land use may include a restaurant open to the general public as well as to guests.</u>                                                   |
| <u>Cultural Facility</u>      | <u>A library, museum, or similar public or quasi-public use displaying, preserving, and exhibiting objects of community and cultural interest.</u>                                                                                                                                                                                                                                                                      |
| <u>Day Care Center, Small</u> | <u>A facility: (1) in a dwelling unit; (2) licensed by the state, if applicable; (3) providing care for five or fewer children or adults who (except for family members) do not reside in the facility, are present primarily during daytime hours, and do not regularly stay overnight. Family members who receive care in the facility are not included in the total; and (4) which may include some instruction.</u> |
| <u>Day Care Center, Large</u> | <u>A facility: (1) licensed by the state, if applicable; (2) providing care for six or more children or adults who do not reside in the facility, are present primarily during daytime hours, and do not regularly stay overnight; and (3) which may include some instruction.</u>                                                                                                                                      |
| Department                    | The Jefferson County Planning and Zoning Department. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                                                                                                                                                                                                                                                          |
| Development                   | The subdivision of land; construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure, installation of a sign; and any mining, landfill or land disturbance, such as grading, paving and excavation.                                                                                                                                                                    |
| Development Review System     | A numerical rating system designed to assess a particular site's development potential based on soils and amenity criteria cited within this ordinance.                                                                                                                                                                                                                                                                 |

**Comment [SB13]:** Use currently not defined.

**Comment [SB14]:** Revised use name and new definition (currently not defined), replaces "Library, museum or similar institution of a noncommercial nature"

**Comment [SB15]:** Revised use name and new definition (currently not defined), replaces "Child or Elderly Care Facilities"

**Comment [SB16]:** Revised use name and new definition (currently not defined), replaces "Child Care Centers."

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| Discernible             | Capable of being distinguished with the eye or mind from its surroundings as a telecommunications tower. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Dormitory               | A building used for sleeping accommodations where such building is used accessory to a permitted use of land. <del>A dormitory shall be located on the same property or campus as the use it is intended to serve. A dormitory shall not offer accommodations to the general public or to persons who are visiting the property or campus primarily for the purpose of being a spectator at a sporting event or other gathering held at the facility. A dormitory may include one common kitchen or dining facility and common gathering rooms for social purposes for use only by its temporary occupants.</del> [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JANUARY 10, 2002] |
| Dwelling Unit           | One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, <u>occupied by no more than one family</u> , and containing <u>no more than one independent cooking food preparation area together with and facilities for sleeping and bathing facilities.</u> [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]                                                                                                                                                                                                                                |
| Dwelling, Detached      | A building containing only dwelling units surrounded by yards or other open area on the same zoning lot.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <u>Dwelling, Duplex</u> | <u>A combination of no more than two single-family dwelling units, with each individual dwelling unit located on its own legal lot, and sharing a common lot line and a common vertical wall.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Dwelling, Multi-Family  | A building containing three or more dwelling units, <u>which may including include rental or condominium residential units.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Dwelling, Single Family | A <u>detached</u> building containing not more than one dwelling unit and not occupied by more than one family.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Dwelling, Townhouse     | One of a series of three or more attached dwelling                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

**Comment [SB17]:** Regulatory text moved to Article 8.

**Comment [SB18]:** These changes clarify that only one family (as defined in the Zoning Ordinance) may occupy a dwelling unit, and that multiple kitchens are not permitted in the same dwelling unit.

**Comment [SB19]:** "Duplex" is a permitted land use in the Zoning Ordinance but is not defined.

**Comment [SB20]:** Clarifies that "multi-family" may including rental and/or ownership units.

**Comment [SB21]:** Revised use name, replaces various names. Clarifies that a single-family dwelling is a detached dwelling.

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|                                  | units separated from one another by continuous vertical party walls without openings from basement floor to roof.                                                                                                                                                                              |
| Dwelling, Two-Family             | A building located on one zoning lot containing not more than two dwelling units, arranged one above the other or side by side, and not occupied by more than two families.                                                                                                                    |
| Easement                         | A lawfully acquired right or privilege to use a parcel of land or a portion thereof for a specified purpose. An easement is retained by a person other than the owner of the land parcel.                                                                                                      |
| Electric Distribution Poles      | Metal, wooden or concrete towers and poles used to suspend wires transporting electricity between substations at the terminus of transmission lines and individual customer premises. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                |
| Electric Transmission Towers     | Metal, wooden or concrete towers and poles used to suspend wires transmitting electricity between generating plants and substations supplying electricity to distribution and feeder lines. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                          |
| Engineer                         | A person registered by the State of West Virginia through the Board of Registration of Professional Engineers.                                                                                                                                                                                 |
| <u>Equestrian Uses</u>           | <u>Use of a site for horse riding, training, breeding, stables, or boarding.</u>                                                                                                                                                                                                               |
| Equipment Enclosure              | Facilities, equipment enclosure means a building, cabinet or shelter used to house transmitters, receivers and other electronic equipment and accessories. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                           |
| Essential Utilities Or Equipment | Underground or overhead electrical, gas, communications not regulated by the federal communications commission, water and sewage systems, including pole structures, towers, wires, lines, mains, drains, sewers, conduits, cable, fire alarm boxes, traffic signals, hydrants, regulating and |

**Comment [SB22]:** New use name; combines several related use names.

|                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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|                                 | <p>measuring devices and the structures in which they are housed, and other similar equipment accessories in connection therewith. Essential utility equipment is recognized in three categories:</p> <ul style="list-style-type: none"> <li>A. Local serving;</li> <li>B. Nonlocal or transmission through county or municipality; and</li> <li>C. Water and sewer systems, the activities of which are regulate, in whole or in part, by one or more of the following state agencies: <ul style="list-style-type: none"> <li>1. Public Service Commission;</li> <li>2. Department of Environmental protection; or</li> <li>3. Department of Health and Human Resources.</li> </ul> </li> </ul> <p>[AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 18, 1996 AND FEBRUARY 11, 1998. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]</p> |
| Expanded Use                    | The further development of a developed site.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| FAA                             | Federal Aviation Administration. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <u>Family</u>                   | <u>Any of the following cases constitutes a family:</u><br><u>(a) An individual; or</u><br><u>(b) two (2) or more persons related by blood, marriage or adoption, or under approved foster care; or</u><br><u>(c) a group of not more than six (6) unrelated persons living together and sharing living areas in a dwelling unit; or</u><br><u>(d) a group of persons occupying a dwelling unit meeting the definition of a Residential Care Home.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <u>Farm Market</u>              | <u>Market for the sale of farm products, and products incidental to farm products.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <u>Farm Vacation Enterprise</u> | <u>A farm adapted for use as a rural vacation area, which may include picnicking and sporting areas, fishing waters, camping, scenery, nature recreation areas, and similar uses. The site may contain up to 5 lodging units.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

**Comment [SB23]:** "Family" currently not defined.

**Comment [SB24]:** Use currently undefined.

**Comment [SB25]:** Use currently undefined. Limit of 5 lodging units is a requirement of existing ordinance.

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| FCC                              | Federal Communications Commission. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                                                                                                                                                                                                                                                                          |
| Flood-prone Area                 | Areas subject to the one hundred (100) year flood as determined by the Flood Insurance Study prepared by the Federal Insurance Study prepared by the Federal Insurance Administration for Jefferson County, dated April 15, 1980, as may be amended.                                                                                                                                                                  |
| Flood-prone Soils                | Any area designated as flood-prone soils in the Soil Survey of Jefferson County, West Virginia prepared by the Department of Agriculture, Soil Conservation Service.                                                                                                                                                                                                                                                  |
| Frontage, Street                 | All property on the side of a street between two intersecting streets (crossing or ending), or if the street is a dead-end, then all property abutting on one side between an intersecting street and the dead-end of the street.                                                                                                                                                                                     |
| Functionally Equivalent Services | FCC licensed providers of Commercial Mobile Radio Services (CMRS) classified as Cellular, Personal Communication Services (PCS), Paging, Specialized Mobile Radio (SMR) and Enhanced Specialized Mobile Radio (ESMR). [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                                                                                       |
| Glare                            | The effect produced by brightness sufficient to cause annoyance, discomfort, or lessen visual performance and visibility.                                                                                                                                                                                                                                                                                             |
| Governmental User                | Federal, state or local governments, or agencies or instrumentalities thereof, volunteer fire departments or rescue squads which operate radio systems (including microwave) requiring an FCC license, and which employ those facilities exclusively for intra-governmental or inter-governmental public service, public safety or administrative purposes. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011] |
| Group Residential Facility       | <u>A facility which is owned, leased or operated by a behavioral health service provider and which: (1) Provides residential services and supervision for individuals who are developmentally disabled or</u>                                                                                                                                                                                                         |

**Comment [SB26]:** Use definition updated for consistency with definition in West Virginia Code.

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|                                       | <p><u>behaviorally disabled; (2) is occupied as a residence by not more than eight individuals who are developmentally disabled and not more than three supervisors or is occupied as a residence by not more than twelve individuals who are behaviorally disabled and not more than three supervisors; (3) is licensed by the Department of Health and Human Resources; and (4) complies with the State Fire Commission for residential facilities. A dwelling owned or leased by a governmental or non-profit organization and used to house a group of persons not necessarily related by blood. The parent agency or institution has the administrative, supervisory and service responsibility for the group home. Per Chapter 17 of the West Virginia Code, as amended, a Group Residential Home shall be a permitted residential use of property for the purposes of zoning and shall be a permitted use in all zones or districts.</u></p> |
| <p><u>Group Residential Home</u></p>  | <p><u>A building owned or leased by developmentally disabled or behaviorally disabled persons for purposes of establishing a personal residence, and complying with all applicable requirements of the state of West Virginia. Per Chapter 17 of the West Virginia Code, as amended, a Group Residential Home shall be a permitted residential use of property for the purposes of zoning and shall be a permitted use in all zones or districts.</u></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p>Harpers Ferry Overlay District</p> | <p>For purposes of regulating Wireless Telecommunication Facilities, an area bounded on the north by a line running west from the Potomac River shore to and along Engle Switch Road to its intersection with Route 230; thence south along Route 230 to its intersection with the CSX Railroad Valley Line; thence south along said railroad to Milepost 4 on the railroad at its intersection with Millville Road; thence east from that point to and across the Shenandoah River to a point 1000 feet distant on the eastern shore of the said Shenandoah River; then following a line 1000 feet inland from that opposite shore of the Shenandoah River to its confluence with the Potomac River; then along a line 1000 feet inland from the Potomac river shore running east to the Virginia state line; thence north to the Potomac River shore; thence west along the shore</p>                                                             |

**Comment [SB27]:** Use currently not included in Zoning Ordinance; added for consistency with West Virginia Code, which states that it shall be a permitted residential use in all zones or districts.

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|                                                                        | of the Potomac River to the point of origin. This district excludes the area within the jurisdictional boundaries of the town of Harpers Ferry and the town of Bolivar. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                                                                           |
| Historic Resource                                                      | A site, structure, area, or district possessing historic importance as defined by the U.S. Department of Interior, West Virginia State Historic Preservation Office, Jefferson County Historic Landmarks Commission, or other governmental agency. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                |
| Historic Site/ Property                                                | Any lot, parcel, historic structure, or designated area which has been listed on the West Virginia or the National Register of Historic Places.                                                                                                                                                                                                             |
| Home Occupation, Level 1                                               | An occupation conducted in a residential premise in any district, but only by family members, wholly within the dwelling unit, with no visible evidence of its conduct. See Article 4A for standards. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 18, 1996]                                                                                     |
| Home Occupation, Level 2                                               | An occupation conducted in a residential premise in any district, but not in subdivisions established since 1979, and with some nonresident employees, but wholly within the dwelling unit and with no visible evidence of its conduct except a small sign. See article 4A for standards. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 18, 1996] |
| <u>Hunting, Shooting, Archery and Fishing Clubs, public or private</u> | <u>Land owned by an organized group of persons formed as a club that is used for hunting, fishing, shooting, archery and similar types of passive recreation.</u>                                                                                                                                                                                           |
| Impervious Surface                                                     | Any structure, material, or surface which reduces and prevents absorption of storm water into the earth.                                                                                                                                                                                                                                                    |
| Improvements                                                           | Modifications to land which increase its value or utility. Improvements include, but are not limited to, buildings and structures, road grading, road surfacing, landscaping, curbs, gutters, storm sewers and drains, sidewalks, street signs, modifications to                                                                                            |

Comment [SB28]: Use currently undefined.

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|                    | watercourses, water supply facilities, sewage disposal facilities, and park and recreation equipment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Institutional Use  | A non-profit, <del>not for profit</del> , public or quasi-public use, such as a religious facility, library, public or private school, hospital, or government owned, operated, or supported facility or land use for public purpose. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]                                                                                                                                                                                                                                   |
| <u>Kenel</u>       | <u>The boarding, breeding, raising, grooming, or training of more than six dogs, cats, or other household pets of any age not owned by the owner or occupant of the premises, and/or for commercial gain.</u>                                                                                                                                                                                                                                                                                                                                                           |
| Land Surveyor      | A person registered by the State of West Virginia through the Board of Examiners of Land Surveyors.                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Lattice Tower      | A support structure constructed of vertical metal struts and cross braces forming a triangular or square structure which often tapers from the foundation to the top. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                                                                                                                                                                                                                                                                                         |
| Light Industrial   | Any industry that does not use a significant amount of water except for domestic purposes. Industrial uses that do not create noise, odors, smoke and objectionable nuisances or hazards. <del>All other perceived light industrial uses shall be referred to the Jefferson County Development Authority for a recommendation. The final decision shall still be made by the Planning and Zoning Commission.</del> Any uses listed in Section 5.6(b) (as amended) are not considered light industrial. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 4, 1989] |
| Lot                | A tract of land area meeting local development standards which is intended for building development whether immediate or future.                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Lot Area           | The total horizontal area included within the rear, side and front lot or proposed street lines of the lot.                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <u>Lot, Corner</u> | <u>A lot abutting on two intersecting streets. Both sides</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

Comment [SB29]: Use currently undefined.

Comment [SB30]: Moved to Section 5.8.

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|                             | <p>abutting the streets forming the corner shall be considered front lot lines unless otherwise specified in this Ordinance, with the exception of corner lots that front on a private or public road on one edge and an access easement serving 5 lots or fewer on one edge – for such lots, a front yard setback for the principal structure applies to the edge of the lot that fronts on a private or public road and a side yard setback for a principal structure applies to the edge of the lot that fronts on the access easement. A corner lot must have at least one rear lot line.</p>                             |
| Lot Line, Front             | <p>The side or sides of an interior or through lot which <del>abut about a street; in a corner lot both sides abutting the streets forming the corner shall be considered front lots.</del> Front lot lines shall be measured from the Road Improvement Easement where one exists. For a property with a rear yard adjacent to a right-of-way designated as an alley, a rear yard setback shall apply. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990]</p>                                                                                                                                            |
| Lot Line, Side              | <p>Any lot line other than a front lot line or rear lot line. <del>In a corner lot there must be at least one rear lot line.</del> [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990]</p>                                                                                                                                                                                                                                                                                                                                                                                                                |
| Lot of Record               | <p>A written or graphic description of a lot that is on record in the office of the Clerk of the County Commission of Jefferson County at the adoption of this Ordinance.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <u>Manufactured Housing</u> | <p>A factory-built, single-family structure, which is manufactured or constructed under authority of 42 U.S.C. Sec. 5403, Federal Manufactured Home Construction and Safety Standards, and is to be used as a place for human habitation, but which is not constructed with a permanent hitch or other device allowing it to be moved other than for the purpose of moving to a permanent site and which does not have permanently attached to its body or frame any wheels or axles. For the purpose of this title, a manufactured home shall be considered the same as any site-built, single-family detached dwelling.</p> |
| Massage Parlor              | <p>An establishment where, for any form of</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

**Comment [SB31]:** New term and definition. Combines existing text in "Lot Line, Front" and "Lot Line, Side". The "exception" text is consistent with adopted Department policy.

**Comment [SB32]:** Moved to definition of Lot, Corner.

**Comment [SB33]:** Alley clarification reflects adopted policy.

**Comment [SB34]:** Moved to definition of Lot, Corner.

**Comment [SB35]:** Term and definition added to distinguish Manufactured Housing from a Mobile Home.

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|                                                      | consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist, certified massage therapist, or similar professional person licensed by the State. This definition does not include an athletic club, health club, school, gymnasium, reducing salon, spa, or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service. [AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993]                                                                                                       |
| <a href="#">Medical/dental/optical office, small</a> | <a href="#">A medical, dental, or optical office limited to two practitioners.</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Mobile Home                                          | A detached structure with the following characteristics:<br>It is designed for long-term occupancy and containing sleeping accommodations, a flush toilet, a tub or shower bath, and kitchen facilities with plumbing and electrical connections provided for attachment to outside systems, and it is designed for transportation after fabrication on streets or highways on its own wheels, or on flatbeds or other trailers, or detachable wheels, and it arrives at the site where it is to be occupied complete and ready for occupancy except for minor and incidental unpacking and assembly operations, location on jacks or other temporary or permanent foundations, connections to utilities and the like. <a href="#">A mobile home is distinct from a manufactured home.</a> |
| Mobile Home Park                                     | A lot, site, or parcel of land used or intended to accommodate two (2) or more mobile homes for residential purposes with adequate public or community water and sewerage service meeting Health Department standards. A mobile home park does not include mobile home sales lots, which unoccupied mobile homes are parked for inspection and sale. This term includes all buildings, structures, vehicles, accessories and appurtenances used or intended as equipment in such a park.                                                                                                                                                                                                                                                                                                   |
| <a href="#">Model Home / Sales Office</a>            | <a href="#">A dwelling unit temporarily used for display</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

**Comment [SB36]:** Revised use name and new definition (currently not defined), replaces "1 or 2 doctor medical/dental/optical office."

**Comment [SB37]:** Sentence added to distinguish a Mobile Home from Manufactured Housing.

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|                               | <u>purposes as an example of dwelling units available for sale in a residential development approved by Jefferson County. Model homes may include sales offices for dwellings within the development.</u>                                        |
| Modular Unit                  | A factory-fabricated transportable building unit designed to be used by itself or to be incorporated with similar units at a building site into a modular structure for residential, commercial, educational, or industrial uses.                |
| Monopole                      | A support structure constructed of a self-supporting hollow metal tube securely anchored to a foundation. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                              |
| Motor Vehicle                 | Any self-propelled vehicle designed primarily for transportation of persons or goods along public streets or other public ways. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]                  |
| Multi-Residential Use         | A deeded lot or parcel on which two or more dwelling units is located.                                                                                                                                                                           |
| Natural Undisturbed Condition | This exists where the terrain has not been altered in form by human activities such as cutting, filling, blasting or leveling and where natural vegetation exists. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990]       |
| Natural Vegetation            | This occurs when a property is allowed to revert to a wild condition with native plants. No cutting, trimming or cultivation takes place in areas of natural vegetation. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990] |
| Neighborhood                  | An area generally confined to a one-mile radius from the perimeter of a proposed development. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]                                                    |

**Comment [SB38]:** New definition. Term used in ordinance but currently not defined.

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| Nonconforming Use                                            | A use of a building or of land lawfully existing at the time this Ordinance becomes effective and which does not conform with the use regulations of the district in which it is located. Any new lines of division within a subdivision of a parcel that is a nonconforming use shall meet the regulations of this Ordinance.                                                                                                                 |
| <u>North American Industry Classification System (NAICS)</u> | <u>A system to classify business establishments according to type of economic activity.</u>                                                                                                                                                                                                                                                                                                                                                    |
| Non-residential                                              | A commercial, industrial, or institutional use. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]                                                                                                                                                                                                                                                                                                |
| Nursing or Retirement Homes                                  | This term includes rest homes, nursing homes, convalescent homes for children and homes providing chronic and convalescent care.                                                                                                                                                                                                                                                                                                               |
| Open Space                                                   | Land within a proposed development site excluding areas devoted to buildings, structures, roadways and parking.                                                                                                                                                                                                                                                                                                                                |
| PCS                                                          | Personal Communication Services. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                                                                                                                                                                                                                                                                                                     |
| Plat                                                         | A scaled, graphic drawing of a land subdivision project prepared according to the provisions of <u>the Subdivision and Land Development Regulations and this Ordinance</u> . A plat depicts the design and layout of a project as well as the location of existing and proposed property boundaries and easements. A plat also includes all terms, conditions and performance requirements established prior to the approval of a subdivision. |
| Preliminary Plat                                             | A professionally prepared drawing of a proposed subdivision which is not a record plat but which contains detailed information concerning the proposed development, <u>and is prepared according to the provisions of the Subdivision and Land Development Regulations and this Ordinance.</u>                                                                                                                                                 |
| <u>Preschool</u>                                             | <u>Use of a site for the provision of pre-elementary educational services on a scheduled basis to children</u>                                                                                                                                                                                                                                                                                                                                 |

**Comment [SB39]:** NAICS is the industry classification system now in use. It was released in 1997, replacing SIC.

**Comment [SB40]:** Added for consistency with final plat definition.

**Comment [SB41]:** New use name and definition.

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|                                    | <u>through kindergarten. If the West Virginia Department of Education establishes requirements for a preschool, the land use shall meet these requirements.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Primary Public Safety Provider     | An FCC licensed governmental user that uses wireless telecommunication facilities to provide primary communications for law enforcement, fire, ambulance or related emergency services. Primary Public Service Provider does not include Commercial Wireless Service Providers, or Competitive Local Exchange Carriers (CLEC), who provide telecommunication services on a commercial basis to Primary Public Service Providers, or who deliver emergency calls or messages from its customers to a Public Safety Answering Point (PSAP). [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011] |
| Principal <del>Permitted</del> Use | The primary or predominant use of any site.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <u>Principal Permitted Use</u>     | <u>Any use which is or may be lawfully established in a particular district, approved by the Departments of Planning and Zoning without requirement of Development Review System review or approval by a board or commission, provided the use conforms with all applicable requirements of this ordinance.</u>                                                                                                                                                                                                                                                                                     |
| Private Business User              | Persons or entities which operate radio facilities (including microwave) requiring an FCC license solely for intra-company communications and who do not employ those facilities to offer fixed or mobile wireless communication services, or point-to-point microwave links for commercial wireline communication services, to third parties for compensation. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                                                                                                                           |
| Prohibited Use                     | A use that is not permitted.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <u>Publicly Owned Facility</u>     | <u>Use of a site for government operations or activities, and not otherwise defined as a public safety facility; school, elementary or secondary; school, university or college; school, vocational or professional; hospital; <del>or</del> cultural facility; or essential utility equipment.</u>                                                                                                                                                                                                                                                                                                 |

Comment [SB42]: Revised name more accurately reflects definition.

Comment [SB43]: New definition.

Comment [SB44]: Use currently not defined

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| <u>Public Safety Facility</u>         | <u>Facilities that provide health and safety services to the general public including, but not limited to fire stations, police stations, and emergency medicine or ambulance stations or facilities.</u>                                                                                                                                                                                                                                                                                                                                            |
| Public Highway                        | Any highway or road in Jefferson County which is part of the Federal or West Virginia public highway system and which is so identified by and numbered on the most recent General Highway Map published by the West Virginia Department of Highways.                                                                                                                                                                                                                                                                                                 |
| Research and Development              | Research, development and testing laboratories that do not involve the mass manufacture, fabrication, processing or sale of products. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JANUARY 10, 2002]                                                                                                                                                                                                                                                                                                                                          |
| Residential                           | Any detached or attached structure that is used for permanent living quarters and has kitchen facilities. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 4, 1989]                                                                                                                                                                                                                                                                                                                                                                           |
| <u>Residential Care Home</u>          | <u>The use of a site for the provision of a family-based facility in a single-family dwelling unit providing 24 hour care in a protected living arrangement with not more than two supervisory personnel and not more than six residents who are suffering from mobility, orthopedic, visual, speech, or hearing impairments, Alzheimer's disease, pre-senile dementia, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, autism, emotional illness, or similar conditions.</u> |
| <u>Restaurant, fast food, limited</u> | <u>Take out pizza/sandwich shops not exceeding 600 square feet.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <u>Restaurant, Limited</u>            | <u>A food service establishment not exceeding 2000 square feet and where the primary mode of food distribution is by server.</u>                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <u>Retail Food Store, Limited</u>     | <u>A retail food store not exceeding 1500 square feet of retail floor space.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Right-of-way                          | A right which grants passage across or through a property. A right-of-way is also the (usually dimensioned) path along which the right of passage is granted).                                                                                                                                                                                                                                                                                                                                                                                       |
| Road                                  | A prepared surface within a right-of-way which is                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

**Comment [SB45]:** Revised use name and new definition (currently not defined), replaces various use names such as "Fire stations, ambulance and rescue squads, publicly supported".

**Comment [SB46]:** New use and definition. This definition is intended to replace the existing definition for "Group Residential Facility."

**Comment [SB47]:** Revised use name and new definition (currently not definition), replaces "Take out pizza/sandwich shops not exceeding 600 square feet."

**Comment [SB48]:** Revised use name and new definition (currently not definition), replaces "Restaurant not exceeding 2000 square feet (primary mode of food distribution is by waiter or waitress."

**Comment [SB49]:** Revised use name and new definition (currently not definition), replaces "Take out pizza/sandwich shops not exceeding 600 square feet."

**Comment [SB50]:** Revised use name and new definition (currently not definition), replaces "Retail food stores not exceeding 1500 square feet of retail floor space."

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|                                        | intended for vehicular use. Road does not include shoulders.                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <u>School, Elementary or Secondary</u> | <u>A public or private school meeting all requirements of the compulsory education laws of the state and providing instruction to students in kindergarten through grade twelve. Secondary schools consist of middle schools and high schools, generally grades six through twelve.</u>                                                                                                                                                                                                                         |
| <u>School, University or College</u>   | <u>An educational institution that offers specialized instruction in any of several fields of study and/or in a number of professions or occupations and is authorized to confer various degrees such as the bachelor's degree. Education uses may include a variety of uses such as classroom buildings, administrative offices, sports facilities, student housing, research facilities and other related uses operated by the governing board of the institution within the campus or on adjoining lots.</u> |
| <u>Seasonal Use</u>                    | A use that is carried on for not more than a single three day consecutive period in each of the four solar seasons.<br>[AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]                                                                                                                                                                                                                                                                                                                          |
| <u>Sensitive Natural Area</u>          | An area of wetlands, stream or river banks and forest which exists as a habitat supporting rare or endangered species or which has been dedicated perpetually to environmental preservation by easement, covenant or other legal instrument or which is otherwise protected for environmental purposes by State or Federal statute. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990]                                                                                                     |
| <u>Setback Line</u>                    | That line that is the required minimum distance from the street right-of-way line or any other lot line that establishes the area within which the principal structure must be erected or placed. <u>For attached dwelling unit types (duplex, multi-family, townhouse, two-family, and similar residential uses) no setback between attached dwelling units is required.</u>                                                                                                                                   |
| <u>Sexual Paraphernalia Store</u>      | Any retail store specializing in the sale of paraphernalia, devices, or equipment distinguished or characterized by an emphasis on depicting or                                                                                                                                                                                                                                                                                                                                                                 |

Comment [SB51]: Currently undefined.

Comment [SB52]: Currently undefined.

Comment [SB53]: In accordance with existing Zoning Ordinance, section 5.4.

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|                           | describing specific sexual activities or used in connection with specified sexual activities.<br>[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE NOVEMBER 7, 2002]                                                                                                                                                                                                                    |
| Shopping Center           | A commercial facility on a single lot with common parking facilities that uses or leases separate areas of space to retail or service oriented businesses.<br>[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]                                                                                                                                                          |
| Shrub, Evergreen          | A low growing, usually several stemmed, woody plant which has foliage that remains green and functional through more than one growing season.                                                                                                                                                                                                                                             |
| Sign                      | Any object, device display or structure, or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination or projected images. |
| Sign, Animated            | A sign with action or motion, flashing lights, or color change requiring electrical energy, electronic, or manufactured sources of supply, but not including wind actuated elements such as flags, banners, or pennants.                                                                                                                                                                  |
| Sign, Business            | A sign which directs attention to a business or profession or to a commodity, service, or entertainment sold or offered upon the premises where the sign is located.                                                                                                                                                                                                                      |
| Sign, Freestanding        | A sign supported by a permanent structure, other than a building, that is affixed to the earth and placed on the same parcel of land on which the business or service advertised by the sign is located.                                                                                                                                                                                  |
| Sign, Outdoor Advertising | A sign structure which directs attention to a business, commodity, service, or entertainment not necessarily conducted, sold, or offered upon the premises where such sign is located. This term shall include billboards.                                                                                                                                                                |
| Sign, Vehicle             | <u>A sign or advertising device which is painted, mounted, affixed or otherwise attached to a vehicle or trailer, which is used for the purpose of providing advertisements of products and services or directing</u>                                                                                                                                                                     |

**Comment [SB54]:** Text moved from "Vehicle sign" definition.

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|                                    | <u>people to a business or service or other activity on or off the premises or public right-of-way where such vehicle sign is located. This does not include identification signs on vehicles which are moved regularly and used in the normal, day-to-day operation of the business.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Soil Value                         | A relative numeric value assigned to soil groups based on the group's potential for agricultural production.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Species, Rare or Endangered        | Any species listed with the West Virginia Department of Natural Resources Heritage Program Species List or by the U.S. Department of the Interior, Department of Fish and Wildlife Management.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Specified Anatomical Area          | As used herein specified anatomical areas means and includes any of the following:<br>A. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areolae; or<br>B. Human male genitals in a discernibly turgid state, even if completely or opaquely covered.<br>[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE NOVEMBER 7, 2002]                                                                                                                                                                                                                                                                                                                                                        |
| Specified Sexual Activities        | As herein, specific sexual activities means and includes any of the following:<br>A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;<br>B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;<br>C. Masturbation, actual or simulated; or<br>D. Excretory functions, when such activities are a part of or in connection with any of the activities set forth in the following definitions:<br>Adult Use; Adult Arcade; Adult Bookstore;<br>Adult Cabaret; Adult Mini Motion Picture;<br>Adult Sauna; Adult Theater; Massage Parlor;<br>Sexual Encounter Establishment; and, Sexual Paraphernalia Store<br>[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE NOVEMBER 7, 2002] |
| Standard Industrial Classification | <u>A multi-digit code utilized by the federal Executive Office of Management and Budget to classify</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

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|                   | establishments by type of activity in which they are engaged.                                                                                                                                                                                                                                                                                                                  |
| Staff             | Personnel employed in the Departments of Planning, Zoning, and Engineering.<br>[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]                                                                                                                                                                                                 |
| Standard Details  | These are minimum acceptable details approved by the County Engineer for use in preliminary plats, site plans, and related improvement plans. Said approval does not relieve the subdivider, the design consultant, or the builder of the responsibility for structural adequacy and sound construction.<br>[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993] |
| Street            | (Same See as Road)                                                                                                                                                                                                                                                                                                                                                             |
| Support Structure | A structure designed to support Wireless Telecommunication Facilities including, but not limited to, monopoles, lattice towers, utility poles and other freestanding self-supporting structures.<br>[ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                                                                  |
| Telecommunication | The technology which enables information to be exchanged through the transmission of voice, video, or data signals by means electrical or electromagnetic systems.<br>[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE FEBRUARY 11, 1998]                                                                                                                                   |
| Tower Base        | The foundation, usually concrete, on which a telecommunication tower is situated. For measurement calculations, the tower base is the actual or geometric center of the tower. For structures lacking a foundation the tower base is the ground elevation of the structure. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                          |
| Tower Height      | The vertical distance measured from the tower base to the highest point on a telecommunication tower, including any antennas or other equipment affixed thereto, but excluding any lightning protection rods extending above the tower and attached equipment. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                       |
| Tower Site        | The land area (including any associated easement                                                                                                                                                                                                                                                                                                                               |

Comment [SB55]: NAICS is the industry classification system now in use. It was released in 1997, replacing SIC. As such, SIC definition can be deleted.

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|                       | areas) that contains, or will contain, any proposed telecommunication tower, related equipment enclosures and other improvements; together with any tower fall zone. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                                                                                                                                                                                                                                                 |
| Urban Growth Boundary | A site-specific line, delineated on the Jefferson County Zoning Map or a written description in the Jefferson County Zoning and Land Development Ordinance identifying an area around and outside the corporate limits of a municipality within which there is a sufficient supply of developable land within the boundary for at least a prospective twenty-year period of municipal growth based on demographic forecasts and the time reasonably required to effectively provide municipal services to the identified area. |
| Use                   | An activity that constitutes a legal employment of a land parcel or lot exclusive of ancillary parking and drives.<br>[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]                                                                                                                                                                                                                                                                                                                                       |
| Utility Poles         | Metal, wooden or concrete poles used to suspend wires or cables for electric, telephone or television cable services. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                                                                                                                                                                                                                                                                                                |
| Variance              | A variance is a deviation from the minimum standards of the <del>zoning ordinance</del> Zoning and Land Development Ordinance -and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classification of a parcel of land.<br>[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]                                                                                                                 |
| Vehicle               | A means of carrying or transporting something.<br>[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]                                                                                                                                                                                                                                                                                                                                                                              |
| Vehicle Signs         | <del>A sign or advertising device which is painted, mounted, affixed or otherwise attached to a vehicle or trailer, which is used for the purpose of providing advertisements of products and services or directing people to a business or service or other activity on or off the premises or public right-of-way where such vehicle sign is located. This does not include identification signs on vehicles which are moved</del>                                                                                           |

**Comment [SB56]:** New term, added for consistency with HB2845, West Virginia Code Chapter 8, Article 6.

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|                                                       | regularly and used in the normal, day-to-day operation of the business. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Vehicular Miles                                       | Distance by motor vehicle between two points utilizing public highways. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Visible                                               | Capable of being seen by the unaided eye in the daylight. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <u>Vocational and/or Training Facility for Adults</u> | <u>A specialized or accredited instructional establishment that provides on-site training or education in business, commercial, and/or trade skills. The land use is conducted in a campus setting, and may include classroom buildings, dormitories, cafeterias, gymnasiums (whose use is limited to the students, participants and instructors at said school or training facility), and administrative buildings. Incidental instructional services in conjunction with another primary use shall not be considered a Vocational and/or Training Facility for Adults. This use does not include School, University or College. In the Rural District, the use must be conducted in a campus setting.</u> |
| Wetland/or                                            | An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that, under normal circumstances, does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation. The substrata is predominantly hydric soil. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990] /or In the Rural District, the use must be conducted in a campus setting.                                                                                                                                                                                                   |
| Wireless Telecommunication Antenna                    | The physical device through which electromagnetic, wireless telecommunications signals authorized by the Federal Communications Commission are transmitted or received. Antennas used by amateur radio operators are excluded from this definition. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE FEBRUARY 11,                                                                                                                                                                                                                                                                                                                                                                                        |

Comment [SB57]: Text moved to "Sign, Vehicle."

Comment [SB58]: Text moved to "Sign, Vehicle".

Comment [SB59]: Use currently undefined; current name "specialized or accredited educational and training facilities for adults"

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|                                                 | 1998]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Wireless Telecommunication Equipment Shelter    | The structure in which the electronic receiving and relay equipment for a wireless telecommunications facility is housed. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE FEBRUARY 11, 1998]                                                                                                                                                                                                                                                                                                  |
| Wireless Telecommunication Facility             | A facility consisting of the equipment and structures involved in transmitting or receiving telecommunications or radio signals to or from a mobile radio communications source and transmitting those signals to a central switching computer which connects the mobile unit with the land-based telephone lines. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                                                                      |
| Wireless Telecommunication Facility, Co-Located | See Co-location. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Wireless Telecommunication Facility, Concealed  | A wireless telecommunication facility with all antennas camouflaged to match or complement the color and architectural treatment of the surface of an existing structure upon which they are mounted; or which have all facility components concealed behind a façade or parapet wall, or inside a radome on a monopole that does not exceed the diameter of the monopole, or interlaced within or atop an electric distribution tower. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011] |
| Wireless Telecommunication Facility, Temporary  | A vehicle-mounted or portable wireless telecommunication facility including portable towers, antennas, equipment enclosures, generators and associated electronics, cabling, wiring and hardware. Such a facility may include, but is not limited to, "cell on wheels" mobile equipment. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]                                                                                                                                                |
| Wireless Telecommunications Tower               | A structure intended to support equipment used to transmit and/or receive telecommunications signals including monopoles, guyed and lattice construction steel structures.<br>[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE FEBRUARY 11,                                                                                                                                                                                                                                                    |

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|                                                  | 1998]                                                                                                                                                                                                                                                                     |
| Wireless Telecommunication Tower,<br>Speculative | A Wireless Telecommunications Tower developed without binding commitments from one or more FCC licensees to utilize the tower within six (6) months of issuance of a certificate of occupancy for the Tower.<br>[ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011] |

DRAFT

## ARTICLE 3: ADMINISTRATION AND ENFORCEMENT

### Section 3.1 Administration

- A. The provisions of this Ordinance will be governed by the County Commission or the Zoning Administrator and Staff in accordance with §8A-1-1 et seq of the West Virginia State Code, as amended. With enactment of the Ordinance, the County Commission shall designate a Zoning Administrator for the day to day administration of the ordinance. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- B. An appeal to this Ordinance, however, may be made to the Jefferson County Board of Zoning Appeals subject to the provisions of §8A-1-1 et seq of the West Virginia Code, as amended. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- C. The Jefferson County Board of Zoning Appeals shall evaluate all Development Review applications and approve or deny issuance of a conditional use permit. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE AUGUST 31, 1989. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- D. All departments, officials, and public employees of Jefferson County which are vested with the duty or authority to issue permits or licenses shall issue no permit or license for any use, building, or purpose if the same would be in conflict with the provisions of this Ordinance.

### Section 3.2 Zoning Administrator

- A. The Zoning Administrator shall administer and enforce the [Zoning Ordinance](#) and [Land Development Ordinance](#). This includes but is not limited to the following:
  - 1. Make determinations that all applications required by the Ordinance are complete and that all fees are paid.
  - 2. Interpret the provisions of the Ordinance as required by law.
  - 3. Issue Zoning Certificates as permitted by the Ordinance.
  - 4. Calculate the LESA point scores and determine the adequacy of the Support Data for all applications for a Conditional Use Permit.
  - 5. Issue all permits and Certificates as permitted by the Ordinance.
  - 6. Prepare and submit reports as required by the Ordinance or the Board of Zoning Appeals or Planning Commission.
  - 7. Conduct meetings and conferences pursuant to the [Zoning Ordinance](#) and [Land Development Ordinance](#). [PREVIOUSLY INVALIDATED APRIL 8, 2005]

AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

- B. Any decision or action by the Zoning Administrator based on Section 3.2(a) above ~~are is~~ subject to appeal to the Board of Zoning Appeals. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- C. It shall be unlawful to develop, construct, alter, or reconstruct any structure or to change the use of any structure or property without first obtaining a zoning certificate from the ~~z~~Zoning ~~a~~A dministrator. This provision may not apply to the general maintenance or repair or any addition deemed not a major addition as defined in Section 2.2 of this Ordinance. ~~Please call the Department of Planning, Zoning and Engineering for more information.~~ [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- D. Each application for a zoning certificate shall be accompanied by a copy of an approved site plan, if applicable, or by a legible drawing either drawn to scale or accurately indicating dimensions which show property boundaries and existing and proposed structures and other proposed changes or land development. The plans shall be retained in the office of the ~~Departments of Planning and Zoning and Engineering.~~ [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- E. Use of any property, developmental arrangement, or construction on any property other than that authorized in the zoning certificate is a violation of this Ordinance. All provisions of this Ordinance and amendments shall be maintained perpetually.
- F. The Zoning Administrator shall approve or disapprove issuance of a zoning certificate within sixty (60) days of the initial filing date providing the application is complete and fees are paid when filed and the request is in compliance of the provisions of this Ordinance. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- G. A zoning certificate and/or conditional use permit shall become void eighteen (18) months after the date of issuance if the construction or use for which the permit was issued has not commenced. A one-time extension of this time frame may be granted by the Board of Zoning Appeals after evaluation of the hardship involved with noncompliance of this regulation. The length of time extended shall be at the discretion of the Board of Zoning Appeals and shall not exceed eighteen (18) months. Pursuant to Chapter 8A of the West Virginia Code as amended, a Zoning Certificate or Conditional Use Permit associated with a subdivision or land development plan - whether recorded or not yet recorded, valid under West Virginia law and outstanding as of January 1, 2010 - shall remain valid until July 1, 2012, provided that the land development plan or plat received at least preliminary approval by the Planning Commission or County Commission by March 1, 2010. [PREVIOUSLY

Comment [SB60]: Unnecessary.

Comment [SB61]: Added for consistency with SB 595, West Virginia Code §8A-5-12.

INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

- H. A filing fee, in accordance with the County fee structure, shall be charged for all zoning certification.

**Section 3.3 Enforcement**

- A. The Zoning Administrator or Staff shall promptly investigate any written complaint alleging a violation of this Ordinance and determine if a violation has occurred. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- B. As provided in §8A-1-1 et seq of the West Virginia Code, as amended, any person who violates any provision of this Ordinance shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than fifty (\$50.00) or more than five hundred dollars (\$500.00) per day. Each day during which any violation of this Ordinance continues shall constitute a separate offense. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- C. When it appears to the Board of Zoning Appeals or the Zoning Administrator or Staff that a violation of this Ordinance has occurred, the County shall notify the responsible person by means of a written Violation Notice. The Violation Notice shall specify the nature of the violation and shall request that the violation be terminated within 15 days from the date appearing on the Notice. Failure to terminate the violation within the requested time shall be cause for the Board of Zoning Appeals or the Zoning Administrator or Staff pursuant to §8A-10-1, 2 and 3 of the West Virginia Code, as amended, to: [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
  - 1. Seek an injunction in the Circuit Court of Jefferson County to restrain the responsible person from continuing the violation cited or seek an injunction requiring the removal of structures or land uses from the property involved, or
  - 2. Issue a warrant for the arrest of the person responsible for the violation and seek a conviction in the Circuit Court of Jefferson County.

**Comment [SB62]:** Clarifies source of 8A sections.

**Section 3.4 Boards and Commissions**

**A. Board of Zoning Appeals**

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

**Comment [SB63]:** General note: Updates to this section are for clarity and organization. Text in this section is consolidated from multiple parts of the Zoning Ordinance, including 3.1(c), 7.6, 7.8, and Article 8.

**Comment [SB64]:** Originally 7.8a

2. ~~Meetings of the Board of Zoning Appeals shall be held at such time that the Board determines appropriate~~conducted according to the Rules of Procedure adopted by the Board of Zoning Appeals. In the event of a conflict between this ordinance and the Rules of Procedure, the Rules of Procedure shall prevail. ~~The Board of Zoning Appeals shall hear and decide appeals regarding the Planning Commission's issuance or denial of a Conditional Use Permit. [AMENDED BY ACT OF THE COUNTY COMMISSION ON AUGUST 31, 1989]~~

**Comment [SB65]:** Originally 7.8b(5)

3. ~~The Board of Zoning Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official in regard to the enforcement of this Ordinance or of any ordinance adopted thereto.~~

**Comment [SB66]:** No longer accurate; Planning Commission does not issue Conditional Use Permits.

**Comment [SB67]:** Originally 7.8b(2)

**Comment [SB68]:** Originally 8.1 a through e

**a. Filing an appeal**

1. ~~An appeal to the Board may be taken by any person, board, associate, corporation or official allegedly aggrieved by any administrative decision based or claimed to be based, in whole or in part, upon the provisions of this Ordinance. The property owner of the subject appeal shall sign the application or an affidavit allowing an agent for the property owner to file the application which shall be submitted.~~

2. ~~Such appeal shall be filed with the Board within thirty (30) days from the decision appealed.~~

~~— Appeal applications shall be made on the forms designated by the Planning Commission and shall be accompanied by three (3) copies of the application and an accurate drawing of the property showing distance of all structures from property lines and any pertinent data deemed necessary for the request. Submittal of the application shall be made to the Planning and Zoning Office.~~

**Comment [SB69]:** Submittal requirements no longer accurate.

~~— All zoning fees, in accordance with the approved County fee structure, shall be paid upon application.~~

**Comment [SB70]:** Unnecessary – administrative.

~~— No application shall be accepted in the Planning and Zoning Office unless it contains all pertinent information and is accompanied by the required fees.~~

**Comment [SB71]:** Unnecessary – administrative.

**b. Processing Procedures Notification**

**Comment [SB72]:** Originally 8.2 a through e

~~— Appeal applications filed in the proper form shall be numbered serially, docketed, and placed upon the calendar of the Board of Appeals.~~

**Comment [SB73]:** Unnecessary – administrative.

~~The Board shall hold a hearing within forty-five days (45) from the date the appeal is received in the Department of Planning and Zoning. [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON SEPTEMBER 13, 1990 AND MAY 18, 1996] [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]~~

Comment [SB74]: Moved to 3.4A.3.c.1

1. ~~Notice of thea public hearing for an appeal shall be advertised in two issues of a newspaper having general circulation in the County at least 15 days before the hearing. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON SEPTEMBER 13, 1990] [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]~~

Comment [SB75]: Originally 8.2c

Comment [SB76]: One issue is consistent with WV Code Section 59-3-1 and Board of Zoning Appeals rules of procedure.

2. ~~Property upon which the application is concernedThe subject property shall be posted conspicuously by a zoning notice no less than twenty-eight (28) inches by twenty-two (22) inches, in size, at least 15 days before the hearing. The sign will be prepared by the Departments of Planning and Zoning but posting the sign is the responsibility of the applicant. The Board, in its discretion, may otherwise visit the specific property prior to or after the hearing.~~

Comment [SB77]: Originally 8.2e

Comment [SB78]: Previously proposed deletion ("The Board, in its discretion...") restored.

c. Public Hearing

Comment [SB79]: Originally 8.3 a & b

1. ~~The Board shall hold a hearing within forty-five (45) days from of the date the appeal is received in the Departments of Planning and Zoning. [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON SEPTEMBER 13, 1990 AND MAY 18, 1996] [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]. The Board following action in Section 8.2, shall hold such hearing. At the hearing, any party may appear and be heard in person or by agent or attorney.~~

Comment [SB80]: Originally 8.2b.

Comment [SB81]: Redundant with first sentence; originally 8.3a

Comment [SB82]: Originally 8.3a.

2. ~~The Board shall render its determination on the application no more than thirty (30) days following the public hearing by registered mail. Any party aggrieved by a decision of the Board may appeal to the circuit court of Jefferson County within thirty (30) days of the Board's decision. The Court may affirm, reverse, vacate, or modify the decision subject to the appeal.~~

Comment [SB83]: Moved to 3.4A.7; originally 8.3b.

d. Continuance of Hearing

Comment [SB84]: Originally 8.4

1. ~~The Board may continue a hearing at another time and/or date once such hearing has been started; however, the Board shall announce~~

the date and hour of continuance of such hearing while in session. Any hearing continued shall be held within thirty (30) days from the initial hearing.

4. The Board of Zoning Appeals shall ~~authorize~~ consider requests for **variances from the terms of the Ordinance.**

a. The board shall approve a variance request ~~-if the Board finds that a variance:~~

- (1) Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;
- (2) Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance;
- (3) Would eliminate an unnecessary hardship and permit a reasonable use of the land; and
- (4) Will allow the intent of the ~~zoning ordinance~~ Zoning and Land Development Ordinance to be observed and substantial justice done. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

b. The owner or authorized representative of the owner of the property which is the subject of a variance request shall complete and sign forms provided for this purpose by the Board, and shall pay the associated fees. The variance request shall be filed with the Board at offices of the Departments of Planning and Zoning.

c. Notification for a variance must be conducted according to the requirements of Section 3.4A(3)(b).

d. A public hearing must be conducted according to the requirements of Section 3.4A(3)(c) and such hearing may be continued according to the requirements of Section 3.4A(3)(d).

**Comment [SB85]:** Originally 7.8b3

**Comment [SB86]:** Reworded for clarity and organization.

**Comment [SB87]:** The current Zoning Ordinance does not specify the process for a variance application.

5. The Board of Zoning Appeals shall ~~approve or deny~~ have the authority over the issuance or denial of a conditional use permit. The Board of Zoning Appeals review process for a conditional use permit application is established in Article 7 of this ordinance. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE AUGUST 31, 1989 AND]

**Comment [SB88]:** Originally 3.1c and 7.6F.

6. In exercising its power and authority, the Board of Zoning Appeals may reverse or affirm, in whole or in part, or may modify the order, requirement, decision or determination appealed from, and make such order, requirement, decision or determination as ~~ought to be made~~ the Board deems appropriate. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

**Comment [SB89]:** Originally 7.8b.4

7. Any party may appeal any decision of the Board of Zoning Appeals to the Circuit Court of Jefferson County within thirty (30) days of the Board's decision, pursuant to

**Comment [SB90]:** Moved from Section 8.3b and section 7.6h (edited)

Chapter 8A of the West Virginia Code, as amended. [AMENDED BY ACT OF THE COUNTY COMMISSION ON AUGUST 31, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

8. Nothing in this Section shall be construed as permitting the Board of Zoning Appeals to exercise any power or refrain from the performance of ~~exercise any power or refrain from the performance of~~ any duty not authorized or directed by the provisions of ~~Chapter 8, Article 24~~ Chapter 8A of the West Virginia Code, as amended, which provisions of the Code are hereby incorporated herein by reference. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

**Comment [SB91]:** Text repeats.

**Comment [SB92]:** Originally 7.8b.6

B. Planning Commission

**Comment [SB93]:** New section. The Zoning Ordinance does not currently have a section outlining the powers and duties of the Planning Commission.

1. Membership, terms of office, jurisdiction, and rules of procedure are established in the Bylaws of the Jefferson County Planning Commission and Chapter 8A of the West Virginia Code, as amended.

2. The powers and duties of the Jefferson County Planning Commission include but are not limited to the following:

a) Review applications for major site plans, major subdivisions, and waivers from minimum standards, pursuant to the Subdivision and Land Development Regulations;

**Comment [SB94]:** Source: §8A-5-1; Subdivision and Land Development Regulations, Section 24.300

b) Review requests for amendments to the County zoning map and Zoning and Land Development Ordinance;

**Comment [SB95]:** Source: §8A-7-8

e) Research and recommend to the County Commission improvements to the Zoning and Land Development Ordinance and the Subdivision and Land Development Regulations;

d) Make recommendations to the County Commission concerning planning and zoning issues;

**Comment [SB96]:** Source: §8A-2-11

e) Make an annual report to the County Commission concerning the operation of the Planning Commission and the status of planning within its jurisdiction;

**Comment [SB97]:** Source: §8A-2-11

f) Prepare and amend the Jefferson County Comprehensive Plan and recommend to the County Commission for adoption or amendment.

**Comment [SB98]:** Source: §8A-3-3; §8A-3-11

C. County Commission

**Comment [SB99]:** New section. The Zoning Ordinance currently does not have a section outlining the powers of the County Commission.

1. General. The County Commission shall have all powers conferred upon it by the Constitution, the laws of the State of West Virginia, and the County Charter. With respect to development approval and amendments to this Ordinance and the County's Comprehensive Plan, the powers that the County Commission retains and shall exercise include but are not limited to the powers set out in this Section.

2. Approvals. Following a public hearing and the submittal of recommendations by the Planning and Zoning Department and the Planning Commission, the County

Commission may take action on the proposed adoption of, or amendments to, the following, including text, maps, and other elements:

a. Comprehensive Plan;

Comment [SB100]: Source: §8A-7-1; §8A-3-11

b. Zoning and Land Development Ordinance;

Comment [SB101]: Source: §8A-7-1; §8A-7-8a

c. Subdivision and Land Development Regulations;

Comment [SB102]: Source: §8A-4-1; §8A-4-5

d. The Jefferson County Zoning Map;

Comment [SB103]: Source: §8A-7-3

e. An Urban Growth Boundary in accordance with Chapter 8 of the West Virginia Code as amended:

Comment [SB104]: Source for all of section f. §8-6-4a

i. A boundary shall be established by the County Commission in agreement with each individual municipality regarding that municipality's boundary.

ii. If the County Commission and municipality cannot agree upon the location or size of the boundary, either party may file for declaratory judgment relief in the circuit court which shall submit the dispute to mediation or arbitration prior to final resolution by the circuit court.

iii. Once the county has adopted an urban growth boundary by its designation on an adopted county zoning map, the gross area inside the boundary may not be reduced without written consent of the municipality.

iv. The county commission shall review each urban growth boundary at a period not to exceed ten years or upon request of the individual municipality.

3. Hiring. The County Commission shall hire staff of the Departments of Planning and Zoning .

4. Appointments. The County Commission shall appoint the members of the Planning Commission and the Board of Zoning Appeals.

Comment [SB105]: Reformatted.

Comment [SB106]: Source: §8A-2-4

Comment [SB107]: Source: §8A-8-4

5. Fees. The County Commission shall adopt a fee schedule for processing applications pursuant to this Ordinance. The fee schedule may be amended from time to time as determined appropriate by the County Commission.

Comment [SB108]: Source: §8A-4-2

**ARTICLE 4: GENERAL PROVISIONS**

**Section 4.1 Ordinance Deemed Minimum Regulations; Uniformity**

The regulations set forth by this ordinance within each zoning district shall be minimum regulations and shall apply uniformly to each kind of structure or land except as hereinafter provided.

~~There will be listed in~~For each zoning district, a limited number of principal permitted uses are listed, as well as ~~and several uses prohibited uses-~~for all districts as listed in Section 4.4. ~~Principal permitted uses are those which are not required to demonstrate their appropriateness within a district and would not be subject to approval by the Development Review System. All other uses, except prohibited uses, will be permitted after demonstrating that such use is compatible with surrounding parcels and will comply with the regulations of this ordinance. Demonstration of compatibility will depend on the numerical value a parcel receives after evaluation by the Development Review System which assesses the productivity of soils and the amenities for development on a particular site and the results of the Compatibility Assessment Meeting. A site will may receive a conditional use permit upon completion of the Conditional Use Permit process as described in this ordinance, including a demonstration that the land use in a specific location will comply with the standards of the Development Review System, and any other applicable requirements of this ordinance.~~

**Comment [SB109]:** Redundant; "Principal permitted use" is defined in Sec 2.2, definitions.

**Comment [SB110]:** Redundant text. The DRS section of the ordinance (Articles 6 and 7) adequately explains details such as soil values; this does not need to be repeated here.

**Section 4.2 Compliance with Ordinance**

Except as hereinafter specified, no land, building, or premises shall hereafter be used, and no building or part thereof or other structure shall be located, erected, reconstructed, extended, enlarged, converted or altered except in conformity with the regulations herein specified for the district in which it is located and the Development Review System. This provision shall not apply to general maintenance or repair or any addition deemed not a major addition as defined in Section 2.2 of this Ordinance.

**Section 4.3 Nonconforming Uses**

Any building, structure or premises lawfully existing at the time of the adoption of this ordinance, or lawfully existing at the time that this ordinance is subsequently amended, may continue to be used even though such building, structure, or premises does not conform to use, setbacks or dimensional regulations of the zoning district in which it is located or the regulations of the Development Review System; subject, however to the following provisions: [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]

~~A. Nonconforming uses may be upgraded, or repaired, or or make alterations made to their the use's facilities.~~

~~B.A.~~ However, expansion of any nonconforming use shall be limited to the lot that existed at the time of adoption of this Ordinance. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]

Repair includes the following: replacement of same size (+/-35%) porches, awnings, decks roofs, overhangs, patios, or any other similar construction as approved by the Zoning Administrator. Additional acreage shall not be added to enlarge any nonconforming use unless approved via that use completes the Development Review System.

~~C.B.~~ Whenever a nonconforming use has been abandoned for a period of twelve (12) months, such use shall not be reestablished and any future use shall be in conformance with the provisions of this Ordinance. [AMENDED TWICE TIMES BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990 AND JULY 15, 1993. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

~~D.C.~~ A nonconforming use may not be substituted for any other nonconforming use without the Board of Zoning Appeals review and public hearing, provided, however, to the following: upon notice to the Zoning Administrator with an application for and approval of a Zoning Certificate a nonconforming retail, service, or wholesale operation may be substituted with another retail, service or wholesale operation without such public hearing; provided again, however, the intended use does not include an adult use. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

~~E.D.~~ Effective October 14, 1999, whenever a nonconforming use expands over 35% of the existing square footage of its operation said use shall meet all the applicable requirements of this Ordinance unless otherwise allowed by the Board of Zoning Appeals. Any nonconforming use that expanded between October 5, 1988 and October 14, 1999 may expand under this provision as if they have never utilized this provision in the past. [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993 AND OCTOBER 14, 1999. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

1. When a nonconforming use can be computed by units such as apartment units, motel/hotel units, mobile home parks, and similar uses, the 35% expansion shall be limited to 35% of the number of existing units. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 18, 1996]

~~F.E.~~ A nonconforming shopping center (including spaces that were not leased in the existing building at the time of the adoption of this ordinance) may substitute uses according to Section 4.3(c). [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]

G.F. Section 4.3 is subject to ~~Chapter 8A Article 8, Chapter 24, Subsection 50~~ of the West Virginia Code, as Amended]. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

G. This Section (4.3) does not apply to industrial uses that existed at the adoption of the ordinance. Such industries may expand provided that they meet the site plan standards of this ordinance, in addition to those of the Jefferson County Subdivision and Land Development Regulations. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 18, 1996]

**Comment [SB111]:** Clarifies that site plan standards of both ordinances must be met.

H. A nonconforming use destroyed by a natural or unnatural calamity cannot be rebuilt without approval of the ~~Zoning~~ Board of ~~Zoning~~ Appeals upon application by the owner and pursuant to the variance and appeal procedures outlined in Article ~~83~~. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

I. The nonconforming use automobile racing facility located on property specifically described as Tax Map 17, Parcels 2, 2.1 and 5 in the Kabletown District is permitted to expand as herein described:

1. The commercial/competitive racing circuit as measured on January 10, 2002, 5,344 linear feet may add an additional 8,870 feet of commercial/competitive raceway surface, in accordance with (and not in addition to) the provisions of Section 4.3 of this Ordinance. The surface shall conform to a required 200 foot setback from all property lines.
2. May add dormitory lodging with food service facilities that do not contain internally lit signs.
3. May add automobile related research and development facilities.
4. May add other automobile related facilities only for vehicles that are used on-site, including, but not limited to warehousing, parts, supplies and service. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JANUARY 10, 2002]

#### **Section 4.4** ~~Section 4.4~~ — Prohibited Uses

- A. Any existing or proposed use which is determined to be in conflict with any existing ordinance or laws of Jefferson County or law or regulation of the State of West Virginia or other governmental agency shall be prohibited even though such use may be allowed under the terms of this ordinance.
- B. No land use shall be conducted that creates any injurious, noxious, or otherwise objectionable fire, explosive heat, or other hazard; noise, or vibration; smoke, dust, odor,

gases, or other form of air pollution; or emit dangerous radioactivity in such a manner that if permitted would adversely affect the uses of an adjacent property or contaminate the ground water or surface waterways of the County. All land uses generating such conditions shall comply with the appropriate State and Federal Codes. Such compliance with applicable State and Federal laws shall be deemed as compliance with this Ordinance.

- C. Any development which would destroy the historical character of a property listed on the West Virginia or National Register of Historic Places shall not be permitted.
- D. No materials or waste should be stored on a property in a form that could be transported to adjacent property by wind or water or other natural causes or forces.
- E. All methods of industrial waste or sewage treatment and disposal shall be in accordance with County, State and Federal Codes.
- F. Jails, prisons and/or penal institutions shall be prohibited in all zones except the industrial/commercial zone. The Development Review System does not supercede this prohibition. [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

- G. No gambling or casino type games of chance (video or mechanical) that provides any type of payoff or remuneration shall be permitted anywhere in Jefferson County unless expressly and explicitly permitted and authorized by the West Virginia Code as amended. Provided, however, that such use shall only be permitted in the Heavy Industrial/Commercial Zone and shall be processed through the Development Review System (Article 6 and 7). [AMENDED BY ACT OF THE COUNTY COMMISSION ON OCTOBER 4, 1990]

Comment [SB112]: Name of zoning district corrected.

This prohibition does not apply to betting on horses or pari-mutuel betting on horses. Furthermore, this prohibition does not apply to such uses that existed at the time of the adoption of this ordinance. The Development Review System shall not supersede this prohibition in the Residential Growth Zone, the Rural Agricultural Zone, the Village Zone, or the Residential/Light Industrial/Commercial Zone.

Comment [SB113]: Staff's interpretation is that the ordinance's omission of the Village district was not intentional.

- H. For parcels located east of the Shenandoah River or which are in a natural, undisturbed condition within 1000 feet of the Potomac and Shenandoah Rivers and Opequon Creek, no use shall be permitted without adherence to the requirements for retention of land in a natural, undisturbed area as spelled out in Section 44.222.504 of the Subdivision Ordinance, Jefferson County Subdivision and Land Development Regulations. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990]

Comment [SB114]: Reference to Subdivision and Land Development Regulations updated.

- I. No sales of fireworks are permitted outside the commercial zones, and are subject to the requirements of for such use in Article 8. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 18, 1996]

~~K.J.~~ Vehicle signs left parked or standing on a public right-of-way, public property or private property. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

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K. Adult arcades, adult bookstores, adult cabarets, adult mini motion picture theaters, adult saunas, adult theaters, sexual encounter establishments, sexual paraphernalia stores, massage parlors and any sign advertising the operation thereof, shall not be permitted in the Rural, Village, Residential Growth and Residential ~~Growth~~ Light Industrial-Commercial Districts.

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Comment [SB115]: Zoning district name corrected.

No conditional use permit shall be approved for any of these uses. This provision does not apply to any specific existing use that legally qualifies as a nonconforming use. [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE NOVEMBER 7, 2002 AND MAY 1, 2003]

L. Salvage yards unless established in accordance with the Jefferson County Salvage Yard Ordinance.

Comment [SB116]: Zoning Ordinance needs linkage with the Salvage Yard Ordinance so that users will know that additional regulations exist.

M. Heavy industrial uses listed in Section 5.6(B) of this Ordinance are permitted only in the Industrial - Commercial District and require approval via the Development Review System.

Comment [SB117]: This prohibition is implicit in 5.6(B) but needs to be made explicit.

#### Section 4.5 ~~Section 4.5~~ — Agricultural Uses Permitted Generally

Except for compliance with distance requirements for a building set forth in Section 4.6, nothing in this ordinance shall prohibit the use of land for agricultural purposes or the construction or use of building or structures incidental to the ~~use~~ use for agricultural purposes.

#### Section 4.6 ~~Section 4.6~~ — Distance Requirements

A. Any uses or building subject to compliance with this section shall be located at least 200 feet from:

1. Any lot in a residential district;
2. A dwelling, school, church or institution for human care not located on the same lot as the said use or buildings [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 4, 1989]
3. Any lot which is part of a recorded subdivision, and
4. Any parcel, ~~or~~ historic structure, or designated historic district which has been listed on the West Virginia or National Register of Historic Places.

B. Adjacent uses or buildings subject to compliance with this section shall be located at least 75 feet from: [AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993]

1. Any lot in the Residential Growth District;
2. Any lot with a dwelling, school, church, or institution for human care not located on the same lot as said use or building;
3. Any parcel, ~~or~~ historic structure, or designated historic ~~structure-district~~ which has been listed on the ~~eat~~ West Virginia or National Register of Historic Places.

**Comment [SB118]:** Currently, sentence repeats "structure" twice. Staff's interpretation is that this was intended to parallel 4.6(A) which uses the word "district."

**Section 4.7** ~~Section 4.7~~ — **Essential Utility Equipment**

Essential utility equipment, as defined in Section 2.2, shall be permitted in any district, as authorized and regulated by law and ordinances of Jefferson County, it being the intention hereof to exempt such essential utility equipment from the application of this ordinance. Wireless telecommunication towers, however, shall conform to the requirements of Article 4B. [AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993 AND ON MARCH 10, 2011]

**Section 4.8** ~~Section 4.8~~ — **Buildable Lot**

Any lot which was a buildable lot under the terms or regulations in effect at the time of the adoption of this ordinance and which was established or recorded at that time shall be deemed a buildable lot for the erection of a single-family dwelling, subject to the provisions of the appropriate district regulations of this ordinance.

**Section 4.9** ~~Section 4.9~~ — **Traffic Visibility Across Corner Lots**

On any corner in all districts, there shall be no obstruction to traffic visibility within thirty-five (35) feet of the intersection of the two (2) street property lines of the corner lot. Site plan and subdivision applications must comply with the Intersection Design requirements of the Subdivision and Land Development Regulations. |

**Comment [SB119]:** Added to clarify location of standards.

Section 4.10 ~~Section 4.10~~ Site Plan Requirements

~~A.~~ A site plan shall be submitted for ~~review by the Planning and Zoning Commission for all new-commercial, townhouse and multi-family residential, industrial, and institutional land uses development~~ in any district and for all major additions or expansions of existing uses as defined in Article 2, ~~in accordance with the requirements of the Subdivision and Land Development Regulations and this Ordinance.~~

**Comment [SB120]:** Subdivision and Land Development Regulations define which site plans are reviewed by the Planning Commission.

**Comment [SB121]:** Clarifies which requirements are to be followed.

~~A.~~ Site Plans shall be prepared by a registered professional engineer, or registered land surveyor licensed to practice in the State of West Virginia. ~~If the proposed use is not listed as a principal permitted use within the zoning district where it is located, the developer must have his proposal evaluated by the Development Review System before Site Plan submittal.~~

**Comment [SB122]:** Redundant with Subdivision and Land Development Regulations.

~~Upon approval of a conditional use permit the applicant may proceed with Ssite Pplan submittal.~~

**Comment [SB123]:** Redundant. The DRS section of the Zoning Ordinance adequately describes the process.

~~In those cases where a Site Plan is required and the developer has received a conditional use permit, a minimum of six (6) copies of the site plan shall be submitted to the Jefferson County Planning Office.~~

**Comment [SB124]:** No longer accurate; Subdivision and Land Development Regulations govern submittal requirements.

B. Site Pplan submittal is not required for single-family or two-family dwelling units unless planned as part of a multi-unit or mixed use development plan.

C. The Ssite Pplan format and informational requirements that must be followed are referenced in the Jefferson County Subdivision and Land Development Regulations Ordinance, and Articles 4.5, 10 and 11 of this Ordinance.

~~C.~~

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

**Comment [SB125]:** No longer accurate. Format requirements addressed in 4.10D above.

~~D.~~ The Planning and Zoning Commission shall review and approve or disapprove a completed application within sixty (60) days of the acceptance of the Site Plan in the Planning Office. ~~The Planning Commission shall review and approve or disapprove a completed application within sixty (60) days of the acceptance of the Site Plan in the Department of Planning, Zoning, and Engineering. The Planning Commission has the authority by variance to reduce any site plan standards as justified under Article 17 of the Subdivision Ordinance. has the authority by variance to reduce-waive any site plan standards as justified under Article 17 of the Subdivision Ordinance in accordance with the Subdivision and Land Development Regulations. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 1, 1998. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]~~

**Comment [SB126]:** No longer accurate.

~~E.D.~~

**Section 4.11 ~~Section 4.11~~—Landscaping, Screening and Buffer Yard Requirements**

- A. All commercial development adjacent to any Residential district, or any lot with a residence, school, church, or institution of human care shall have a fifty (50) foot or greater unscreened green space buffer or a fifteen (15) foot screened green space buffer along common property lines. The screening may be either vegetative or opaque fencing and may be placed anywhere within the buffer. No structures, materials, or vehicular parking shall be permitted within the side and rear yard buffers. All commercial development adjacent to all other uses must maintain ten (10) foot side and rear yard landscape buffers. [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]
- B. All industrial development adjacent to any Residential district, or a residence, school, church, or institution for human care shall have a buffer yard of no less than two hundred (200) feet. No structures, stored materials, or vehicular parking shall be permitted within the buffer yard. All industrial development shall have front yard buffers of no less than one-half (½) the front yard building setback. [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990 AND JULY 15, 1993]

*Table 4.11 - 1 Setbacks, Buffers and Distance Requirements for Non-Residential Uses*

**Comment [SB127]:** Table moved from 4.16, renamed as "table", and table simplified.

| ADJACENT USE<br>PROPOSED USE | BUILDING SETBACKS         |                | PARKING & ACCESS DRIVE SETBACKS |            | BUFFERS UNSCREENED/SCREENED |                            |                                          |            |            | DISTANCE REQUIREMENTS |                            |                                          |            |            |
|------------------------------|---------------------------|----------------|---------------------------------|------------|-----------------------------|----------------------------|------------------------------------------|------------|------------|-----------------------|----------------------------|------------------------------------------|------------|------------|
|                              | Any Use Except Industrial | Industrial Use | Any Use Except Industrial       | Industrial | Residential Zone            | Lot with a Residential Use | Church/School/Institution for Human Care | Commercial | Industrial | Residential Zone      | Lot with a Residential Use | Church/School/Institution for Human Care | Commercial | Industrial |
| FRONT Comm'l Lot <= 1.5 ac.  | 25                        | 25             | 15                              | 15         | 50/15                       |                            | N/A                                      | N/A        | 75         |                       | N/A                        | 75                                       |            |            |
| Comm'l Lot > 1.5 ac.         | 25                        | 25             | 15                              | 15         | 50/15                       |                            | N/A                                      | N/A        | 75         |                       | N/A                        | 75                                       |            |            |
| Industrial                   | 50                        | 25             | 25                              | 25         | 200                         |                            | 25                                       | N/A        | 200        |                       | N/A                        | 200                                      |            |            |
| Church                       | 25                        | 25             | 15                              | 15         | 50/15                       |                            | N/A                                      | N/A        | N/A        |                       | N/A                        | N/A                                      |            |            |
| Multi-family                 | 25                        | 25             | 15                              | 15         | N/A                         | N/A/15                     |                                          | N/A        | N/A        | N/A                   |                            | N/A                                      | N/A        |            |
| SIDE Comm'l Lot <= 1.5       | 25                        | 25             | 4                               | 4          | 50/15                       |                            | 10                                       | 10         | 75         |                       | N/A                        | 75                                       |            |            |
| Comm'l Lot > 1.5 ac.         | 50                        | 25             | 10                              | 10         | 50/15                       |                            | 10                                       | 10         | 75         |                       | N/A                        | 75                                       |            |            |
| Industrial                   | 50                        | 25             | 25                              | 20         | 200                         |                            | 20                                       | 20         | 200        |                       | N/A                        | 200                                      |            |            |
| Church                       | 50                        | 50             | 10                              | 10         | 50/15                       |                            | 10                                       | 10         | N/A        |                       | N/A                        | N/A                                      |            |            |
| Multi-family                 | 12                        | 12             | 12                              | 12         | N/A                         | N/A/12                     |                                          | N/A        | N/A        | N/A                   |                            | N/A                                      | N/A        |            |
| REAR Comm'l Lot <= 1.5       | 25                        | 25             | 4                               | 4          | 50/15                       |                            | 10                                       | 10         | 75         |                       | N/A                        | 75                                       |            |            |
| Comm'l Lot > 1.5 ac.         | 50                        | 25             | 10                              | 10         | 50/15                       |                            | 10                                       | 10         | 75         |                       | N/A                        | 75                                       |            |            |
| Industrial                   | 50                        | 25             | 25                              | 20         | 200                         |                            | 20                                       | 20         | 200        |                       | N/A                        | 200                                      |            |            |
| Church                       | 50                        | 50             | 10                              | 10         | 50/15                       |                            | 10                                       | 10         | N/A        |                       | N/A                        | N/A                                      |            |            |
| Multi-family                 | 30                        | 30             | 15                              | 15         | N/A                         | N/A/15                     |                                          | N/A        | N/A        | N/A                   |                            | N/A                                      | N/A        |            |

*Note: When Table 4.11-1 is in conflict with another section of the Zoning & Development Review Ordinance, this table shall prevail. See Article 8 of the Zoning and Land Development Ordinance for building setbacks for certain land uses.*

**Comment [SB128]:** The first sentence of this note is already in the current ordinance; the only change is replacement of "section" with "table." Second sentence is to alert readers that other uses (e.g. Barn/Feeding Pen, Jails, etc) have specific setbacks.

- C. In all buffer yards, the exterior width beyond the vegetative screen shall be planted with grass, seed, sod, or ground cover.
- D. All buffer yards shall include a fence or a dense screen planting of trees, shrubs, or other plant materials or both, to the full length of the lot line to serve as a barrier to visibility, air borne particles, glare or noise. Such screen planting shall meet the following requirements.
  - 1. Vegetative screening shall comply with Standard Details M52, M53 or M54, or other applicable Standard Details, depending on the buffer width. At the time of the planting the vegetation shall be at ~~least~~ least four (4) feet in height. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]
  - 2. It will be the responsibility of the landowner to replace any trees that die and shall be so noted on the site plan.
  - 3. Screen planting shall be a minimum of ten (10) feet wide but shall be placed so that it is no closer than four (4) feet at maturity from a property line or from any street.
  - 4. No structure, fence, planting, or other obstruction shall be permitted which would interfere with traffic visibility.
- E. In any Commercial, Industrial, Institutional, or Residential development, all dumpsters shall be screened from any residences or from view of a the public highway's ~~view~~.
- F. All buffer yards shall be maintained by the property owner.
- G. All development adjacent to a Sensitive Natural Area shall have a buffer of natural vegetation. Environmental standards contained in Section ~~5-88.9(bA)~~, ~~2-1~~ through ~~87~~, will apply. The buffer shall meet the current Federal standard except as required in Table 4.11 -2 below:

*Table 4.11 - 2 Wetland sSize in aAcres*

| <u>Greater Than</u> | <u>Less Than</u> | <u>Buffer width in feet</u> |
|---------------------|------------------|-----------------------------|
| 0.05                | 0.10             | 30                          |
| 0.10                | 0.16             | 35                          |
| 0.15                | 0.21             | 40                          |
| 0.20                | 0.26             | 50                          |
| 0.25                | 0.31             | 55                          |
| 0.30                | 0.36             | 60                          |
| 0.35                | 0.41             | 65                          |
| 0.40                | 0.46             | 70                          |

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|      |      |     |
|------|------|-----|
| 0.45 | 0.51 | 75  |
| 0.50 | 0.66 | 80  |
| 0.65 | 0.81 | 85  |
| 0.80 | 0.96 | 90  |
| 0.95 | 1.21 | 95  |
| 1.20 | --   | 100 |

[AMENDED TWICE BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990 AND MAY 18, 1996]

H. All required landscape plans shall contain the following elements:[AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993]

1. Deciduous street trees for shade and aesthetics. planted at the following average spacing:
  - a) Site with street frontage of up to 200 feet: 1 tree per 50 feet
  - a)b) Site with street frontage exceeding 200 feet: The greater of 4 trees or 1 tree per 100 feet.
2. Evergreen buffer planting, as required, for full screening.
3. Parking lot and internal drive plantings (mix of evergreen and deciduous) for partial screening and limited shade.
4. Structure plants for aesthetics and limited shade.
5. Schedule of plants including common name, scientific name, minimum size (height, caliper, etc.) quantity and specific limitation notes.

**Comment [SB129]:** Street trees are currently required, but the Zoning Ordinance does not specify at what spacing. This is creating problems for staff and applicants both.

**Section 4.12 Section 4.12—Design Standards for Multi-Family Developments**

**Comment [SB130]:** This section moved from Section 5.5.

**A. Common open space shall be oriented to the interior of the development and shall consist of land suitable for passive and active recreational use. No more than 50 percent of land dedicated to recreational use shall be within the 100 year Floodplain.**

**B. Impermeable/Impervious surface coverage for interior streets, parking areas, and residential structures shall not exceed fifty (50) percent of the gross land area.**

**(c) Asphalt or concrete walkways of a minimum width of four (4) feet shall provide access from bus waiting areas, recreational land, tot lots and parking areas.**

**Comment [SB131]:** This requirement is covered by the Americans With Disabilities Act, and hence can be deleted.

**(d) All on-site utilities and dumpsters shall be effectively screened.**

**Comment [SB132]:** Dumpster screening is covered in Sub Regs Sec 9.12(F), p. 181.

**A.C. Tot lot or play areas shall be centrally located in areas convenient to residential buildings and at least twenty-five (25) feet from any street right-of-way. Outdoor Lighting**

**Comment [SB133]:** Lighting covered in Sec 2.6, Appendix B of Sub Regs.

~~A. The location and height of all exterior lighting shall be shown on the Site Plan and will be reviewed by the Zoning Administrator to assure that lighting and glare does not adversely affect adjacent properties.~~

~~Section 4.13—Development in or Adjacent to the 100 Year Flood Plain~~

**Comment [SB134]:** Floodplain addressed in Sec. 1, Appendix A of Sub Regs.

~~Section 4.12—~~

~~A. The 100 year Flood plain shall clearly be delineated on the site plan by the registered engineer or licensed land surveyor.~~

~~B. All land within the 100 year Flood plain will be subject to the Jefferson County Flood Plain Management Ordinance.~~

~~Section 4.13 Section 4.14—Development Adjacent to the Potomac and Shenandoah Rivers~~

~~A. Any development, other than residential development, that takes place after the adoption of this Ordinance must maintain a five hundred (500) foot buffer strip from the existing banks of the Potomac and Shenandoah Rivers and is subject to Section 4.13.~~

**Comment [SB135]:** Floodplain covered in Subdivision and Land Development Regulations; hence, this reference is unnecessary.

~~Section 4.15 Location of Jails and Prisons~~

**Comment [SB136]:** Jails and Prisons – moved to Article 8

~~Due to the special conditions surrounding a jail, prison, or penal institution, all such projects shall only be allowed in the Industrial-Commercial Zone and shall be subject to the Development Review System as outlined in Article 6 of this Ordinance. Furthermore, these projects shall comply with Article 5, Section 5.6(L), and Article 6 of the Jefferson County Zoning and Development Review Ordinance.~~

~~[AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]~~

**Comment [SB137]:** Fireworks and Model Homes – Moved to Article 8

~~Section 4.17—West Virginia Legal Fireworks~~

~~Sales of fireworks are only permitted in the commercial zones provided all other restrictions such as subdivision and site plan regulations and setbacks are met.~~

~~[AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]~~

~~Section 4.18—Model Homes/Sales Offices~~

~~Model homes with a staffed sales office for sales exclusively within the residential subdivision that they are located are permitted provided that they are contained on the first lot on either or both side of any road/right-of-way that enter the subdivision; provided also that they are so designated on the preliminary and final plats during the subdivision process.~~

~~Model homes with a staffed sales office in any other location within the subdivision needs to be approved or denied by the Zoning Board of Appeals after a 15 day public hearing.~~

~~Model homes without staffed sales offices are permitted internally within the subdivision.~~

~~[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]~~

**ARTICLE 4A HOME OCCUPATIONS AND COTTAGE INDUSTRIES**  
[AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]

**Section 4A.1 Home Occupation, Level 1**

An occupation conducted in a dwelling unit for gain provided that:

- A. No person other than members of the family residing on the premises shall be engaged in such occupation. Said members must be full time residents of the premises.
- B. The use shall be conducted wholly within the dwelling unit and shall not exceed 25% of the floor area of the dwelling unit.
- C. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation.
- D. There shall be no sales, other than items handcrafted on the premises, in connection with such home occupation.
- E. Traffic generated by such home occupation must not exceed two (2) business related vehicle visits per day nor more than ten (10) visits per week at the premises. Any need for parking generated by the conduct of such home occupation shall be met off street and other than in a required front yard.
- F. It is clearly incidental and subordinate to the use of the dwelling unit as a residence.
- G. No equipment or process shall be used in such a home occupation which creates offensive manifestations by sight, sound or smell detectable to the normal senses, or electrical interference or vibrations perceptible, outside the dwelling unit.
- H. No business which includes the storage of weapons such as firearms (other than the residents hunting, protection and leisure weapons) shall be permitted. Home occupations do not include; boarding or rooming homes or bed and breakfast establishments or adult uses. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

**Section 4A.2 Home Occupation, Level 2**

An occupation conducted in a dwelling unit for gain, provided that:

- A. The occupation must be conducted by a full-time resident of the property. Up to two (2) nonresident employees also may be permitted to work on the premises.

- B. The use shall be conducted wholly within the dwelling unit and shall not exceed one third (1/3) of floor area of the dwelling unit.
- C. The use shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding one (1) square foot in area, non-illuminated.
- D. There shall be no sales, other than items crafted on the premises, in connection with such home occupation.
- E. No more than three (3) business-related vehicle visits per day nor more than fifteen (15) visits per week at the premises, including delivery vehicles, but excluding employee commuting, shall be permitted. Any need for parking generated by the conducted use of such home business shall be met off street and other than in a required front yard.
- F. It is clearly incidental and subordinate to the use of the dwelling unit as a residence.
- G. No equipment or process shall be used in such a home business which creates offensive manifestations by sight, sound or smell detectable to the normal senses, or electrical interference or vibrations perceptible, outside the dwelling unit.
- H. No business which includes the storage of weapons such as firearms (other than the residents hunting, protection and leisure weapons) shall be permitted. Home businesses do not include; boarding or rooming homes or bed and breakfast establishments or adult uses. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
- I. Is not permitted in existing subdivisions established since 1979.

**Section 4A.3 Cottage Industry**

An occupation conducted at a residential premises for gain, provided that:

- A. The occupation must be owned and operated by a full-time resident of the property. Up to four (4) nonresident employees may be permitted to work on the premises.
- B. The use shall be conducted at least in part within the dwelling unit. Said use area shall not exceed one third (1/3) of floor area of the dwelling unit. In addition all cottage industry. Two subordinate structures shall be permitted not exceeding two stories and shall not have a footprint greater than 1000 square feet.
- C. There shall be no change in the outside appearance of the residential structure. One sign, not exceeding four (4) square feet in area, non-illuminated may be permitted.
- D. Sales on the premises shall be permitted with the limitation that no less than seventy-five (75) percent of the items for sale shall be products produced on the premises and that

items not produced on premises shall be items similar or related to the items produced on the premises.

- E. No more than twelve (12) business-related vehicle visits per day nor more than sixty (60) visits per week at the premises, including delivery vehicles, but excluding employee commuting, shall be permitted. Any need for parking generated by the conduct of such cottage industry shall be met off street and other than within the required front yard setback.
- F. No evidence in the appearance of the property or other visible manifestation of the conduct of cottage industry activity shall be visible from the public way, other than a non-illuminated sign.
- G. No equipment or process shall be used in such a cottage industry establishment which creates offensive manifestations by sight, sound or smell detectable to the normal senses at any property line, or which creates electrical interference or vibrations perceptible, at any lot line.
- H. No business which includes the storage of weapons such as firearms (other than the residents' hunting, protection and leisure weapons) shall be permitted. Home businesses do not include: boarding or rooming homes, or bed and breakfast establishments, or adult uses. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
- I. Site plans pursuant to Section 20.203 of the Jefferson County Subdivision and Land Development Regulations Article 4 of the Improvement Location Permit Ordinance are required for new structures or structures that are to be converted to be used as a part of the Cottage Industry; unless otherwise permitted by the Planning Commission.
- J. Setbacks shall be 25 feet all round the structure.
- K. Permitted anywhere except the Residential Growth District and existing residential subdivisions.

Comment [SB138]: Reference to updated regulations.

#### Section 4A.4 Private Covenants Running with the Land

Although not regulated by the County, it is recommended that prior to the operation of a Home Occupation and/or Cottage Industry applicants research restrictive covenants for their land or seek the advice of a surveyor, engineer or attorney. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

## ARTICLE 4B WIRELESS TELECOMMUNICATION FACILITIES

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 1, 1998]  
[RESCINDED AND REPLACED BY ACT OF THE COUNTY COMMISSION ON MARCH 10,  
2011]

### Section 4B.1 Purpose and Legislative Intent

The purpose of Article 4B, Wireless Telecommunication Facilities, is to balance the needs of residents of and visitors to Jefferson County for reliable access to wireless telecommunication networks and services with the community's desire to preserve the County's rural, historic and agricultural character and the quality of its residential neighborhoods.

To accomplish these objectives and to ensure that the placement, construction or modification of wireless telecommunication facilities complies with the provisions of the Telecommunications Act of 1996 and other Federal laws, and is consistent with Jefferson County's land use policies and Comprehensive Plan, this Article is intended to regulate the construction, placement and operation of wireless telecommunication facilities within Jefferson County. When any provision of this article is in conflict with any provision of the Jefferson County Zoning Ordinance or the Jefferson County Subdivision and Land Development Regulations, the stricter regulation shall apply.

This Article establishes parameters for the siting of Wireless Telecommunication Facilities. It is Jefferson County's intent to:

- A. Ensure access to reliable and robust wireless communications services throughout Jefferson County consistent with the aforementioned objectives;
- B. Encourage the use of existing structures such as buildings, water towers, silos, church steeples, monopoles, lattice towers, utility poles, electric distribution and transmission structures and other existing structures for the co-location of Wireless Telecommunication Facilities;
- C. Encourage the location of new Wireless Telecommunication towers in non-residential areas, with taller towers limited to the Industrial-Commercial zoning district;
- D. Minimize the number of new Wireless Telecommunication Towers that would otherwise need to be constructed by providing incentives for the use of existing structures;
- E. Encourage the location of new Wireless Telecommunication Towers, to the greatest extent possible, in areas where the adverse impact on the community will be minimal; and by encouraging the use of camouflage or concealment to create structures such as silos, faux trees and flagpoles that mimic elements that typically are found on Jefferson County's agricultural landscape and that appear in scale and context with their surroundings.

F. Minimize or mitigate the potential adverse visual effects associated with the construction of Wireless Telecommunication Towers through the implementation of reasonable design, landscaping and construction practices;

G. Ensure public health, safety, welfare, and convenience; and

H. Conform to Federal and State laws that allow certain antennas to be exempt from local regulations.

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

For purposes of administering this Article, Wireless Telecommunication Facilities (hereafter “Facilities” or “Facility”) shall be classified as follows:

1. Exempt Facilities as specified in Section 4B.3
2. Concealed Wireless Telecommunication Facilities
3. Co-located Wireless Telecommunication Facilities
4. Temporary Wireless Telecommunication Facilities
5. Wireless Telecommunication Towers

Exempt Facilities are allowed by right. Prior to the issuance of a Zoning Certificate, all other types of new Wireless Telecommunications Facilities listed above require approval of a Minor Site Plan as described in the Jefferson County Subdivision and Land Development Regulations and also meeting the submittal and design requirements of this Article. Additionally, Wireless Telecommunication Towers shall require submittal of a Concept Plan and a public hearing to allow for an analysis of demonstration of need, neighborhood compatibility, impact on cultural and historic resources, and visual mitigation.

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

**Section 4B.3 Exempt Facilities Allowed by Right**

This section covers antennas other than those associated with commercial wireless telecommunication facilities, such as facilities associated with governmental users, television and radio broadcast facilities, and private business users requiring an antenna support structure of twelve feet or less. Antennas allowed by right subject to special requirements of this section include:

- A. Amateur radio facilities mounted on supporting structures less than 100 feet in height provided however, that commercial wireless providers and private business users may not co-locate antennas on an amateur radio tower irrespective of its height.
- B. Residential antennas for receiving television or AM or FM radio broadcast signals.
- C. Residential or business customer premise antennas for receiving microwave, satellite or broadcast television signals, provided such antennas are less than one meter (39.4 inches) in diameter and are mounted on a support structure less than twelve (12) feet in height.

#### **Section 4B.4 Concealed Wireless Telecommunication Facilities**

Concealed Facilities are permitted in all zoning districts. The Department may issue a Zoning Certificate for a Concealed Facility consistent with the following terms and conditions:

- A. Concealed Facilities are permitted on buildings and alternative structures (other than telecommunication towers).
- B. For purposes of this section antennas mounted on electric transmission towers shall qualify as Concealed Facilities provided that antennas associated with such facilities do not extend more than twenty (20) feet above the top of the supporting structure. Equipment enclosures associated with such facilities may be mounted on the structure, placed underground or on the ground. If placed on the ground, equipment enclosures shall be placed on a concrete pad, metal skid or platform, or other foundation and screened so as to make them unobtrusive.
- C. For purposes of this section antennas mounted on an electric distribution pole, utility or street lighting pole or traffic light pole shall qualify as a Concealed Facility provided antennas associated with such facilities shall not extend more than twenty (20) feet above the top of the existing support structure.
- D. Utility poles may be extended up to twenty (20) feet in height to accommodate antennas for a Concealed Facility.
- E. For any utility pole height increases in the Harpers Ferry Overlay District, the Department shall refer the application to the Jefferson County Historic Landmarks Commission for review and comment before issuing a Zoning Certificate.
- F. Applications for such utility pole height extensions in the Appalachian Trail Overlay District shall be referred by the Department to the Appalachian Trail Conservancy and the National Park Service for review and comment prior to issuance of a Zoning Certificate.
- G. Antennas associated with Concealed Facilities, if flush-mounted on the side of a building or alternative structure, shall be camouflaged to match or complement the color and architectural texture of the surface.
- H. Antennas associated with a Concealed Facility shall not be co-located on a tower or other support structure developed as an Exempt Facility pursuant to this Article for the use of an amateur radio operator.
- I. Equipment enclosures associated with Concealed Facilities may be placed inside a building or, if placed on a rooftop, all equipment enclosures shall be mounted behind a parapet wall or façade which is camouflaged to match or complement the color and architectural treatment of the building. If antennas are placed on a structure other than a

building, equipment enclosures associated with the facility may be mounted on the structure or placed underground or at ground level on a concrete pad, metal skid or platform, or other foundation. If placed at ground level, such equipment enclosures shall be screened so as to make them unobtrusive.

- J. All cabling and wiring connecting antennas, equipment enclosures, and other components of Concealed Facilities shall be colored or concealed in a manner that renders them unobtrusive.
- K. Generators may not be used as a primary electrical power source. Backup generators shall only be operated during power outages or for testing and maintenance purposes. Testing and maintenance of a generator shall only take place on weekdays between 8:00 a.m. and 7:00 p.m.
- L. Equipment associated with a Concealed Facility not located in a public right-of-way must meet the setback requirements for the zoning district in which it is located.

#### **Section 4B.5 Co-located Wireless Telecommunication Facilities**

Co-located Wireless Telecommunications Facilities are permitted within all zoning districts. Co-location includes the placement of additional antennas or antenna arrays on an existing or approved telecommunication tower or support structure (or alternative structure or Concealed Telecommunication Support Structure), or otherwise sharing a common location by two or more FCC licensed providers of personal wireless services. The Department may issue a Zoning Certificate for a Co-located Facility consistent with the following terms and conditions:

- A. Antennas associated with a Co-located Facility shall not be co-located on a support structure developed as an Exempt Facility pursuant to this Article for the use of an amateur radio operator.
- B. Co-located Facilities shall meet the following design standards:
  - 1. Antennas associated with a Co-Located Facility located on a monopole shall, where practical, be mounted so as to present the smallest possible silhouette, profile or cross-section. Preferred antenna mounting scenarios are, in order of descending preference:
    - a. Antennas within a cylindrical radome matching the diameter of a monopole;
    - b. Antennas mounted at the end of straight or curved davit arms or brackets extending from the sides of the tower.
    - c. Antennas mounted as an array arranged around a platform extending from the monopole.
  - 2. All equipment enclosures and other improvements accessory to a co-located Facility shall be architecturally designed to blend in with the surrounding environment and shall be maintained in good appearance and repair. No equipment enclosure may exceed twelve (12) feet in height.
  - 3. Generators may not be used as a primary electrical power source. Backup generators shall only be operated during power outages or for testing and

- maintenance purposes. Testing and maintenance of a generator shall only take place on weekdays between the hours of 8:00 a.m. and 7:00 p.m.
4. Equipment enclosures and other improvements shall be enclosed within a security fence consisting of chain link fencing at least eight (8) feet in height. The Department may require as a condition of approval that the fencing be screened by a landscaped buffer of at least 10 feet in width planted along the entire exterior perimeter of the fence. Such a buffer must contain at least one row of native vegetation and form a continuous screen at least 6 feet in height. All buffer yards shall be maintained by the property owner. It will be the responsibility of the property owner to maintain the buffer yard and to replace any trees or shrubs that die. The landscaping requirements of this section do not apply to an application for co-location on a site with an approved site plan. The Department may waive or modify the fencing requirement upon a determination that doing so will enhance the overall appearance of the facility without any compromise in safety or security.
  5. Signage at any ground-based portion of a Co-located Facility site shall conform to FCC and FAA standards. No commercial signage is permitted.
  6. Before an application for a Co-located Facility can be processed, a copy of the applicant's FCC license must accompany its application. If FCC licenses for the applicant have been provided to the Jefferson County Department of Planning & Zoning in conjunction with previous wireless facility applications, the applicant may certify that such licenses remain in full force and effect.

#### **Section 4B.6 Temporary Wireless Telecommunication Facilities**

Temporary Facilities are permitted in all zoning districts. The Department may issue a Zoning Certificate for a Temporary Facility consistent with the following terms and conditions:

- A. Temporary Facilities, including but not limited to Cell on Wheels (COW), may be placed at or near the location of an existing, proposed or approved Facilities for periods up to seventy-two (72) hours for equipment or signal propagation testing purposes or, where an existing facility is temporarily unavailable due to scheduled or unscheduled maintenance, without any requirement for a permit. Where scheduled or unscheduled maintenance will extend beyond seventy-two (72) hours, the wireless provider must obtain a Zoning Certificate. The Department may issue such a certificate for up to thirty (30) days upon a showing of good cause by the applicant. Such certificate may be extended for an additional thirty (30) day period if the applicant can demonstrate that extenuating circumstances necessitate an extension.
- B. In the event of a natural disaster, catastrophic event or public emergency that either renders an existing Facility unusable, or creates an urgent need for supplemental capacity to manage the emergency, temporary facilities may be placed in any area as necessary to provide coverage or capacity for longer periods upon the authority of the Director of the Office of Homeland Security and Emergency Management, with notification to the Director of the Planning and Zoning Department.

- C. Permits may be issued by the Department for up to one week for temporary facilities needed in conjunction with scheduled special events at specific locales that are likely to generate a need for additional capacity at the event which is expected to exceed existing installed capacity.
- D. Fees for permits for Temporary Facilities shall be in accordance with the Department of Planning and Zoning schedule of fees and charges.

**Section 4B.7 Wireless Telecommunication Towers**

Wireless Telecommunication Towers (hereafter “Tower” or “Towers”) are permitted in all zoning districts subject to the provisions of this section. The provisions of this section apply to an application for a new Tower, as well as for a major modification to an existing Facility or Support Structure that results in a substantial change to the facility or structure, including but not limited to a height extension of more than twenty (20) feet or ten percent (10%) of the current height of a facility or structure, whichever is greater, and/or replacement of the structure.

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

**A. Site Plan Required**

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

**B. Concept Plan Submittal and Public Hearing Required**

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

1. Required elements for a Wireless Telecommunications Tower Concept Plan shall be the same as for a site plan as established in the Subdivision and Land Development Regulations, Appendix A, Sec. 1.3A, with the exception of Subsections 1.3A.20-22, 24-29, 31-35.
2. The following additional elements must be submitted:
  - a. Outside dimensions, use, and setbacks of all existing and proposed buildings, structures, towers, antennas, utility lines, driveways, and parking areas
  - b. Height of the proposed tower measured from ground level at the center of the proposed structure, and height comparison to any nearby buildings or trees, or other applicable structures and natural landforms part of the site’s background and foreground landscape
  - c. Elevations and Cross-Section: Display topography with all proposed facilities including tower, equipment shelter and existing buildings

- d. Number, size and location of proposed and existing antennas; number of co-locations possible
  - e. Method of camouflage (if any)
  - f. Locations of known historic structures
  - g. A description of the anticipated construction and installation schedule
  - h. Documentation verifying compliance with applicable Federal Communications Commission (FCC) standards and requirements to provide the proposed services
  - i. Narrative addressing the design criteria of this section
  - j. Dates, address list, and notice for Balloon Test
  - k. Balloon Test exhibits as required in subsection G of this section
  - l. Propagation maps as required in subsection F of this section
  - m. Any other relevant information
  - n. Additional application requirements of subsection H of this section.
3. Submittal and review of a Concept Plan shall follow the review process and timeline established in Sections Sec. 24.119 – 24.122 of the Subdivision and Land Development Regulations, with the following exceptions:
- a. The application shall be exempt from 24.120A, Agency Reviews, and 24.120D, WVDOH, except as otherwise provided in this subsection.
  - b. Following the Department's determination of the sufficiency of a Concept Plan application,
    - i. the Department shall notify the Jefferson County Historic Landmarks Commission of an application filing.
    - ii. the Applicant shall provide a copy of the completed Concept Plan application to the Appalachian Trail Conservancy and the National Park Service, if required by the Cultural and Historic Resources Review standards of this section.
  - c. The Concept Plan shall be reviewed at a public hearing conducted at a scheduled Planning Commission meeting. The scope of this public hearing shall include a demonstration of need as required under this article, neighborhood compatibility, impact on cultural and historic resources, visual mitigation, the submittal and design criteria of this article, and the compatibility of the facility proposal with the Comprehensive Plan, as well as any relevant information presented by any person that addresses the purpose and intent of this Article. The Planning Commission shall review the proposed Tower for compliance with the standards in this article and, if applicable, provide conditions relevant to the scope of the public hearing and/or unique characteristics of the proposed development site, to be addressed in the Department's approval of the site plan.
  - d. Before the Department may approve a site plan for a Tower, the Planning Commission must find, by a majority vote, that the Concept Plan application complies with this article, and that the application is consistent with the Comprehensive Plan.

C. Retention of Consultants

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

#### D. Applicant's Burden of Proof

The applicant for a site plan for any Tower bears the burden of demonstrating by substantial evidence in a written record that a *bona fide* need exists for the proposed structure at its proposed height and location—as required in subsection F, “Demonstration of Need, and that it has met all submittal and design criteria in this Article.

#### E. Proof of Eligibility

Speculative Towers are prohibited. Before an application for a Tower can be processed, a copy of the applicant's FCC license must accompany its application. If the applicant is not an FCC licensee, the applicant must demonstrate that it has binding commitments from one or more FCC licensees to utilize the tower within six (6) months of issuance of a certificate of occupancy for the Tower. Such demonstration shall include submittal of an affidavit by the FCC licensee(s), and a copy of each wireless provider's FCC license. If such FCC licenses have been provided to the Department in conjunction with previous tower applications, the applicant may certify that such licenses remain in full force and effect.

#### F. Demonstration of Need

As part of its application submission for a Concept Plan and for a site plan the applicant shall be required to submit propagation maps demonstrating a technical need for its proposed Tower and justifying the height of its antennas on the structure. One propagation map shall depict existing coverage without the proposed site and another depicting coverage with the proposed site. Such maps shall identify all adjacent sites whether existing, approved or proposed, and each map shall be accompanied by an engineer's affidavit attesting to the parameters or variables used to create the map.

Such propagation studies shall be submitted in both hard copy and in electronic format to facilitate information sharing, inclusion on the county's web site and to otherwise maximize public awareness.

#### G. Balloon Test

1. An applicant shall conduct a balloon or crane test to simulate the maximum height of the proposed Tower. Following the test, the applicant shall submit color photo simulations showing the proposed structure as it would appear viewed from the closest residential property or properties and from adjacent roadways. Photographs

should be taken from appropriate locations on abutting properties, along each publicly used road from which the balloon is visible, and from up to five significant structures or locations identified by the Department. A map shall be supplied identifying the location of each photo. Before and after photo exhibits will be presented.

2. Notice of the dates and times of such tests shall be mailed to all property owners within a one-quarter mile (1320 feet radius) from the proposed location, in addition to the Historic Landmarks Commission at least ten (10) days prior to such tests. The applicant shall utilize address and owner information on file at the Jefferson County Assessor's Office. Such notices shall designate a primary date and an alternate date in case of inclement weather. Notices shall state that there is an application to the Planning Commission for a Wireless Telecommunication Tower on the property and provide the file number. The Department shall review and approve the sufficiency of the notice and the list of addresses prior to mailing. An affidavit of mailing accompanied by a list of recipients and addresses shall be included in the application file.
3. Such notice shall also be published in the legal advertisements section of a newspaper of general circulation in Jefferson County at least ten (10) days prior to such tests. Such notices shall designate a primary date and an alternate date in case of inclement weather. The newspaper's affidavit of publication shall be submitted as part of the application file.
4. In the event the applicant seeks to increase the height of the proposed Tower, or move its location more than one hundred (100) feet laterally, from that stated in its original notices, additional notice shall be required to be given consistent with the above requirements.

#### H. Preferred Structures and Locations Policy

1. Co-location Encouraged. Prior to the approval of the construction of a new Tower, it is the policy of Jefferson County to encourage co-location of wireless facilities in the following locations:
  - a. Co-location of antennas on existing electric transmission towers.
  - b. Co-location and the use of existing or approved towers, buildings or alternative structures such as buildings, water towers, silos, church steeples, and utility poles more than fifty (50) feet in height within a one-quarter mile radius of a proposed Tower, where appropriate.
1. Preferred Support Structures. In light of Jefferson County's agricultural, and increasingly residential character, it is the policy of Jefferson County that for Facilities located outside the Industrial-Commercial zoning district, support structures for antennas are desired in the following descending order of preference:
  - a. Silos
  - b. Other Alternative Structures
  - c. Monopoles
  - d. Lattice Towers

2. Preferred Locations. For new Towers, it is the policy of Jefferson County to encourage use of the following facilities or locations, in descending order of priority:
  - a. The Industrial - Commercial District
  - b. Non-residential areas screened by existing vegetation and located outside of the Industrial - Commercial District
  
3. Application Requirements. In furtherance of the Preferred Structures and Locations Policy in this Article, the following provisions shall apply to an application for a site plan for a Tower:
  - a. The application must demonstrate that the proposed Tower is designed structurally, electrically, mechanically and in all other respects to accommodate additional wireless users unless the applicant demonstrates that structure height, topography, or other factors render this requirement unfeasible. An application must include an affidavit from the tower owner affirming that, subject to exceptions for structure height, topography, or other factors which make co-location unfeasible, the tower is available for co-location.
  - b. A site plan for a Tower shall not be approved if an electric transmission tower with capacity of 230 kV or less is located above, or within twenty-five (25) feet below, the ground elevation of, and within a one quarter mile radius laterally, of a proposed Tower, unless the applicant can demonstrate that:
    - (1) Sufficient easements or other interests in real property cannot be obtained to accommodate the Facility on the electric transmission tower;
    - (2) The electric utility owning the electric transmission tower is unwilling to allow its use for wireless facilities;
    - (3) Reasonable terms, rates, or conditions cannot be negotiated with the electric utility;
    - (4) The location of the tower will not allow the applicant to meet coverage or capacity requirements; or
    - (5) Other unforeseen reasons make it infeasible to locate the planned telecommunications equipment upon existing or approved towers.
  - c. Where suitable electric transmission towers are not available for co-location of antennas, a site plan for a Tower located outside the Industrial-Commercial zoning district shall not be approved unless the applicant demonstrates that the equipment planned for the proposed Tower cannot be accommodated on existing or approved towers, buildings, silos or other alternative structures more than fifty (50) feet in height within a one-quarter mile radius of the proposed Tower due to one or more of the following reasons:
    - (1) The planned equipment would exceed the structural capacity of the existing or approved tower, building or alternative structures, as documented by a qualified and licensed professional engineer, and the existing or approved tower, building or structure cannot be

- reinforced modified or replaced to accommodate planned or functionally equivalent equipment at a reasonable cost;
- (2) Existing and approved towers, buildings or other structures within the search radius, or combinations thereof, cannot accommodate the planned equipment at a height necessary to function reasonably, as documented by a qualified and licensed professional engineer;
  - (3) Reasonable terms, rates, or conditions cannot be negotiated with the owner of the structure and/or property;
  - (4) The location of the structure will not allow the applicant to meet coverage or capacity requirements; or
  - (5) Other unforeseen reasons make it infeasible to locate the planned telecommunications equipment upon existing or approved towers, buildings or alternative structures.
- d. Antennas associated with an application for a Facility may not be co-located on a tower or other support structure developed as an Exempt Facility pursuant to this Article for the use of an amateur radio operator.

#### I. Cultural and Historic Resources Review

1. In addition to the notification requirements of this Section, an application for a Tower shall comply with the following:
  - a. An application for a proposed tower within the Harpers Ferry Overlay District shall be provided, by the applicant, to the National Park Service for review and comment, and the applicant will provide the Department an affidavit certifying delivery.
  - b. An application for a proposed tower located within one mile of the Appalachian Trail shall be provided, by the applicant, to the Appalachian Trail Conservancy and the National Park Service for review and comment, and the applicant will provide the Department an affidavit certifying delivery.

#### J. Design Criteria

Wireless Telecommunication Towers shall comply with the following design criteria:

##### 1. Antenna Mounting Preferences

Antennas associated with a Tower shall, where practical, be mounted so as to present the smallest possible silhouette, profile or cross-section. Preferred antenna mounting scenarios are, in order of descending preference:

- a. Antennas within a cylindrical radome matching the diameter of a monopole.
- b. Antennas mounted at the end of straight or curved davit arms or brackets extending from the sides of the tower.

- c. Antennas mounted as an array arranged around a platform extending from the monopole.

## 2. Height Restrictions

- a. Towers in the Industrial-Commercial zoning district shall not exceed 199 feet. Towers in all other zoning districts shall not exceed 100 feet. If a silo is used for a support structure for antennas, the height of the silo shall not exceed 120 feet.
- b. Antennas may extend up to twenty (20) feet above the height of existing electric transmission towers if such height extensions are preferable to placement of a new Tower.

## 3. Fall Zone

- a. With the exception of silos, Towers shall be set back from all property lines a distance equal to 110% of tower height measured from the base of the structure to its highest point. Additional easements may be acquired on adjacent properties to meet the fall zone requirement.
- b. No residential dwellings may be located in the fall zone on either the primary parcel or in any easement area on adjacent parcels.

## 4. Signage

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

## 5. Lighting & Marking

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

## 6. Electrical Supply

Generators may not be used as a primary electrical power source. Backup generators shall only be operated during power outages or for testing and maintenance purposes. Testing and maintenance of a generator shall only take place on weekdays between the hours of 8:00 a.m. and 7:00 p.m.

## 7. Fencing

Towers, equipment enclosures and other improvements shall be enclosed within a security fence consisting of chain link fencing at least eight (8) feet in height. The Planning Commission may require as a condition of approval that the fencing be screened by a

landscaped buffer of at least 10 feet in width planted along the entire exterior perimeter of the fence. Such a buffer must contain at least one row of native vegetation and form a continuous screen at least 6 feet in height at planting. All buffer yards shall be maintained by the property owner. It will be the responsibility of the property owner to maintain the buffer yard and to replace any trees or shrubs that die.

The Planning Commission may waive or modify the fencing requirement upon a determination that doing so will enhance the overall appearance of the facility without any compromise in safety or security.

#### 8. Tower Color

Towers shall have a flat gray or galvanized finish unless the Planning Commission determines that another color scheme would be a preferable alternative to address visual mitigation and such scheme is consistent with FCC and FAA standards for antenna structure marking.

### **Section 4B.8 Maintenance & Removal Bonds**

Prior to issuance of a Zoning Certificate, each applicant for a Facility shall be required to execute a standard Maintenance / Removal agreement binding the applicant and its successors and assigns to properly maintain the exterior appearance of, and to ultimately remove such facilities, upon abandonment or cessation of operations. The applicant shall be required to post a bond for this purpose in accordance with the Department of Planning & Zoning schedule of fees and charges. The applicant shall be required to continue such bond or other security until such time as the facility has been removed and all other requirements of the Maintenance/Removal agreement have been satisfied. Private business users operating a single Facility at their principal place of business and Governmental Users are exempt from this bond requirement.

### **Section 4B.9 Abandonment & Removal**

- A. Any Facility or Support Structure that is not operated for a period of twelve (12) consecutive months may be referred to the Property Safety Enforcement Agency Board for a determination of the structural soundness of the Facility or Structure.
- B. If a structure is determined to be unsound, it will be considered abandoned.
- C. The owner or operator of any Facility or Support Structure shall remove the Facility pursuant to the requirements of the Jefferson County Property Safety Ordinance.

**ARTICLE 5: DISTRICT ESTABLISHMENT; ZONING MAPS; DISTRICT BOUNDARIES; DISTRICT REGULATIONS**

**Section 5.1 Establishment of Districts**

For the purpose of this Ordinance, all land within the County, exclusive of the incorporated towns, is hereby designated as one of the following zoning districts:

- R-G Residential/Growth District
- I-C Industrial/Commercial District
- R-A Rural/Agricultural District
- R-L-C Residential/Light Industrial/Commercial District

V Village District

**Comment [SB139]:** Village District is an existing zoning district but is currently absent from this list.

[AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 4, 1989]

**Section 5.2 Boundaries of Districts**

Unless otherwise indicated on the zoning district maps, the boundary lines of the districts shall follow lot lines, centerlines of streets, alleys, corporate limit lines, or centerlines of waterways as existing at the time of the adoption of this Ordinance.

**Section 5.3 District Maps**

The districts shall be of the size and shape shown on the Jefferson County Zoning Maps and shall hereby be made a part of this ordinance. A copy of the said maps shall be signed by the County Commissioners upon the adoption of these regulations and recorded within the Courthouse.

The Jefferson County zoning layer is parcel-based, maintained in a Geographic Information System (GIS), and shall be the basis for the County's official zoning map. Within 30 days of final County Commission action on a zoning map amendment, GIS/Addressing staff will update the digital zoning layer and make the new data available online.

**Comment [SB140]:** This policy was adopted by the County Commission.

On an annual basis, in December, and within 30 days of final County Commission action on a zoning map amendment, a new zoning map will be printed which includes the most up to date base layer data, all approved zoning designations since the last printed map, and an effective date, certified by the President of the County Commission, filed with the County Clerk's office, and a copy provided to the Planning Commission. This annual map update shall not require a public hearing and such certification shall occur administratively.

## Section 5.4 Residential-Growth District

The Residential-Growth District is intended to provide for a variety of residential uses and densities which can be supported by central or public water and sewer and adequate roadways and services. This district encourages commercial growth provided that such growth is deemed to be appropriate and compatible by the Development Review System.

The following regulations govern development within the Residential-Growth District.

### A. Principal Permitted Uses

1. Dwelling, Single-Family detached dwelling units
2. Dwelling, Duplexes
3. Dwelling, Two Family
4. Dwelling, Townhouses
5. Dwelling, Multi-Family dwelling units
6. Mobile Home Parks (Subject to the Jefferson County Subdivision and Land Development Regulations Section 10.1; Jefferson County Subdivision Ordinance)
7. Private or public elementary, middle or secondary schools, hospitals
8. Hospital and Vocational and/or Training Facility for Adults educational facilities for adults [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
9. Churches and other places of worship
10. Day Care Center, Small
11. Day Care Center, Large
12. Essential Utility Equipment Child care centers
13. Public utility Safety buildings Facility
14. Publicly Owned Facility buildings and public service establishments like fire, ambulance and rescue services
15. Accessory Uses
16. Group Residential Facility
17. Home Occupation, Level 1
18. Home Businesses Occupation, Level 2 as specified in Articles 2 and 4 [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]
19. Nursing or Retirement Homes
20. Model Homes/Sales Office (pursuant to Section 4.18) [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
21. Preschool
22. Wireless telecommunication facilities pursuant to Article 4B.

**Comment [SB141]:** Staff interprets the intent of the ordinance to allow two-family uses in districts where multi-family, townhouse, or duplex uses are also permitted.

**Comment [SB142]:** Use added.

**Comment [SB143]:** Currently permitted per Article 4B but not listed.

### B. Minimum Lot Area, Height, and Yard Requirements

1. Minimum Lot Area, Height, and Yard Requirements are as shown in Table 5.4 – 1 below. The following minimum lot area requirements for residential dwelling units are based on the availability of central or public water and sewer facilities and West Virginia Board of Health regulations.

**Comment [SB144]:** Unnecessary.

1.2. When computing the dwelling unit yield for a parcel of land, use the total area of parcel minus (1) lands contained in a wetland and (2) hillside lands to be retained in a natural, undisturbed condition as provided for in Article 14 of the Subdivision Ordinance the Jefferson County Subdivision and Land Development Regulations.

[AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

**Section 5.4b Table 5.4 - 1 Residential Growth District - Height and Yard Requirements**

[AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990 AND SEPTEMBER 1, 2006]

|    | Development Type                 | Minimum Lot Area (MLA)<br>Area per Dwelling Unit (ADU)        | Required Yards (ft)  |      |             |                 | Maximum Building Height (ft)* |
|----|----------------------------------|---------------------------------------------------------------|----------------------|------|-------------|-----------------|-------------------------------|
|    |                                  |                                                               | Required Yards Front | Side | Street Side | Rear            |                               |
| 1. | Single Family detached Dwelling  | 6,000 sq. ft. MLA**                                           | 25                   | 12   | 15          | 20              | 40                            |
|    | Public/Central water and sewer   | 10,000 sq. ft. ADU                                            | "                    | "    | "           | "               | "                             |
|    | Public/Central water or sewer    | 20,000 sq. ft. MLA                                            | "                    | "    | "           | "               | "                             |
|    | No Public/Central water or sewer | 40,000 Sq. ft. MLA                                            | "                    | "    | "           | "               | "                             |
| 2. | Duplex Dwelling unit             |                                                               | 25                   | 15   | 15          | 20              | 40                            |
|    | Public/Central water and sewer   | 3,200 sq. ft. MLA                                             | "                    | "    | "           | "               | "                             |
|    | Public/Central water and sewer   | 7,500 sq. ft. ADU                                             | "                    | "    | "           | (exterior only) | "                             |
|    | Public/Central water or sewer    | 10,000 sq. ft. ADU                                            | "                    | "    | "           | "               | "                             |
| 3. | Townhouse Dwelling               |                                                               | 25                   | 12   | 15          | 20              | 40                            |
|    | Public/Central water and sewer   | 1,400 sq. ft. MLA                                             | "                    | "    | "           | "               | "                             |
|    |                                  | 3,500 sq. ft. ADU                                             | "                    | "    | "           | (exterior only) | "                             |
|    |                                  |                                                               | "                    | "    | "           | "               | "                             |
|    |                                  |                                                               | "                    | "    | "           | "               | "                             |
| 4. | Multi-Family Dwelling            | 20,000 sq. ft. MLA                                            | 25                   | 12   | 15          | 30              | 40 ft.                        |
|    | Public/Central water and sewer   | 2,000 sq. ft. ADU                                             | "                    | "    | "           | (exterior only) | "                             |
|    |                                  |                                                               |                      |      |             | "               | "                             |
| 5. | Condominium                      | 20,000 sq. ft. area for the parcel containing the condominium | 25 ft. front         |      |             |                 | 40 ft.                        |
|    |                                  | 2,000 sq. ft. minimum area per condominium unit               | 12 ft. side          |      |             | (exterior only) | "                             |
|    |                                  |                                                               | 30 ft. rear          |      |             |                 | "                             |

**Comment [SB145]:** While the Subdivision and Land Development Regulations specify a street side setback for townhomes (15'), the Zoning Ordinance is silent on street side setbacks. As such, two front setbacks must be applied currently to all uses but townhomes. For consistency, Staff recommends applying a 15' street side setback to all residential uses in this district.

**Comment [SB146]:** See above note.

**Comment [SB147]:** "Exterior only" established in definition of setback.

**Comment [SB148]:** Indicator for ADU or MLA is currently missing. Staff's interpretation is that ADU is applicable here.

**Comment [SB149]:** See above note re: street side setbacks.

**Comment [SB150]:** "Condominium" proposed for deletion because this land use is included in the definition of multi-family, and the standards (MLA, ADU, setbacks, etc) are identical to those for multi-family.

\* Subject to Section 9.2

NOTE: ALL detached accessory structures under 144 square feet in size - 6' setback.

\*\* The balance square footage between the ADU and the MLA shall not include land set aside in a Sensitive Natural Area, Buffer to a Sensitive Natural Area, land qualifying as Hillside development or a 100 Year Flood Plain.  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990]

C. Commercial Services in Residential Developments

1. Commercial services may be included in a residential development providing the commercial uses are intended to serve the residential community proposed and shall relate well to residential areas in terms of pedestrian and vehicular circulation.
2. The gross area for commercial uses shall not exceed 5 acres or 10 percent of the gross tract area, whichever is less.
3. Commercial uses shall not be built or established prior to the residential development ~~except that they may be unless~~ built in phases consistent with phasing of the residential construction.
4. These uses shall be located within the interior of the project.  
~~4.5 and shall be located within the interior of the project and~~ Commercial uses shall be subject to the ~~Neighborhood~~ Compatibility ~~Assessment Meeting~~ ~~Hearing~~ process as outlined in Article 7 of this Ordinance. Any proposed commercial use that is served from a road that is located on the perimeter of the project or on a State Road shall be subject to the entire Development Review Process. [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

Comment [SB151]: Single paragraph broken into sections for legibility.

Comment [SB152]: Text repeats.

Comment [SB153]: Name corrected for consistency.

D. ~~Access to~~Standards for Commercial or Light Industrial Uses

1. Commercial or Light Industrial uses ~~are subject to the following access requirements:~~
  - a. ~~(1)Such uses~~ will not use adjacent residential roads for through traffic; and
  - b. ~~(2)w~~Will connect to principal and major arterial highways as directly as feasible considering access restrictions. [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]
2. ~~Commercial and Light Industrial uses are subject to the requirements of Section 5.6D and the requirements for such standards in Article 8.~~

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Comment [SB154]: This requirement is stated in Section 5.6D, but is difficult to find and should be stated within 5.4 as well.

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Comment [SB155]: Design Standards for Multi-Family Dwellings - Moved to Article 4.

Comment [SB156]: Marked as "Reserved" in order to preserve numbering of Article 5.

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Section 5.5 ~~Reserved~~Design Standards for Multi-Family Dwellings

- A. ~~Common open space shall be oriented to the interior of the development and shall consist of land suitable for passive and active recreational use. No more than 50 percent of land dedicated to recreational use shall be within the 100-year Flood plain.~~
- B. ~~Impermeable surface coverage for interior streets, parking areas, and residential structures shall not exceed fifty (50) percent of the gross land area.~~
- C. ~~Asphalt or concrete walkways of a minimum width of four (4) feet shall provide access access from bus waiting areas, recreational land, tot lots and parking areas.~~

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~~D. All on-site utilities and dumpsters shall be effectively screened.~~

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~~E. Tot lot or play areas shall be centrally located in areas convenient to residential buildings and at least twenty-five (25) feet from any street right-of-way.~~

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## Section 5.6 Industrial - Commercial District

The purpose of this district is to provide locations for manufacturing, processing, and commercial uses which may require extensive transportation and central or public water and sewer services. It is not the purpose of this district to encourage the use of land within the district for retail services; however, it is anticipated that there may be areas or locations where retail services can be reasonably and logically considered due to their relationship with other uses existing within the district, as well as their relationship with the district boundary line or the configuration of the property and the relative scale of the project.

### A. Principal Permitted Uses

- ~~1. Uses of a Light or Heavy Industrial Uses~~
- ~~2. Heavy Industrial Uses~~
3. Commercial Uses
4. Day Care Center, Small
5. Day Care Center, Large
6. Home Occupation, Level 1
7. Home Occupation, Level 2
8. Cottage Industry
9. Medical/Dental/Optical Office, Small
10. Barber/Beauty Shop, Limited
11. Antique Shop
12. ATM
- ~~13. Branch Bank~~
14. Kennel (subject to the requirements for such use in Article 8)
15. Dry Cleaner
16. Florist
17. Restaurant, Limited
18. Restaurant, Fast Food, Limited
19. Retail Food Store, Limited
20. Veterinary Services
21. Video Rental Store
22. Country Inn
23. Non/Not for Profit Commercial Uses
24. Non-profit Community Centers
25. Publicly Owned Facility
26. Public Safety Facility
27. Essential Utility Equipment
28. Wireless telecommunications facilities pursuant to Article 4B.

**Comment [SB157]:** Several commercial uses listed in this section are currently listed only in the Village District but should be included here for consistency, because all commercial uses are permitted in the district.

**Comment [SB158]:** ATM and Bank are distinct land uses.

29. Private or Public Shooting Ranges

2-30. Cultural Facility

~~3-31. Industrial related accessory uses including residential dwellings including a mobile home on site for a caretaker or watch keeper.~~

**Comment [SB159]:** The Board of Zoning Appeals has determined that a shooting range is a permitted use in this district.

~~4-32. Adult uses: adult arcades, adult bookstores, adult cabarets, adult mini-motion picture theaters, adult saunas, adult theaters, sexual encounter establishments, sexual paraphernalia stores, massage parlors and any sign advertising the operation thereof, subject to distance requirements set forth for such uses in Section 5.6h Article 8.~~  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 1, 2003]

**Comment [SB160]:** Updated section reference.

B. The following uses shall be evaluated by the Development Review System and shall not be located less than 1000 feet from any Residential property line or property listed on the National and State Historic Register/Survey.

1. Bituminous concrete mixing and recycling plants
2. Concrete and ceramic products manufacture, including ready mixed concrete plants
3. Petroleum products refining or storage (subject to the requirements for such standards in Article 8) above ground in tanks; provided, that all state and federal laws, as well as National Fire Underwriters Codes, are adhered
4. Commercial sawmills
5. Salvage Yards, subject to the Jefferson County Salvage Yard Ordinance
6. Garbage or dead animal reduction or processing
7. Slaughterhouses, Sstockyards
8. Acid or heavy chemical manufacturer, processing or storage
9. Cement or lime manufacture
10. Explosive manufacture or storage
11. Foundries and/or casting facilities
12. Mineral extraction, mineral processing
- ~~12-13. Jails and Prisons (subject to requirements for this use in Article 8)~~

**Comment [SB161]:** The Zoning Ordinance currently states that Jails/Prisons are allowed in this zone, but the land use is not mentioned in Section 5.6.

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C. Height Regulations

No structure shall exceed seventy-five (75) feet in height except as provided in Section 9.2.

D. Yard Requirements as follows: (These yard requirements are also for an approved commercial or industrial use proposed for any other zone.) [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

**Comment [SB162]:** Applicable requirements below are not solely yard requirements.

1. Front yard building setback
 

|                  |         |
|------------------|---------|
| Commercial sites | 25 feet |
| Industrial sites | 50 feet |
2. Side yard building setback
 

|                                         |         |
|-----------------------------------------|---------|
| Commercial sites greater than 1.5 acres | 50 feet |
|-----------------------------------------|---------|

- Commercial sites 1.5 acres and smaller 25 feet
- Industrial sites 50 feet
- 3. Rear yard building setback
  - Commercial sites greater than 1.5 acres 50 feet
  - Commercial sites 1.5 acres and smaller 25 feet
  - Industrial sites 50 feet
- 4. Parking, Driveway and Internal Access Drive Front Setbacks
  - Commercial sites greater than 1.5 acres 15 feet
  - Commercial sites 1.5 acres and smaller 15 feet
  - Industrial sites 25 feet
- 5. Parking, Driveway and Internal Access Drive Side and Rear Setbacks
  - Commercial sites greater than 1.5 acres 10 feet
  - Commercial sites 1.5 acres and smaller 4 feet
  - Industrial sites\* 25 feet

\* Driveways and Internal Access Drives Only. Parking must abide by buffer requirements.

- 6. Compliance with Sections 4.11 and ~~5-88.9(A)(1-9), b 2-10~~ [AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993]
- 7. Distance Requirements
  - a. Commercial shall comply with Section 4.6(b)
  - b. Industrial shall comply with Section 4.6(a) [AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993]

E. Lot Area

A minimum lot size of three acres shall be required for any industrial use unless the site is located in an approved Industrial Park.

~~Site Plan Requirements~~

~~All uses must be in compliance with Article 11 of the adopted Subdivision Ordinance and Articles 4, 5, 10 and 22 of this Ordinance.~~

**Comment [SB163]:** "Site Plan Requirements" redundant with Sec. 4.10.

F. Commercial and Industrial Design Standards

1. Commercial Design Standards

- a. Landscaping, screening, buffer yards, and setbacks for commercial development are subject to Section 4.11.

- a. ~~Impervious~~
- b. ~~Impermeable~~Impervious site coverage (parking areas, building areas and other paved surfaces) shall not be greater than 80% of the gross area of the site.
- c. Adequate provision shall be made for storage and collection of refuse. Refuse containers are subject to Section 4.11e.
- d. Permeable areas of the site shall be planted with ground cover, shrubs and trees.
- e. ~~All off-street parking areas which are paved with an impermeable surface and which have an area of 10,000 square feet and greater shall have a minimum of five (5) percent of the total impervious area of the parking lot. ||~~
- f. Lighting shall be provided for all parking areas which will receive night use. Such lighting shall be directed to the parking area and be shielded to prevent adverse glare on adjacent public highways, streets and properties.

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Comment [SB164]: This requirement is covered by the Subdivision and Land Development Regulations, Appendix B, Section 9.12

2. Industrial Design Standards

- a. ~~Impermeable~~Impervious site coverage (parking areas, building areas and other paved surfaces) shall not be greater than 90% of the gross area of the site.
- b. Adequate provision shall be made for storage and collection of refuse, subject to Section 4.11e.
- c. Permeable areas of the site shall be planted with ground cover, shrubs or trees if subject to Section 4.6.

Comment [SB165]: Adult Use Requirements and Design Standards for Jails relocated to Article 8

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~~H. Design Standards For Jails, Prisons and/or Penal Institutions [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]~~

~~1. All jails shall have direct access to a primary road as defined by the Jefferson County Comprehensive Plan.~~

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~~a. Such road shall have a level of service no worse than Level C.~~

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~~2. No residential subdivisions, schools, churches or institution for human care shall be within 2000' of the subject property. However, this does not prevent such use from locating within 2000' of a jail, prison or penal institution.~~

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~~3. SETBACKS~~

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- ~~a. Front — 1,000 Feet~~
- ~~b. Sides — 1,500 Feet~~
- ~~c. Rear — 1,500 Feet~~

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~~I. Adult Use Requirements [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 1, 2003]~~

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~~Adult arcades, adult bookstores, adult cabarets, adult mini-motion picture theaters, adult saunas, adult theaters, sexual encounter establishments, sexual paraphernalia stores,~~

massage parlors and any sign advertising the operation thereof, shall only be permitted in the Industrial-Commercial District under the following conditions:

1. All elements of the use, including parking areas, shall be located at least 1,500 feet from any Rural, Residential-Growth, Village or Residential-Growth-Light Industrial-Commercial Zoning District not separated from the subject property by a public road or railroad right-of-way.

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2. A proposed adult arcade, adult bookstore, adult cabarets, adult mini motion picture theaters, adult saunas, adult theaters, sexual encounter establishments, sexual paraphernalia stores, massage parlors or any sign advertising the operation thereof, shall not be permitted within 2,500 feet of a lot with an existing adult use or a lot with a sign advertising an adult use.

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3. All elements of any use described in Article 5, Section 5.6(h), including parking areas, shall be located at least 1,500 feet from any lot, regardless of its zoning classification, that contains a dwelling unit, a school, a church or house of worship or an institution for human care, regardless it is separated by a public road or railroad right-of-way.

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This provision does not apply to any specific existing use that legally qualifies as a nonconforming use; provided, however, that an existing nonconforming use cannot add any of the uses described in Article 5, Section 5.6(h) to their operations as existing at the time of the adoption of this section.

Comment [SB166]: Moved to Article 8, Adult Uses section.

## Section 5.7 Rural District

The purpose of this district is to provide a location for low density single family residential development in conjunction with providing continued farming activities. This district is generally not intended to be served with public water or sewer facilities, although in situations where the Development Review System is utilized, it may be. A primary function of the low density residential development permitted within this section is to preserve the rural character of the County and the agricultural community. All lots subdivided in the Rural District are subject to Section 5.7d ~~Maximum number of lots allowed.~~ The Development Review System does allow for higher density ~~by issuance of a Conditional use permit is issued.~~ [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]

Comment [SB167]: Unnecessary text.

### A. Principal Permitted Uses

~~1.~~  
1. Agricultural uses as defined in Article 2; ~~provided any building or feeding pens in which farm animals are kept shall comply with distance requirements specified in Section 4.6 and the requirements for barns and feeding pens specified in Article 8. Also, any buildings used to store manure shall comply with distance requirements specified in Section 4.6(a).~~ [AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993]

Comment [SB168]: Moved to Section 5.7B

2. Church

- 3. ~~Elementary or Secondary Schools and private or public elementary, middle or secondary schools~~
- 3.4. ~~Vocational and/or Training Facility for Adults and specialized or accredited educational and training facilities for adults in a campus setting, including classroom buildings, dormitories, cafeterias, gymnasiums (whose use is limited to the students, participants and instructors at said school or training facility), and administrative buildings. [AMENDED BY ACT OF THE COUNTY COMMISSION EFFECTIVE, OCTOBER 14, 1999 AND SEPTEMBER 28, 2006]~~
- 5. ~~Dwelling, SsSingle Ffamily~~
- 6. ~~dwelling, including mMobile hHomes (subject to the Jefferson County Subdivision and Land Development Regulations) provided that they are utilized as single family dwelling units on the minimum lot size specified in Section 5.15.~~
- 7. ~~Dwelling, Two-Family provided one unit is owner-occupied~~
- 4.8. ~~Cottage Industry~~
- 9. ~~Home Businesses Occupation, Level 1 as specified in Articles 2 and 4A. [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]~~
- 5.10. ~~Home Occupation, Level 2~~
- 6. ~~Private riding stables~~
- 7.11. ~~Day Care Center, Small Child or elderly care facilities with six (6) or less individuals in single family detached dwellings only; not counting the operator's children or parents. [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999 AND OCTOBER 3, 2005]~~
- 8.12. ~~Public Safety Facility Fire stations, ambulance and rescue squads, publicly supported.~~
- 9. ~~Fish, game or poultry hatchery~~
- 10. ~~Forestry~~
- 11.13. ~~Cultural Facility Library, museum, or similar institution of a noncommercial nature~~
- 12.14. ~~Farm Market Markets for the sale of farm products, and products incidental to farm products; provided that floor area does not exceed 1,500 square feet, a front yard setback of fifty feet (50) from the street right-of-way be maintained, and off street parking be provided. (subject to the requirements for such a use in Article 8) [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]~~
- 13.15. ~~Horticultural nurseries and commercial greenhouses~~
- 14.16. ~~Hospital~~
- 15.17. ~~Public Essential uUtility Equipmenties uses, specified in Section 4.7 incident to any principal permitted uses~~
- 18. ~~Accessory buildings and uses customarily incident to any principal permitted uses~~

**Comment [SB169]:** Section does not exist. Minimum lot size reference unnecessary.

**Comment [SB170]:** Recommend deletion of two-family occupancy restriction. Owner occupancy provision is unique to the Rural district and is difficult to enforce.

**Comment [SB171]:** Currently permitted per Section 4A.3 but not listed in 5.7.

**Comment [SB172]:** "Private riding stables" deleted – redundant with "Equestrian uses."

**Comment [SB173]:** Changes to Home Occupation terms to match Article 4A.

**Comment [SB174]:** Amended use name; use restrictions moved to definition and to Article 8.

**Comment [SB175]:** Redundancies eliminated

**Comment [SB176]:** Use name shortened; detailed standards moved to Article 8.

a. ~~Accessory Uses for Hunting, Shooting and Fishing Clubs~~

- i. ~~Private restaurant that seats no more than 80 patrons that are members and guests of members.~~

**Comment [SB177]:** Hunting, Shooting, Fishing Club accessory regs moved to Article 8

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- ii. ~~Conference and banquet facilities to serve no more than 250 people in which a member rents the facility. Events which are accessory uses other than hunting, shooting, archery and fishing, cannot exceed more than 16 per year.~~
- iii. ~~Private lodge facilities of up to 50 units that serve members and guests.~~  
[AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 28, 2006]

19. Group Residential Facility

~~16.20.~~

Bed and Breakfast (subject to the requirements for such a use in Article 8) ~~s (no more than 7 bedrooms) 4 receptions per year with no more than 1 tent per reception. (subject to the requirements for such a use in Article 8)~~ [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993 AND OCTOBER 3, 2005]

**Comment [SB178]:** Detailed use standards for B&B moved to Article 8.

16. Publicly ~~O~~wned ~~F~~acilities [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]

~~17. Two family dwellings provided one unit is owner-occupied [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]~~

~~17.21.~~ Wireless telecommunications facilities pursuant to Article 4B [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 1, 1998]

~~18. Horse breeding and/or boarding [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]~~

19. Equestrian riding/training facility [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

**Comment [SB179]:** Redundancies eliminated. "Equestrian uses" is listed in the definition of "Agricultural Use."

~~18.22.~~ Model ~~H~~omes/~~S~~ales ~~O~~ffice (subject to the requirements for such a use in Article 8) ~~(pursuant to 4.18)~~ [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

~~19.23.~~ Non-profit Community Centers [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 3, 2005]

~~20.24.~~ Landscaping business outside of Planning Commission approved subdivisions [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 3, 2005]

~~21.25.~~ Veterinary services outside of Planning Commission approved subdivisions [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 3, 2005]

26. Feed and/or ~~F~~arm ~~S~~upply ~~C~~enter ~~and/or~~

~~22.27.~~ Agricultural ~~R~~epair ~~C~~enter [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 3, 2005]

~~23.28.~~ Dog Kennels ~~all portions of the use must be buffered pursuant to Article 4 and setback at least 500 feet from any property that contains a residence. Kennels cannot be located within a Planning Commission approved residential subdivision. [(subject to the requirements for such a use in Article 8)]~~ AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 3, 2005]

**Comment [SB180]:** Kennel standards moved to Article 8

~~24.29.~~ Hunting, Shooting, Archery and Fishing Clubs (subject to the requirements for such a use in Article 8), ~~public or private as defined by American Planning~~

~~Association Definitions including shooting ranges.~~ [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 28, 2006]

**Comment [SB181]:** Defined in definitions, Sec. 2.2.

~~30. Agricultural Tourism~~

**Comment [SB182]:** Agricultural Tourism, Farm Vacation Enterprise, Farm Brewery or Winery, Rental of Existing Farm Building were moved from definition of agricultural use, Section 2.2.

~~31. Farm Vacation Enterprise~~

~~32. Farm Brewery or Winery~~

~~33. Rental of Existing Farm Building, for commercial storage (structure must have existed for 5 years)~~

~~34. Preschool~~

**Comment [SB183]:** Preschool: Land use added.

B. Minimum Lot Area, Lot Width and Yard Requirements

~~1. Minimum lot sizes, lot width, and yard requirements are as follows for principal permitted uses are shown in Table 5.7-1.~~

**Comment [SB184]:** Numbering added to this section.

~~2. For any residential use that complies with the Development Review System, the setbacks and lot size shall be as outlined in Article 5.4(b). [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]~~

**Comment [SB185]:** Missing word.

*Table 5.7-1 – Lot Area, Width, and Yard Requirements for Principal Permitted Uses in the Rural District*

| <del>Land Use</del><br><u>Lot Area</u> | <u>Lot Area</u> | <u>Lot Width</u> | <u>Front Yard Depth</u> | <u>Side Yard Depth</u> | <u>Rear Yard Depth</u> |
|----------------------------------------|-----------------|------------------|-------------------------|------------------------|------------------------|
| Dwellings                              | 40,000 sq. ft.  | 100              | 40                      | 15                     | 50                     |
| Churches                               | 2 acres         | 200              | 5025                    | 50                     | 50                     |
| Schools, Grades K-4                    | 10 acres +      | 500              | 100                     | 100                    | 100                    |
| Schools, Grades 5-8                    | 20 acres +      | 500              | 100                     | 100                    | 100                    |
| Schools, Grades 9-12                   | 30 acres +      | 500              | 100                     | 100                    | 100                    |
| Hospitals                              | 10 acres        | 500              | 100                     | 100                    | 100                    |
| Other permitted uses                   | 40,000 sq. ft.  | 100              | 40                      | 50                     | 50                     |

**Comment [SB186]:** Amended to resolve conflict with table in Section 4.16

~~3. Plus Lot area for schools (K-12) as shown in Table 5.7-1 shall be increased by one (1) additional acre for every 100 pupils. Minimum lot size for Vocational Schools shall be based on State of West Virginia Code. If a sewerage treatment plant and retention ponds are required, acreage shall be increased accordingly. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 4, 1989]~~

**Comment [SB187]:** Reworded for clarity.

~~4. Commercial and Light Industrial uses are subject to the requirements of Section 5.6D and the requirements for such standards in Article 8.~~

**Comment [SB188]:** This requirement is stated in Section 5.6D, but is difficult to find and should be stated within 5.7 as well.

~~5. Any building or feeding pens in which farm animals are kept shall comply with distance requirements specified in Section 4.6 and the requirements for barns and feeding pens specified in Article 8. Also, any buildings used to store manure shall comply with distance requirements specified in Section 4.6(a).~~

**Comment [SB189]:** Moved from 5.7A and edited.

C. Height Regulations

No structure shall exceed thirty five (35) feet in height as provided in Section 9.2.

D. Maximum Number of Lots Allowed

All parcels of land that were on record as of October 5, 1988 are entitled to subdivide for single family detached residences based on Subsections 5.7(d)1, 5.7(d)2 or 5.7(d)3 below. A property owner may use a combination of these subsections, provided that the number of lots are prorated by density. [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]

1. A property owner may create one (1) lot for every fifteen (15) acres with a minimum lot size of three (3) acres.
  - a. Acreage shall be computed using existing acreage at the time application is submitted. Total acreage does not include acreage which was subdivided off of present parent parcel between October 5, 1988 and time of application.
  - b. A property owner may transfer rights to adjacent parcels which are owned by the same entity.

[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

2. Clustering

a. Purpose and Intent

- i. To encourage the conservation of farmland in the Rural Zoning District by planning the residential development allowed in the zone to provide for the best obtainable siting, access and location of lots on a tract.
- ii. To provide for a well planned development while minimizing the use of prime agricultural land.

b. Requirements

- i. ~~A property owner may subdivide one (1) lot~~ ~~may be subdivided~~ for every ten (10) acres ~~he/she owns.~~ [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

Comment [SB190]: Wording simplified.

- (a) Acreage shall be computed using existing acreage at the time application is submitted. Total acreage does not include acreage which was subdivided off of present parent parcel between October 5, 1988 and time of application.

ii. Minimum lot size shall be 40,000 square feet for lots that will be served by individual wells and septic systems; 20,000 square feet for lots that will be served by a central water OR central sewerage system; and 10,000 square feet for lots that will be served by both a central water AND central sewerage system. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

(a) Setbacks shall be 25' front, 12' sides and 20' rear.

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

(c) Clusters of three (3) or more lots shall not be along an existing public road.

(d) A property owner may transfer rights to adjacent parcels which are owned by the same entity. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

(e) Maximum lot size shall be 3 acres. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

iii. Procedures

(a) Concept Plan. For the subdivision of tracts eligible for cluster lots, a concept plan ~~must be submitted shall be submitted to the Department of Planning, Zoning, and Engineering showing all standard and potential cluster rights to determine the feasibility of subdivision rights for the original tract(s) of land. The plan shall be prepared in accordance with a "sample" cluster plan and show the following: pursuant to the requirements of the Jefferson County Subdivision and Land Development Regulations. All cluster developments must be processed as a major subdivision.~~ [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

**Comment [SB191]:** While staff recommends that this standard be maintained, the requirement is no longer in the Subdivision and Land Development Regulations.

**Comment [SB192]:** Requirement to process as a major subdivision will ensure that all cluster developments (even those of 5 lots or fewer) will have a Concept Plan. This is consistent with the intent of Section 5.7.

~~The lot layout (scale no smaller than one (1) inch equals one hundred (100) feet) including the building restriction lines and appropriate dimensions  
Street layout  
Vicinity map (scale no smaller than one (1) inch equals two thousand (2000) feet) showing the tracts(s) and total acreage including within the plan.~~

**Comment [SB193]:** The new Subdivision Regulations establish the Concept Plan standards and review process. A cluster subdivision would be required to follow these requirements. As such, the Zoning Ordinance standards and process for a cluster Concept Plan are redundant with new Subdivision Regulations. This is confusing and burdensome for applicants. Hence, the Concept Plan standards and process in the Zoning Ordinance should be deleted.

~~Topography with minimum ten-foot contours (USGS Topo, interpretation is permitted for concept plan)  
Development rights table indicating acreages and development rights, both standard and cluster, for each tract and the total.  
Soils data for the cluster area and the remaining farmland.~~

~~The Department of Planning, Zoning, and Engineering Staff will review the cluster plan, prepare a report and submit it to the Planning Commission within thirty (30) days of original submittal. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]~~

(b) The Staff will have final approval over the location layout of the proposed clustering of lots. The Staff shall consider the following when reviewing concept plans:

- (1) Soils: The cluster plan should minimize the use of the higher quality soils (class I, II and III as designated in the soils classification study) and maximize the use of steeper sloped areas, areas of poorer soils and areas which are otherwise less productive for agricultural uses.
- (2) Surrounding land use and zoning: The cluster plan shall consider the existing land uses and zoning in the vicinity. Generally, new lots which are adjacent to existing development or residential zoning are preferred to creating an isolated cluster of new houses.

~~(c) Concept plan approval shall become null and void at the end of one year from the date of approval unless a Community Impact Statement is submitted.~~

~~(c)~~ If the concept plan is approved by the Planning Commission, the ~~developer applicant~~ may then proceed with platting of the clustered development in accordance with the Jefferson County Subdivision and Land Development Regulations ~~subdivision regulations~~ and the approved concept plan. The plat shall bear a statement indicating "The land lies within an approved rural cluster development and no further subdivision of the remaining land is permitted unless the property is placed in another zone or further subdivision is allowed by ordinance or regulation".

**Comment [SB194]:** Validity dates for subdivisions are established by the Subdivision Regulations, per Chapter 8A of the West Virginia Code.

~~iv.i.~~ Not in addition to subsections 5.7(d)1 and 5.7(d)2 above, any property that was a lot of record as of October 5, 1988 may create 3 total lots (including the residue) during any five year period. Applications which exceed this number during any five year period shall be processed utilizing the Development Review System. Subdivisions involving transfers of land between parent and child shall not be subject to this section. All lots that qualify under this section must meet subdivision requirements. Only the residue or parent parcel may qualify under this provision once the original subdivision takes place.

Parent to child or child to parent lots are not entitled to further subdivide except as another parent to child or child to parent transfer.

ii. Once the maximum number of lots are created under 5.7(d), the property cannot be further subdivided unless the Ordinance is amended to allow such.

~~E. Standards for Hunting, Shooting and Fishing Clubs [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 28, 2006]~~

~~1. 75 foot setback for all structures and parking.~~

~~2. 150 yard setback for all shooting facilities.~~

~~3. Height~~

~~a. As is for conversion or reconstruction that does not exceed 135 percent of the original footprint of existing structures~~

~~b. 35 feet for new structures~~

~~4. Landscaping requirements to meet standard found in this Ordinance with the following exception:~~

~~a. Perimeter landscaping shall be as approved by staff in order to preserve existing vegetation.~~

~~5. Minimum of 150 acres under common ownership.~~

~~F. Special Exceptions for Hunting, Shooting and Fishing Clubs [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 28, 2006]~~

~~1. Limits exceeding requirements outlined above can be increased with Board of Zoning Appeal's approval provided that the Board of Zoning Appeals find that the increase is compatible with the neighborhood after taking into consideration neighborhood character, traffic, and buffering. Such decision shall be rendered after a public hearing as outlined in the Board of Zoning Appeal's Rules and Procedures.~~

**Section 5.8 Residential/Light Industrial/Commercial District**

[AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 4, 1989]

The purpose of this district is to guide the high intensity growth into the perceived-designated growth area. Light industrial uses are defined in Section 2.2. All other perceived light industrial uses shall be referred to the Jefferson County Development Authority for a recommendation on whether a use is a light industrial or heavy industrial use. The final decision on use classification shall still be made by the Zoning Administrator. Planning Commission.

A. Principal Permitted Uses

Comment [SB195]: Hunting, Shooting, Fishing - moved to Article 8

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Comment [SB196]: Section moved from Section 2.2 and has been edited: words "on use classification" added.

1. ~~Uses of Light Industrial Uses~~
2. ~~Commercial Uses~~
3. ~~Medical/Dental/Optical Office, Small~~
4. ~~Barber/Beauty Shop, Limited~~
5. ~~Antique Shop~~
6. ~~ATM or~~
7. ~~Branch Bank~~
8. ~~Dog-Kennel (subject to the requirements for such use in Article 8)~~
9. ~~Dry Cleaner~~
10. ~~Florist~~
11. ~~Restaurant, Limited~~
12. ~~Restaurant, Fast Food, Limited~~
13. ~~Veterinary Services~~
14. ~~Video Rental Store~~
2. ~~Country Inn~~
15. ~~Dwelling, Single Family detached dwelling units~~
3. 16. ~~Dwelling, Two Family~~
4. 17. ~~Dwelling, Duplexes~~
5. 18. ~~Dwelling, Townhouses~~
6. 19. ~~Dwelling, Multi-Family dwelling units~~
20. ~~Mobile Home Parks~~
21. ~~Home Occupation, Level 1~~
22. ~~Home Occupation, Level 2~~
7. 23. ~~Cottage Industry~~
24. ~~Private or public Elementary, middle or Secondary Schools, colleges, hospitals~~
25. ~~Hospital~~
8. 26. ~~and Vocational and/or Training Facility for Adult educational facilities for adults~~  
 [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE  
 OCTOBER 14, 1999]
27. ~~Churches and other places of worship~~
28. ~~Cultural Facility~~
9. 29. ~~Day Care Center, Small~~
10. 30. ~~Day Care Center, Large Child care centers~~
11. 31. ~~Public Essential Utility Equipment buildings~~
32. ~~Publicly Owned Facility buildings and public service buildings~~
12. 33. ~~Public Safety Facility~~
13. 34. ~~Accessory Uses~~
14. 35. ~~Group Residential Facility~~
15. 36. ~~Nursing or Retirement Home~~
37. ~~Model Home/Sales Office (subject to requirements for this use in Article  
 pursuant to Section 4.18) [AMENDED BY ACT OF THE COUNTY  
 COMMISSION, EFFECTIVE OCTOBER 14, 1999]~~
16. 38. ~~Non-Profit Community Center~~
39. ~~Non/Not for Profit Commercial Uses [AMENDED BY ACT OF THE COUNTY  
 COMMISSION, EFFECTIVE OCTOBER 14, 1999]~~
40. ~~Preschool~~

Comment [SB197]: ATM and Bank are distinct land uses.  
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Comment [SB198]: New use.

17.41. Wireless telecommunications facilities pursuant to Article 4B.

B. Standards

1. Industrial uses permitted in this district shall be of types that require daily water use of no more than 0.25 gallons per gross square feet of floor space.

2. Light industrial and commercial uses are subject to the standards for such uses in Article 8 of this ordinance.

||

2. Light Industrial uses in the Residential/Light Industrial/Commercial District are subject to the standards for such uses in Article 8 of this ordinance.

Comment [SB199]: Standards moved to Article 8.

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1. Water Use Limits

Industrial Uses permitted in this district shall be of types that require daily water use of no more than 0.25 gallons per gross square feet of floor space.

2. Noise

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All noise shall be muffled so as not to be objectionable due to intermitting, beat frequency, or shrillness. Noise levels shall not exceed the following sound levels dB(A). The sound pressure level shall be measured at the property line with a sound level meter.

| <u>Sound Measured In</u>                                     | <u>DAY</u>         | <u>NIGHT</u>       |
|--------------------------------------------------------------|--------------------|--------------------|
|                                                              | <u>7 AM - 6 PM</u> | <u>6 PM - 7 AM</u> |
| <u>Adjoining Agricultural or Residential Growth District</u> | 60 dB(A)           | 50 dB(A)           |
| <u>Residential Uses in R.L.C. District</u>                   | 65 dB(A)           | 55 dB(A)           |
| <u>Commercial Uses</u>                                       | 70 dB(A)           | 60 dB(A)           |
| <u>Light Industrial Uses adjacent to noise source</u>        | 85 dB(A)           | 80 dB(A)           |

The following sources of noise are exempt:

- a. Transportation vehicles not under the control of the industrial use.
- b. Occasionally used safety signals, warning devices and emergency pressure relief valves.
- e. Temporary construction activity between 7:00 a.m. and 7:00 p.m.

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3. Odor

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No operation shall result in the creation of odors of such intensity and character as to be detrimental to the health and welfare of the public or which interferes with the comfort of the public. Odor thresholds shall be in accordance with ASTM d139-57 "Standard Method for Measurement of Odor in Atmospheres (Dilution Method)" or its equivalent.

Odorous material released from any operation or activity shall not exceed the odor threshold concentration beyond the state line, measured either at ground level or habitable elevation.

#### 4. Smoke

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No smoke, dust, fumes, or particulate matter shall be perceptible at any lot line. Further, the regulations and standards governing the control of air pollution shall be the same as those adopted by the State of West Virginia.

For the purpose of grading the density or equivalent capacity of smoke, the Ringelman Chart as published by the United States Bureau of Mines shall be used.

The emission of smoke darker than Ringelmann No. 1 from any chimney, stack, vent, opening, or combustion process is prohibited.

The total emission rate of dust and particulate matter from all vents, stacks, chimneys, flues or other opening or any process, operation, or activity except solid waste incinerators within the boundaries of any lot, will not exceed the levels set forth below:

Particulate matter emission from materials or products subject to becoming wind born will be kept to a minimum by paving, sodding, oiling, wetting, covering or other means, such as to render the surface wind resistant. Such sources include vacant lots, unpaved roads, yards and storage piles or bulk material such as coal, sand, cinders, slag, sulfur, etc..

#### 5. Ambient Air Quality Standard

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##### Particulate Matter

##### Suspended

|                             |     |
|-----------------------------|-----|
| Annual Arithmetic Mean ug/m | 65  |
| 24 hour Maximum b, ug/m     | 140 |

##### Settleable

|                                          |      |
|------------------------------------------|------|
| Annual Arithmetic Average, mg/cm/ /month | 0.35 |
| Monthly Maximum                          | 0.7  |

#### 6. Vibration

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No vibration shall be produced which is transmitted through the ground and is discernible without the aid of instruments at any point beyond the lot line nor shall any vibration produced exceed 0.002g peak measured at or beyond the lot line using either seismic or electronic vibration measuring equipment.

## 7. Glare and Heat

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No direct or sky-reflected glare, whether from floodlights or from high temperature processes, such as combustion or welding or otherwise, so as to be visible at the lot line, shall be permitted. There shall be no emission or transmission of heat or heated air so as to be discernable at the lot line.

## 8. Toxic Matter

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The ambient air quality standards for the State of West Virginia shall be the guide to the release of airborne toxic materials across lot lines. Where toxic materials are not listed in the ambient air quality standards of the State, the release of such materials shall be in accordance with the fractional quantities permitted below, of those toxic materials currently listed in the threshold limit values adopted by the American Conference of Governmental Industrial Hygienists. Unless otherwise stated, the measurement of toxic matter shall be at ground level or habitable elevation, and shall be the average of any twenty-four (24) hours sampling period.

The release of airborne toxic matter will not exceed one-thirteenth of the threshold limit value across lot lines.

Such materials shall include but are not limited to: all primary explosives such as lead azide, lead styphnate, fulminates and tetraene; all high explosives such as TNT, RDX, HMX, PETN, and picric acid; propellants and components thereof, such as dry derivatives; pyrotechnics and fireworks such as acetylates, tetrazoles, and ozonides; unstable oxidizing agents such as perchloric acid, perchlorates, and hydrogen peroxide in concentration greater than thirty-five (35) per cent; and nuclear fuels, fissionable materials and products, and reactor elements such as Uranium 235 and Plutonium 239.

The storage, utilization or manufacture of materials or products which decompose by detonation is prohibited.

## 9. Fire Hazards

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The storage, utilization or manufacture of solid materials which are active to intense burning shall be conducted within spaces having fire resistive construction of no less than two (2) hours and protected with an automatic fire extinguishing system.

The total capacity of flammable liquids and gasses shall not exceed those quantities permitted in the following Table for each of the industrial districts:

| <u>CAPACITY</u> | <u>STORAGE</u> |
|-----------------|----------------|
| Liquids         | 60,000 gallons |
| Gasses          |                |
| -Above ground   | 150,000 SCF    |

-Below ground 300,000 SCF

SCF - Standard Cubic Feet at sixty (60) degrees Fahrenheit and 29.92 inches Mercury. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 4, 1989]

The following setback requirements will apply to the location of any container which holds flammable liquids or gasses:

Container Setback from Lot Lines

| Water Capacity per Container (Gallons) | Containers         |                                | Between Above-Ground Containers (ft.)           |
|----------------------------------------|--------------------|--------------------------------|-------------------------------------------------|
|                                        | Underground (Feet) | Above-Ground Containers (Feet) |                                                 |
| 0 to 2,000                             | 25                 | 25                             | 3                                               |
| 2,000 to 30,000                        | 50                 | 50                             | 5                                               |
| 30,000 to 60,000                       | 50                 | 75                             |                                                 |
| In excess of 60,000                    | 75                 | 100                            | 1/4 the sum of diameters of adjacent containers |

10. Frontage Road

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Easements or fee simple dedications will be provided along all limited access highways at the site plan or subdivision phases. Said easement/dedication shall not exceed 60 feet in width. The width may vary but must be adequate for extension, continuation or establishment of a minimum 20' wide paved frontage road.

11. Landscape Buffer

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A fifty (50) foot wide landscape buffer strip will be provided along all limited access highways. Said buffer shall be adjacent to the frontage road. In the case where existing roads not adjacent to controlled access highway serve as frontage road the landscape buffer may be placed against the highway right-of-way.

All front set backs (building and parking lot) are to be measured from the landscape buffer. (See sketch)

ROW LIMITS OF CONTROLLED ACCESS HIGHWAY



\* ~~Maximum 60' easement or dedication for frontage road~~

\*\* ~~50' landscaped buffer strip~~

\*\*\* ~~Setbacks~~

~~This provision shall also apply to any ramps or access roads connecting to a controlled access highway within 1/2 mile of a controlled access highway. [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]~~

### C. OTHER REGULATIONS

Comment [SB200]: Numbering added.

1. All sections of this ordinance applying to the residential growth district with the exception of Section 5.4(a) will apply to residential uses in this District.
2. All commercial uses must conform with the commercial design standards and yard requirements cited in Sections 5.6(d) 1-6 and 4.6(b). All industrial uses must conform with the Industrial Design Standards and yard requirements cited in Sections 5.6(d) 1-6 and 4.6(a). ~~Either use must be in compliance with site plan the requirements for such use in Article 8. In addition, it a site plan, if required, must be demonstrated a Community Impact Statement, or Site Plan Phase~~ that traffic patterns created by Commercial or Light Industrial uses (1) will not use adjacent residential roads for through traffic and (2) will connect to principal and major arterial highways as directly as feasible considering access restrictions. [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990 AND JULY 15, 1993]
3. Restaurants where the primary mode of food distribution is by pick-up counter or drive in window and convenience stores (food stores not in excess of 10,000 square feet gross floor area) shall be subject to the ~~Neighborhood Compatibility~~ Assessment Meeting Process pursuant to Article 7, Section 7.6 inclusive.
4. Proposed uses in this zone do not have to comply with the distance requirements in Sections 4.6 (a-b) if part of a master planned community. This provision shall only apply to the internal use of land under the same ownership. [AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993]

Comment [SB201]: Redundant with other sections of the Zoning Ordinance. Also, Community Impact Statements no longer part of review process; replaced by Concept Plan.

Comment [SB202]: Not all changes of use require a site plan.

Comment [SB203]: Name corrected for consistency.

### Section 5.9 ~~Site Plans Reserved~~

Comment [SB204]: Redundant with Sec. 4.10.

Comment [SB205]: Marked as "Reserved" in order to preserve numbering of Article 5.

~~Site Plans are required for all uses, subject to Section 4.10. [AMENDED BY ACT OF THE COUNTY COMMISSION ON AUGUST 31, 1989]~~

### Section 5.10 Village District

[AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]

The purpose of this district is to allow recognized villages the ability to provide low level services within their boundaries.

A. Principal permitted uses

1. Dwelling, Single Family dwellings
2. Dwelling, Duplexes
3. Dwelling, Two Family dwellings
4. Home Occupations, Level 1
5. Home Occupation, Level 2
- 4.6. Cottage Industry
7. Public Safety Facility Fire stations, ambulance and rescue squads publicly supported  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
- 5.8. Essential Utility Equipment
9. 1 or 2 doctor Medical/Dental/Optical Office, Small [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
- 6.10. Group Residential Facility
11. Cultural Facility Library, museum or similar institution of a noncommercial nature  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
- 7.12. Wireless telecommunications facilities pursuant to Article 4B.

**Comment [SB206]:** Cottage Industry moved to "permitted" list (from Conditional list) to be consistent with Article 4A.3, which states that the land use is permitted in all districts except Residential Growth.

**Comment [SB207]:** By state law, permitted in all districts where residential uses are permitted.

B. Conditional Uses

The following uses may be approved after being evaluated by the Development Review System (Article 7, Sections 7.3 through 7.8 inclusive). The LESA point system would not apply.

**Comment [SB208]:** All of Article 7 applies.

Cottage Industries

1. 2-chair Barber/Beauty Shop, Limited
2. Dry Cleaners
3. Video Rental Stores
4. Retail Food Stores not exceeding 1500 square feet of retail floor space, Limited
5. Churches/Houses of Worship
6. Day Care Centers, Large
7. Country Inn
8. Bed and Breakfast (subject to the requirements for such a use in Article 8)
9. Restaurant not exceeding 2000 square feet (primary mode of food distribution is by waiter or waitress, Limited)
10. ATM or
- 10.11. Branch Bank
- 11.2. Antique Shop
- 12.13. Florist

**Comment [SB209]:** Cottage Industry moved to "permitted" list (from Conditional list) to be consistent with Article 4A.3, which states that the land use is permitted in all districts except Residential Growth.

**Comment [SB210]:** ATM and Bank are distinct land uses.

~~13.~~ 14. Restaurant, Fast Food, Limited Take-out pizza/sandwich shops not exceeding 600 square feet [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

C. Setbacks  
~~C.~~

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1. Residential

a. Section 9.7. Residential Growth standards

Comment [SB211]: Ordinance currently does not specify which standards of 9.7 to follow.

2. Commercial

a. 25' front, 10' side and 40' rear

b. Setbacks may be reduced as a result of ~~the a~~ Compatibility Assessment Meeting based on other structures existing in the neighborhood.

3. Existing Structures  
~~3.~~

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a. As exists not less than 6' on sides and rear.

b. Commercial uses shall not cause any odor, dust, smoke, vibration, noise, or electromagnetic interference, which can be detected at or beyond the property line.

c. Proposed uses in a recognized historic district shall obtain approval from the Historic Landmarks Commission ~~and/or other~~ appropriate state or federal agency prior to processing.

Comment [SB212]: At the County level, "appropriate agency" assumed to be the Historic Landmarks Commission.

~~d. All new commercial structures shall comply with the site plan requirements.~~

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~~e.d.~~ There will be no outdoor storage of equipment, materials or other stock.

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Comment [SB213]: Covered by Sec. 4.10.

~~f.e.~~ Parking ~~shall be discussed at the~~ requirements may be modified as a result of a compatibility meeting.

Comment [SB214]: Assumed that ability to modify parking requirements is the intent of this sentence.

D. Other Requirements

1. With the exception of setback requirements specified in this section, Commercial and Light Industrial uses are subject to the requirements of Section 5.6D and the requirements for such standards in Article 8.

Comment [SB215]: This requirement is stated in Section 5.6D, but is difficult to find and should be stated within 5.4 as well.

**ARTICLE 6: DEVELOPMENT REVIEW SYSTEM**

**Section 6.1 Development Review System (DRS)**

The purpose of the Development Review System (also referred to as DRS) is to assess a particular site's development potential based on criteria which determine the agricultural longevity of the parcel in combination with the presence of and compatibility with public services adjacent to and in close proximity to the site. The DRS is a numerical rating system designed to function within the framework of the traditional zoning districts referenced in this ordinance. All commercial uses and those uses which are not permitted in zoning districts shall be governed by the procedures set forth in Article 7 and all sections that reference requirements to obtain a conditional use permit. It shall be unlawful to commence construction of any commercial uses or uses which are not permitted uses in a zoning district without obtaining conditional use permit approval.

**Section 6.2 Issuance of a Conditional Use Permit**

Application for a conditional use permit shall be made before construction of any uses not listed as permitted uses within the appropriate zoning district. Upon receipt of an application, the site will be evaluated by the Departments of Planning and Zoning Staff using the Development Review System. The two major components of the System, the Soils Assessment and the Amenities Assessment, consist of criterion which each possess a numerical value that is weighted relative to its importance as an indicator of a parcel's agricultural significance or its development potential. The total numerical value of the combined criteria is 100 points; the Soil Assessment contributes 25 points and the Amenities Assessment contributes 75 points. The highest total numerical value of the combined criteria indicates that a parcel is more suitable for agriculture, whereas, the lowest numerical value indicates that development is more appropriate for the site. A score of 60 points or less advances the application to the Compatibility Assessment as provided in Section 7.6.

[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

**Section 6.3 The Soils Assessment**

The Soils Assessment evaluates a particular parcel for development based on the soil types it possesses. The following soils types will be combined into soil groups.

Soils Type Data

| <u>Map Symbol</u> | <u>Soil Series</u> | <u>Agriculture Value Group</u> |
|-------------------|--------------------|--------------------------------|
| Ad                | Alluvial           | 9                              |
| Am                | Alluvial           | 5                              |
| As                | Ashton             | 4                              |

**Comment [SB216]:** Updated list of soil types and agricultural values, per USDA NRCS. Previous list was from 1973 and no longer matches USDA classifications.

|      |          |   |
|------|----------|---|
| BaB  | Benevola | 2 |
| BeC3 | Benevola | 5 |
| BeC  | Benevola | 6 |

| <u>Map Symbol</u> | <u>Soil Series</u>  | <u>Agriculture Value Group</u> |
|-------------------|---------------------|--------------------------------|
| BeD               | Benevola            | 7                              |
| BkB               | Berks               | 4                              |
| BIB               | Berks               | 6                              |
| BIC               | Berks-Weikert       | 8                              |
| BID               | Berks-Weikert       | 9                              |
| BnB               | Blairton            | 6                              |
| BrB               | Braddock            | 3                              |
| BrC               | Braddock            | 4                              |
| BrC3              | Braddock            | 7                              |
| Brd               | Braddock            | 7                              |
| BrD3              | Braddock            | 8                              |
| BrE               | Braddock            | 8                              |
| CdB               | Chilhowie           | 6                              |
| CdC               | Chilhowie           | 8                              |
| CeC3              | Chilhowie           | 9                              |
| ChC               | Chilhowie & Opequon | 8                              |
| CIC3              | Chilhowie & Opequon | 10                             |
| CID3              | Chilhowie & Opequon | 10                             |
| CmD               | Clifton             | 8                              |
| DeC               | Dekalb              | 6                              |
| DeD               | Dekalb              | 8                              |
| DeE               | Dekalb              | 9                              |
| DeF               | Dekalb              | 10                             |
| DgB               | Duffield            | 2                              |
| DgC               | Duffield            | 4                              |
| DgC3              | Duffield            | 5                              |
| DgD3              | Duffield            | 9                              |
| EdD               | Edgemont            | 10                             |
| EdF               | Edgemont            | 10                             |
| FbB               | Frankstown          | 3                              |
| FbC               | Frankstown          | 4                              |
| FbC3              | Frankstown          | 5                              |
| FbD               | Frankstown          | 5                              |
| FbD3              | Frankstown          | 9                              |
| FbE3              | Frankstown          | 10                             |
| FeC               | Frankstown          | 6                              |

|      |            |    |
|------|------------|----|
| FeD  | Frankstown | 7  |
| FeD3 | Frankstown | 10 |
| HbB  | Hagerstown | 2  |
| HbC  | Hagerstown | 4  |
| HeC  | Hagerstown | 10 |
| HeC3 | Hagerstown | 5  |

| <u>Map Symbol</u> | <u>Soil Series</u>     | <u>Agriculture Value Group</u> |
|-------------------|------------------------|--------------------------------|
| HfB               | Hagerstown & Frederick | 3                              |
| HfC               | Hagerstown & Frederick | 4                              |
| HgB               | Hagerstown & Frederick | 6                              |
| HgC               | Hagerstown & Frederick | 6                              |
| HgD               | Hagerstown & Frederick | 8                              |
| HhC3              | Hagerstown & Frederick | 5                              |
| HhC3              | Hagerstown & Frederick | 9                              |
| HhD3              | Hagerstown & Frederick | 10                             |
| Hn                | Huntington             | 2                              |
| Ho                | Huntington             | 1                              |
| LaC               | Laidig                 | 5                              |
| LaD               | Laidig                 | 7                              |
| LbC               | Laidig                 | 9                              |
| LbD               | Laidig                 | 9                              |
| Lf                | Landes                 | 2                              |
| Ln                | Lindside               | 3                              |
| Lo                | Lindside               | 3                              |
| Ma                | Marl                   | 10                             |
| Me                | Melvin                 | 6                              |
| MhB               | Monongahela            | 3                              |
| Qu                | Quarries               | 10                             |
| StF               | Steep                  | 10                             |
| WeC3              | Weikert                | 9                              |
| WeD3              | Weikert                | 10                             |
| WeF               | Weikert                | 10                             |

Table 6.3 - 1 Soil Types and Agricultural Value Groups

| Map Symbol | Soil Series              | Agricultural Value Group |
|------------|--------------------------|--------------------------|
| AmB        | Airmont, stony           | 5                        |
| AxC        | Airmont, v. rocky        | 7                        |
| BaC        | Bagtown, v. rocky        | 6                        |
| BaD        | Bagtown, v. stony        | 6                        |
| BgE        | Bagtown, x. stony        | 8                        |
| BnF        | Bagtown, rubbly          | 9                        |
| BoF        | Bagtown                  | 9                        |
| Bp         | Bigpool                  | 2                        |
| CaB        | Carbo, v. rocky          | 4                        |
| CaC        | Carbo, v. rocky          | 5                        |
| CbC        | Carbo-Rock outcrop       | 6                        |
| CbD        | Carbo-Rock outcrop       | 6                        |
| CdD        | Cardova                  | 6                        |
| CmB        | Clearbrook               | 6                        |
| CrB        | Clearbrook-Berks         | 6                        |
| Cs         | Combs                    | 2                        |
| DsB        | Downsville               | 3                        |
| DsC        | Downsville               | 4                        |
| DsD        | Downsville               | 5                        |
| DsE        | Downsville               | 7                        |
| DyB        | Duffield-Ryder           | 2                        |
| DyC        | Duffield-Ryder           | 4                        |
| DyD        | Duffield-Ryder           | 5                        |
| DyE        | Duffield-Ryder           | 7                        |
| EgB        | Edgemont                 | 3                        |
| EgC        | Edgemont                 | 4                        |
| EgD        | Edgemont                 | 5                        |
| Fa         | Fairplay                 | 4                        |
| Fk         | Funkstown                | 1                        |
| HbB        | Hagerstown               | 2                        |
| HbC        | Hagerstown               | 4                        |
| HcC        | Hagerstown               | 4                        |
| HeB        | Hagerstown, v. rocky     | 3                        |
| HeC        | Hagerstown, v. rocky     | 4                        |
| HgE        | Hagerstown-Opequon-RO    | 8                        |
| HrB        | Hagerstown-Rock outcrop  | 6                        |
| HrC        | Hagerstown-Rock outcrop  | 6                        |
| Hy         | Holly                    | 6                        |
| La         | Lappans                  | 1                        |
| Ln         | Lindside                 | 3                        |
| MhA        | Monongahela              | 3                        |
| MoB        | Monongahela              | 3                        |
| MxC        | Myersville-Catoctin, stx | 7                        |
| MxD        | Myersville-Catoctin, stx | 7                        |
| OaB        | Oaklet                   | 3                        |
| OaC        | Oaklet                   | 4                        |

| Map Symbol | Soil Series                | Agricultural Value Group |
|------------|----------------------------|--------------------------|
| OeB        | Oaklet, v. rocky           | 3                        |
| OeC        | Oaklet, v. rocky           | 4                        |
| OkC        | Oaklet, v. rocky           | 4                        |
| OrB        | Oaklet-Rock outcrop        | 6                        |
| OrC        | Oaklet-Rock outcrop        | 6                        |
| PmB        | Poplimento                 | 2                        |
| PmC        | Poplimento                 | 4                        |
| PpB        | Poplimento, v. rocky       | 3                        |
| PpC        | Poplimento, v. rocky       | 4                        |
| PpD        | Poplimento, v. rocky       | 5                        |
| PrC        | Poplimento-Rock outcrop    | 6                        |
| Qm         | Quarry                     | 10                       |
| ReF        | Rock outcrop-Opequon       | 9                        |
| RpC        | Ryder-Poplimento           | 4                        |
| RrC        | Ryder-Poplimento, v. rocky | 4                        |
| RrD        | Ryder-Poplimento, v. rocky | 5                        |
| Sp         | Speedwell                  | 1                        |
| SrF        | Stumptown-Rock outcrop     | 9                        |
| SvF        | Sylvatus                   | 9                        |
| SyF        | Sylvatus-Rock outcrop      | 9                        |
| ThC        | Thurmont                   | 4                        |
| ThD        | Thurmont                   | 5                        |
| Tm         | Toms                       | 3                        |
| TxC        | Trego, x. stony            | 7                        |
| TxD        | Trego, x. stony            | 7                        |
| Ua         | Udorthents                 | 10                       |
| Ub         | Urban land                 | 10                       |
| Uu         | Urban land - Udorthents    | 10                       |
| UwC        | Urban land-Hagerstown      | 10                       |
| VeB        | Vertrees                   | 2                        |
| VeC        | Vertrees                   | 4                        |
| VrB        | Vertrees, v. rocky         | 3                        |
| VrC        | Vertrees, v. rocky         | 4                        |
| VsC        | Vertrees, v. rocky         | 4                        |
| VtB        | Vertrees-Rock outcrop      | 6                        |
| VtC        | Vertrees-Rock outcrop      | 6                        |
| VtD        | Vertrees-Rock outcrop      | 6                        |
| W          | Water                      | 10                       |
| WbC        | Weikert-Berks              | 6                        |
| WbD        | Weikert-Berks              | 6                        |
| WkF        | Weikert-Berks              | 9                        |
| WnC        | Weverton, v. stony         | 7                        |
| WoE        | Weverton-Rock outcrop, stv | 8                        |
| WrB        | Wharton-Clearbrook         | 4                        |
| WrC        | Wharton-Glearbrook         | 4                        |
| WtB        | Whiteford                  | 3                        |
| WtC        | Whiteford                  | 4                        |

The points for the soils assessment are computed as follows: [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

- A. Determine the area of each soil type on the property according to the map symbols.
- B. Multiply the soil type areas times the Relative Value for the soil type taken from the List of Soil Groups and Relative Values.
- C. Sum the products of the multiplication of Area times Relative Value to obtain a total for the property.
- D. Divide the total of the multiplication products by the Total Area of the property to obtain the Weighted Relative Value.
- E. Multiply the Weighted Relative Value times the 25 Soil Assessment Points. Then divide the product by 100 to obtain the allowable number of Soil Assessment Points.

Soil groups take into account a rating of best and worst individual soil types. The following 10 soil groups have been developed from the Jefferson County Soil Survey and have been assigned relative values based on their agricultural productivity (see note). [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

Table 6.3 – 2: List of Soil Groups and Relative Values LIST OF SOIL GROUPS AND RELATIVE VALUES

| <u>Agricultural Group</u> | <u>Land Capability Unit</u> | <u>Relative Value</u> |
|---------------------------|-----------------------------|-----------------------|
| 1                         | I                           | 100                   |
| 2                         | II                          | 9487                  |
| 3                         | II                          | 8778                  |
| 4                         | II and III                  | 8476                  |
| 5                         | III and IV                  | 6865                  |
| 6                         | III and IV                  | 6453                  |
| 7                         | IV and VI                   | 500                   |
| 8                         | IV and VI                   | 310                   |
| 9                         | VI                          | 40                    |
| 10                        | VII, VIII and other         | 0                     |

**Comment [SB217]:** Land Capability Unit data is not used for LESA point calculation or other purpose related to the Zoning Ordinance; as such, it should be removed for clarity.

**Comment [SB218]:** Relative Values updated per USDA-NRCS.

The soil groups and their corresponding values will be incorporated into a work sheet to be used to evaluate the potential agricultural value of each site.

If 50% to 65% of the total soils are rated severe for home construction or street construction, by the Jefferson County Soil Survey, add 5 points to the Land Evaluation value of the work sheet.

If over 65%, add 10 points to the Land Evaluation value of the work sheet.

The soils assessment shall not exceed 25 points.

NOTE: The development of soil groups have been determined [by the USDA Natural Resources Conservation Service](#) using corn as the indicator crop. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 4, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

#### Section 6.4 Amenities Assessment

The amenities assessment of the Development Review System provides indicators of a site's agricultural viability or its development potential. The following criterion are weighted with a high numerical value assigned if the site is more agriculturally viable and a low numerical value assigned if development would be more appropriate for the parcel. The procedure for the compatibility assessment is contained in Article 7.

For nonresidential projects, there is no impact on Proximity to Schools or Parks and Recreation. Therefore, these points have been added to Size of Site, Highway Problem Areas, and Roadway Adequacy as shown.

##### A. Size of Site:

This criterion reflects the importance of preserving large blocks of land as a primary goal of agricultural preservation; therefore, acreage shall be contiguous. For nonresidential projects, the points on the right will be applied.

|                | Residential Projects | Nonresidential Projects |
|----------------|----------------------|-------------------------|
| 0 to 40 acres  | 0 points             | 0 points                |
| 40 to 80 acres | 3 points             | 5 points                |
| Over 80 acres  | 6 points             | 10 points               |

[AMENDED BY ACT OF THE COUNTY COMMISSION ON NOVEMBER 30, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

##### B. Adjacent development

This criterion assesses percentage of adjacent land that which is developed or under development. Development and development pressure includes: a subdivision of more than 5 lots, lots of less than 5 acres and all commercial or industrial uses. This measurement shall be by a computation of linear feet around the boundary of the property in question. Agricultural related industry or uses shall be considered "no development pressure." Adjacent property includes land separated by roads, rights-of-way, railroads, and other easements. After the percentage of land under development pressure is calculated the remaining percentage of adjacent property may be considered as property where there is no development pressure. The points shall be assessed as follows:

For the property not under development pressure or not developed:

| Percent           | Points    |
|-------------------|-----------|
| 0 to 40 percent   | 0 points  |
| 40 to 65 percent  | 5 points  |
| 65 to 100 percent | 10 points |

[AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993.  
PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY  
COURT ORDER ON DECEMBER 3, 2009]

C. Distance to Growth Corridor

The distance to the growth corridor relates to the distance of the subject parcel to the boundaries of the Residential-Growth District or the Residential-Light Industrial-Commercial District adopted within this ordinance. Measuring shall be by the closest linear distance from the property to the closest point of either of the aforementioned growth districts.

| Distance             | Points    |
|----------------------|-----------|
| Less than .25 mile   | 0 points  |
| .25 mile to .75 mile | 6 points  |
| Over .75 mile        | 12 points |

[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY  
COURT ORDER ON DECEMBER 3, 2009]

D. Comprehensive Plan Compatibility

This criterion shall determine whether site development is supportive ~~of~~ or has a negative impact on the following elements of the Comprehensive Plan: Highway Problem Areas, Compatibility of site development with designated parks or proposed parks and recreational areas and percentage of proposed affordable housing. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

Comment [SB219]: Missing word.

Highway Problem Areas

| Residential Project |          | Nonresidential Project |
|---------------------|----------|------------------------|
| 0 problem areas     | 0 points | 0                      |
| 1 problem area      | 3 points | 6                      |
| 2 problem areas     | 6 points | 12                     |

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Highway Problem Area Points will be assessed as follows:

If one could get to the site is accessible to the closest 'in-county' incorporated area (using the most direct vehicular route) and an 'out-of-county' market area (Frederick, MD; Winchester, VA; Inwood, WV; Martinsburg, WV) (using the most direct vehicular route) without traveling through a Highway Problem Area as shown on the Comprehensive Plan Highway Problem Area Map the project would score a 0 for this criterion.

Comment [SB220]: Clarifying text.

If the site is accessible to either ~~If one could get to~~ one or the other without traveling through a Highway Problem Area the project would score a 3 for this criterion.

If ~~one would travel through~~ a Highway Problem Area intersects the most direct vehicular route to the closest in-county incorporated area and ~~to~~ the closest out-of-county market area, the project would score a 6 for this criterion.

Affordable Housing

- 25% affordable housing is proposed 0
- 10% affordable housing is proposed 3
- No affordable housing is proposed 6

[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

Park/Recreational

|                                                                                                                                                                              |          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Proposing a 5 acre park or 10% of gross acreage (whichever is greater) with amenities and land dedicated to and accepted by Jefferson County Parks and Recreation Commission | 0 points |
| Located within 2 miles from an area marked on the Comprehensive Plan Parks and Recreation map                                                                                | 3 points |
| Located farther than 2 miles from an area marked on the Comprehensive Plan Parks and Recreation map                                                                          | 6 points |

Distances for Parks and Recreation will be measured by vehicular miles from a subdivision entrance by the most direct route to the closest park or recreation area as shown on the Comprehensive Plan map of Parks and Recreation Areas.

For nonresidential projects, parks and recreation points will be reassigned to Highway Problem Areas: 0, 6, and 12. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

E. Proximity to Schools

|                   |          |                                                                                         |
|-------------------|----------|-----------------------------------------------------------------------------------------|
| Less than 2 miles | 0 points | For Nonresidential projects points are reassigned to Roadway Adequacy and Size of Site. |
| 2 to 4 miles      | 4 points |                                                                                         |
| Over 4 miles      | 8 points |                                                                                         |

The purpose of assessing the proximity of schools to new development is to avoid excessive busing of students. Distances for schools will be measured by vehicular miles from a subdivision entrance by the most direct route to the entrance of the appropriate school.

For nonresidential projects the proximity to schools points will be reassigned to roadway adequacy: 0, 10, and 16 and size of site: 0, 5, and 10.  
 [AMENDED BY ACT OF THE COUNTY COMMISSION ON NOVEMBER 30, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

F. Roadway Adequacy

| Residential Projects      |           | Nonresidential Projects |
|---------------------------|-----------|-------------------------|
| Primary or Four Lane Road | 0 points  | 0 points                |
| Secondary                 | 6 points  | 10 points               |
| Local Service             | 12 points | 16 points               |

Point values for this criterion are assigned based on the designation of the Comprehensive Plan Highway Classification map. Section 6.5(d) evaluates the operational proximity of the site to designated highway problem areas.  
 [AMENDED BY ACT OF THE COUNTY COMMISSION ON NOVEMBER 30, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

G. Emergency Service Availability

The purpose of this criterion is to assess the distance of potential site development to emergency services: fire department (4.5 points) and ambulance service (4.5 points).

Distance to Emergency Services

| Distance to Fire  | Points     | Distance to Ambulance | Points     |
|-------------------|------------|-----------------------|------------|
| Less than 2 miles | 0 points   | Less than 2 miles     | 0 points   |
| 2 to 5 miles      | 2.5 points | 2 to 5 miles          | 2.5 points |
| Over 5 miles      | 4.5 points | Over 5 miles          | 4.5 points |

Distances for Fire and Ambulance will be measured by vehicular miles from a subdivision entrance by the most direct route to the closest entrance of the appropriate fire or ambulance station.  
 [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

## Section 6.5 Computation of Soils/Amenities Assessment

- A. At the completion of evaluation of a site with the Soils and Amenities Assessment Criteria, there should be a total number of points awarded to each Assessment. Since the Soils Assessment utilized was based on a 100 points relative point value in itself, a minor conversion must be made to the total relative value. The Development Review System allots a maximum of 25 points to the Soils Assessment therefore the conversion to be made is expressed as follows:  $100 \times .25 = 25$  pts. (For example, if a parcel receives the maximum point value of 100 points, in actuality only 25 points will be awarded for the Soils Component of the Development Review System.)
- B. The Amenities Assessment has a 75 point maximum point value.
- C. The combined maximum total for both Assessments is 100 points. The most agriculturally significant parcel would rate 100; the most developable parcel would rate 0. A total of 60 points or less advances the application to the Compatibility Assessment Meeting. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- D. The Soils Assessment of a proposed development is not applied when the development proposal is located within the Residential/Growth District or the Industrial/Commercial District.
- E. Any land in the Rural District that is located on a primary or secondary road, as defined in the Comprehensive Plan, shall not have to process through the LESA points process for a commercial or industrial project and shall be advanced directly to the Compatibility Assessment Meeting. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

## ARTICLE 7. PROCEDURAL REQUIREMENTS FOR REVIEW

### Section 7.1 Purpose

The Procedural Requirements section of the Ordinance details the procedures to review development utilizing the zoning district regulations and/or the Development Review System. All plans and development approved shall comply with the standards contained in this Article. ~~Uses that are permitted within a Zoning district may be submitted with an application for a Site Plan subject to Section 4.10.~~

Comment [SB221]: Redundant with Section 4.10.

### Section 7.2 Zoning District Principal Permitted Uses

All uses listed as ~~permitted~~ principal permitted uses within a zoning district shall be developed subject to ~~adopted Subdivision and Site Plan regulations~~ the Jefferson County Subdivision and Land Development Regulations.

Comment [SB222]: Word "permitted" repeated.

Comment [SB223]: Correct name of regulations.

### Section 7.3 General Development Review System Requirements

~~A.~~ If a ~~developer's proposal~~ proposed use is not listed as a principal permitted use in a zoning district, ~~the applicant~~ must submit a Development Review System application ~~for his project~~ subject to the requirements of Section 7.4.

~~A.~~

B. Filing an application with the Planning and Zoning Staff is the first of several stages within the Development Review System. Those stages are listed below.

1. Filing the application
2. ~~Departments of~~ Planning and Zoning Staff Evaluation of the Development Review System
3. Compatibility Assessment Meeting
4. Public hearings
5. ~~Planning and Zoning Commission~~ Board of Zoning Appeals's decision on the issuance or denial of the Conditional Use Permit [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE AUGUST 31, 1989]

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### Section 7.4 Filing the Application

A. The owner or the owner's agent proposing to develop land that is not a principal permitted use in the district where it is located shall consult with the ~~Departments of~~ Planning ~~and~~ Zoning ~~and Engineering~~. Fifteen (15) copies of a sketch plan detailing the project shall be submitted with an application and fifteen (15) copies of the support data that will enable the project to be evaluated by the Development Review System, at least ten (10) days prior to the scheduling of a Compatibility Assessment Meeting. ~~This~~ Compatibility Assessment Meeting will occur within thirty (30) days from the date that the Compatibility Assessment Meeting ~~was~~ scheduled by the staff. ~~This time frame~~

~~allows the Staff ten (10) days to review the application for completeness and collect the application fee before the Compatibility Assessment Meeting is scheduled and provides time for the adjacent and confronting property owners to review the application and receive any technical advice they would like to secure before the meeting.~~ Copies of the application, sketch plan, and development review data shall be available for public review in the Planning Office at such time as the proposed development is advertised in the newspaper. [AMENDED THREE TIMES BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON MAY 4, 1989, AUGUST 31, 1989 AND JULY 15, 1993. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

Comment [SB224]: Redundant text.

B. The sketch plan shall include the entire original parcel as it appeared on the date this ordinance took effect. The property proposed for development shall be drawn to a reasonable scale (eg. 1" = 50', 1" = 100', or 1" = 200'). The sketch plan shall show, in simple form, the proposed layout of lots, parking areas, recreational areas, streets, building areas, and other features in relation to each other and to the tract boundaries. Contour lines, as shown on the appropriate U.S.G.S. Topographic Quadrangle Map ~~or other data source approved by the Departments of Planning, Zoning, and Engineering,~~ should be superimposed on the sketch plan. The source of all contour lines shall be noted on the plan. Natural features such as woods, watercourses, prominent rock out-croppings, sinkholes and quarries shall be delineated.

Comment [SB225]: Consistent with approved policy established by the GIS/Addressing Office, the Planning and Zoning Departments, and the Engineering Department.

C. The sketch plan should be accompanied by a tract location map; a soils report indicating the soil types on the parcel and a map delineating the boundaries of each soil type; and the necessary support data, to evaluate the site by the Development Review System, listed below.

D. Support Data

1. Name and address of owner/developer.
2. Name and address of contact person.
3. Type of development proposed.
4. Acreage of original tract and property to be developed.
5. General description of surface conditions (topography).
6. Soil and drainage characteristics.
7. General location and description of existing structure.
8. General location and description of existing easements or rights-of-way.
9. Existing covenants and restrictions on the land.
10. Intended improvements and proposed building locations including locations of signs.
11. Intended land uses.
12. Earth work that would alter topography.
13. Tentative development schedule.
14. Extent of the conversion of farm land to urban uses.
15. ~~E~~Affected wildlife populations.
16. Ground water and surface water and sewer lines within 1320 feet.
17. Distance to fire and emergency services that would serve the site.

18. Distance to the appropriate elementary, middle, and high school.
  19. Traffic characteristics - type and frequency of traffic; adequacy of existing transportation routes.
  20. Demand for school services created by this development.
  21. Proximity and relationship to historic structures or properties within two hundred (200) feet.
  22. Proximity to recreational facilities.
  23. Relationship of the project to the Comprehensive Plan.
- E. The developer shall submit a list of all property owners, and their addresses, adjacent to and confronting the property which is to be developed.
- F. Payment of fees - Within one week of the submittal of a Development Review System application, all zoning-required fees must be paid.
- G. The Zoning Administrator shall determine if the sketch plan and support data are adequate. ~~Once the Zoning Administrator places the advertisement in the paper, any interested party has thirty days to appeal the inadequacies of the sketch plan and/or support data to the Zoning Board of Appeals.~~ [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

**Comment [SB226]:** Any determination of the Zoning Administrator is appealable to the BZA per Section 3.2A, the CUP sketch plan does not need to be called out specifically.

### Section 7.5 Planning and Zoning Staff Evaluation of the Development Review System

- A. The staff will evaluate all applications for the proposed land use in conjunction with Article 6 ~~of this Ordinance~~ and all other applicable sections of the Zoning Ordinance Zoning and Land Development Ordinance and other pertinent ordinances governing development in the County.
- B. ~~After staff review and the collection of fees, the s~~ Staff will notify the adjacent and confronting property owners of the date, time, and place of the Compatibility Assessment Meeting by registered mail. Notification requirements of Section 3.4A(3)(b) shall apply. ~~and the applicant will post the property with a sign prepared by the staff which states the requested proposal and the date, time and place of the Compatibility Assessment Meeting. The property shall be posted conspicuously by a zoning notice no less than twenty-eight (28) inches by twenty-two (22) inches in size at least twenty (20) days before the hearing. The project shall also be advertised in a newspaper with local circulation at least 10 days in advance.~~ [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 4, 1989]
- C. ~~The developer shall be notified of the particulars of the meeting. Failure of the developer to be in attendance to present his proposal will result in an invalid application and no refund of fees. If the application becomes invalid as a result of this section, a new application must be submitted, subject to Section 7.4, to begin the process.~~

**Comment [SB227]:** Redundant.

**Comment [SB228]:** Redundant with text above.

**Comment [SB229]:** Requirements of Appeals process section 3.4A(3)(b) are nearly identical (size of sign, etc). The only difference is the number of days in advance notification takes place. Staff recommends consistency with timelines in Appeals process.

**Comment [SB230]:** This requirement does not apply to any other type of review process, and should be omitted.

D. A ~~North American Industrial Classification System~~ Standard Industrial Classification (SIC/NAICS) code will be assigned to the proposed project. Once the classification is agreed upon, the ~~SIC/NAICS~~ code shall be binding. Any change of use shall ~~be required to file submittal of a new~~ application in accordance with Article 7.

**Comment [SB231]:** NAICS is the industry classification system now in use. It was released in 1997.

### Section 7.6 Compatibility Assessment Meeting

A. The Compatibility Assessment Meeting allows the adjacent and confronting property owners and all other interested parties the opportunity to hear the ~~developer's~~ Applicant's presentation and proposal. ~~In his~~ The presentation, ~~he~~ will address the compatibility of ~~his~~ the project to the existing areas adjacent to the site. Following the ~~developers~~ Applicant's presentation, ~~those who are in attendance~~ may ask questions or provide comments. Any discussion shall be limited to the proposal's compatibility as presented rather than whether the site should be developed by any other use. At the end of the discussion, the staff shall summarize the positions presented by those in attendance ~~to determine if his account of the issues is accurate~~. If the majority of those in attendance are in agreement that the staff record is accurate, the meeting will end ~~and the staff will prepare a report for the next Board of Zoning Appeals meeting~~. If there is need for clarification of a particular issue ~~or issues~~ the staff will allow additional time for clarification before ending the meeting.

**Comment [SB232]:** Redundant.

**Comment [SB233]:** Redundant.

B. During the Compatibility Assessment Meeting, those who participate should address, but are not limited to, the following criteria to determine compatibility of the proposed project:

1. Adopted Federal, State and local regulations;
2. Similarity of proposed development type (residential, commercial, industrial, agricultural, etc.) to existing development types;
3. In a residential project, similarity of the density of the proposed development to existing density in the neighborhood;
4. Adequacy of roads and highways to accommodate traffic to be generated by the development, with particular attention to dangerous intersections designated by the State Roads Commission or the State Police;
5. Present and future transportation patterns in the area;
6. Consistency with land use plans and regulations of incorporated municipalities immediately adjacent to the proposed development;
7. Any variance which is known to be required at the time of submittal;
8. The relationship of the proposed change to the adopted Comprehensive Plan; and
9. All items submitted with the application. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

C. ~~The Department of Planning, Zoning, and Engineering~~ Staff shall monitor and record the meeting. A time limit, as referred to in Section 7.7c may be imposed if there are a large number of ~~persons to speakers at a particular meeting~~. The Staff may comment on the proposed development's conformance to applicable State, Federal and Local codes ~~but~~.

**Comment [SB234]:** Department names unnecessary.

**Comment [SB235]:** Redundant.

shall primarily monitor and record pertinent issues and concerns. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

D. ~~If not all issues raised at the Compatibility Assessment Meeting were resolved at that meeting, a public hearing of the Board of Zoning Appeals will be required. The~~ Staff shall prepare ~~its a~~ report ~~of summarizing~~ the developer's proposal, the agreed upon conditions, and any other pertinent data and will advertise for ~~a the~~ public hearing ~~of the Board of Zoning Appeals~~. A public hearing in conformance with ~~Section 7.7~~ this article will be conducted ~~on the application~~ no ~~less fewer~~ than 30 days but no more than 60 days from the date of the Compatibility Assessment Meeting. At the public hearing, the Board shall take action as described in Section 7.6F. ~~The Staff report to be presented at the Public Hearing will be available to the general public fourteen (14) days prior to the advertised hearing.~~ [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON MAY 4, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

Comment [SB236]: Added to clarify process.

Comment [SB237]: The timing of the availability of BZA staff reports should be consistent for all types of BZA cases.

Comment [SB238]: 7.6(e) moved to 7.7A.

E. If all issues raised at the Compatibility Assessment Meeting ~~with the staff~~ were resolved at that meeting, no public hearing shall be required. At the next Board of Zoning Appeals meeting ~~thereafter~~, the Board shall take action as described in Section 7.6F of Zoning Appeals ~~shall issue, issue with conditions or deny the conditional use permit. The standards governing the issuance of the Conditional Use Permits shall be: successful LESA Point application, Board of Zoning Appeal's resolution of unresolved issues; and, evidence offered by testimony and findings by the Board of Zoning Appeals that the proposed development is compatible with the neighborhood where it is proposed.~~ [AMENDED BY ACT OF THE COUNTY COMMISSION ON AUGUST 31, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

Comment [SB239]: Text proposed for deletion is repeated verbatim in 7.6F.

~~A. The public hearing will be conducted by the Board of Zoning Appeals. The purpose of the meeting is to hear the staff's report of the issues and concerns raised at the Compatibility Meeting. Any comments relative to the validity of the staff's report should be presented at this meeting. Concerns that have been addressed and agreed upon as accurate by the majority of those present at the Compatibility Assessment Meeting should not be addressed at this hearing. The hearing will be subject to Section 7.7c; however, speakers shall be limited to resolution of issues which could not be resolved at the Compatibility Assessment Meeting and the compatibility of the project within the neighborhood. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON MAY 4, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]~~

Comment [SB240]: Moved to Section 7.7.

~~B.~~

F. The Board of Zoning Appeals shall issue, issue with conditions, or deny the conditional use permit. ~~The Board of Zoning Appeals shall have the authority over the issuance or denial of all development review applications.~~ The standards governing the issuance of the Conditional Use Permits shall be: successful LESA Point application, Board of

Comment [SB241]: Moved to 3.4A(5), and edited.

Zoning Appeal's resolution of unresolved issues; and, evidence offered by testimony and findings by the Board of Zoning Appeals that the proposed development is compatible with the neighborhood where it is proposed. [AMENDED BY ACT OF THE COUNTY COMMISSION ON AUGUST 31, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

- G. A Conditional Use Permit shall be valid for the time period identified in Sec. 3.2G of this ordinance.
- H. ~~Any persons may appeal any decision of the Board of Zoning Appeals to the Circuit Court of Jefferson County subject to §8A-1-1 et seq., of the West Virginia Code, as amended. [AMENDED BY ACT OF THE COUNTY COMMISSION ON AUGUST 31, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]~~

Comment [SB242]: Moved to Sec. 3.4.

### Section 7.7- Public Hearings for Development Review System

~~(Unless Otherwise Superseded by the Board of Zoning Appeal's Rules of Procedure)~~

Comment [SB243]: Moved to A below.

A. Unless otherwise superseded by the Board of Zoning Appeals Rules of Procedure, a public hearing for a Development Review System application shall be conducted in accordance with this section.

Comment [SB244]: Added for clarity.

B. The public hearing will be conducted by the Board of Zoning Appeals. The purpose of the meeting is to hear the staff's report of the issues and concerns raised at the Compatibility Meeting. Any comments relative to the validity of the staff's report should be presented at this meeting. Concerns that have been addressed and agreed upon as accurate by the majority of those present at the Compatibility Assessment Meeting should not be addressed at this hearing. Speakers shall be limited to resolution of issues which could not be resolved at the Compatibility Assessment Meeting and the compatibility of the project within the neighborhood. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON MAY 4, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

Comment [SB245]: Formerly 7.6 (e). Moved in order to consolidate into one section all

~~The Board of Zoning Appeals Chairman or his appointed designee will preside over the public hearing. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]~~

Comment [SB246]: Unnecessary; BZA rules of procedure cover this.

A.C. All public hearings shall have time limits allotted to those who speak, as follows: the ~~developer or his agent, or~~ applicant ~~or agent~~ shall have 30 minutes for ~~his a~~ ~~preservation presentation~~, each group who speaks may have 15 minutes, each individual who speaks is allotted 5 minutes, the ~~developer or his agent, or~~ applicant ~~or agent are is~~ allowed 15 minutes for rebuttal. The time limit provision within this section may be modified by the ~~Planning and Zoning Commission or~~ Board of Zoning Appeals ~~Chairman~~ Chairperson in the event that there are a large number of persons to speak at a particular hearing. The ~~Commission or~~ Board shall announce any change to this section at the beginning of the hearing. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

Comment [SB247]: "applicant" is sufficiently broad to include "developer"

C.D. Notification requirements of Section 3.4A(3)(b) apply.

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Comment [SB248]: Requirements of Appeals process section 3.4A(3)(b) are identical (size of sign, posting instructions, etc).

~~All public hearings shall be advertised in a newspaper having general circulation in the County at least 15 days prior to such hearing. (Conditional use permits are subject to Section 7.5b and Section 7.6d.) [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]~~

**Comment [SB249]:** Deleted requirements are identical to notification requirements for other types of BZA applications; as such, it is more appropriate to reference the other requirements than to repeat them.

~~D. The property subject to the hearing shall be posted at least 15 days before the date of the hearing. (Conditional use permits are subject to Section 7.5b.) [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]~~

**Comment [SB250]:** Deleted requirements are identical to notification requirements for other types of BZA applications; as such, it is more appropriate to reference the other requirements than to repeat them.

E. The Board of Zoning Appeals shall ~~make-render~~ a decision no more than 60 days after the public hearing. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

**Section 7.8** Board of Zoning Appeals Approval of Conditional Use Permit

**Comment [SB251]:** BZA section moved to new 3.4.

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

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B. The Board of Zoning Appeals shall:

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1. Hear and decide appeals regarding the Planning and Zoning Commission's issuance or denial of a Conditional Use Permit. [AMENDED BY ACT OF THE COUNTY COMMISSION ON AUGUST 31, 1989]

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2. Hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official in regard to the enforcement of this Ordinance or of any ordinance adopted thereto.

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3. Authorize such variances from the terms of the Ordinance if the Board finds that variance:

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a. Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;

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b. Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance;

c. Would eliminate an unnecessary hardship and permit a reasonable use of the land; and

d. Will allow the intent of the zoning ordinance to be observed and substantial justice done. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

4. In exercising its power and authority, the Board of Appeals may reverse or affirm, in whole or in part, or may modify the order, requirement, decision or determination determination appealed from, and make such order, requirement, decisions or determination as ought to be made.

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5. Meetings of the Board of Appeals shall be held at such time that the Board determines appropriate.

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

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**ARTICLE 8. SUPPLEMENTAL USE REGULATIONS APPEAL PROCESS UNLESS SUPERCEDED BY THE BOARD OF ZONING APPEALS RULES OF PROCEDURE**

Comment [SB252]: "Appeals Process" Moved to 3.4

**Section 8.1 Adult Use Requirements**

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 1, 2003]

Comment [SB253]: Moved from Section 5.6(i)

Adult arcades, adult bookstores, adult cabarets, adult mini motion picture theaters, adult saunas, adult theaters, sexual encounter establishments, sexual paraphernalia stores, massage parlors and any sign advertising the operation thereof, shall only be permitted in the Industrial-Commercial District under the following conditions:

- A. All elements of the use, including parking areas, shall be located at least 1,500 feet from any Rural, Residential-Growth, Village or Residential Growth-Light Industrial-Commercial Zoning District not separated from the subject property by a public road or railroad right-of-way.
- B. A proposed adult arcade, adult bookstore, adult cabarets, adult mini motion picture theaters, adult saunas, adult theaters, sexual encounter establishments, sexual paraphernalia stores, massage parlors or any sign advertising the operation thereof, shall not be permitted within 2,500 feet of a lot with an existing adult use or a lot with a sign advertising an adult use.
- C. All elements of any use described in Article 5, Section 5.6(h) this section, including parking areas, shall be located at least 1,500 feet from any lot, regardless of its zoning classification, that contains a dwelling unit, a school, a church or house of worship or an institution for human care, regardless it is separated by a public road or railroad right-of-way.

This provision does not apply to any specific existing use that legally qualifies as a nonconforming use; provided, however, that an existing nonconforming use cannot add any of the uses described in this section to their operations as existing on May 1, 2003.

Comment [SB254]: Adoption date of section clarified.

**Section 8.2 Barns and Feeding Pens**

Barns and feeding pens must be set back a minimum of 75' from a residential zonedistrict, a lot with a residential use, a church, a school, or an institution for human care.

**Section 8.3 Bed and Breakfast**

A bed and breakfast may contain up to 7 bedrooms, and may conduct up to 4 receptions per year, with 1 tent per reception. Breakfast is the only meal served, and is served only to overnight tenants and their guests. An owner or designated caretaker must reside on the premises while the bed and breakfast is occupied. Up to 2 bedrooms may be located in an accessory dwelling unit, provided that the total number of bedrooms associated with the land use does not exceed 7.

**Comment [SB255]:** The ordinance currently does not specify that breakfast is the only meal served; that an owner or caretaker must reside on the premises, or whether an accessory dwelling unit may be used. These standards are common to other communities' zoning ordinances.

**Section 8.4 Dog Kennels**

All portions of a Dog-Kennel land use must be buffered pursuant to Article 4 and set back at least 500 feet from any property that contains a residence. Kennels cannot be located within a Planning Commission approved residential subdivision.

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 3, 2005]

**Section 8.5 Farm Brewery or Winery**

All structures associated with the operation of a farm brewery or winery may not exceed 10,000 square feet.

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**Section 8.6 Farm Market**

The floor area of a farm market may not exceed 1,500 square feet, a front yard setback of fifty feet (50) from the street right-of-way must be maintained, and off street parking must be provided.

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**Section 8.7 Jails and Prisons**

Due to the special conditions surrounding a jail, prison, or penal institution, all such projects shall only be allowed in the Industrial-Commercial Zone and shall be subject to the Development Review System as outlined in Article 6 of this Ordinance. Furthermore, these projects shall comply with Article 5, Section 5.6(L), and Article 6 of the Jefferson County Zoning and Development Review Ordinance.

**Comment [SB256]:** Moved from Section 4.15  
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[AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

Design Standards for Jails, Prisons and/or Penal Institutions are as follows: [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

**Comment [SB258]:** Moved from Section 5.6(h)

- A. All jails shall have direct access to a primary road as defined by the Jefferson County Comprehensive Plan. Such road shall have a level of service no worse than Level C.
- B. No residential subdivisions, schools, churches or institution for human care shall be within 2000' of the subject property. However, this does not prevent such use from locating within 2000' of a jail, prison or penal institution.

C. SETBACKS

- 1. Front 1,000 Feet
- 2. Sides 1,500 Feet
- 3. Rear 1,500 Feet

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Section 8.8 Hunting, Shooting and Fishing Clubs

A. Hunting, Shooting and Fishing Clubs may include the following accessory uses:

Comment [SB259]: Moved from 5.7(a)15

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- 1. Private restaurant that seats no more than 80 patrons that are members and guests of members.
- 2. Conference and banquet facilities to serve no more than 250 people in which a member rents the facility. Events which are accessory uses other than hunting, shooting, archery and fishing, cannot exceed more than 16 per year.
- 3. Private lodge facilities of up to 50 units that serve members and guests. [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 28, 2006]
- 4. Shooting ranges for use of members and guests of members.

B. Standards for Hunting, Shooting and Fishing Clubs [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 28, 2006]

Comment [SB260]: Moved from 5.7(e)

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- 1. 75 foot setback for all structures and parking.
- 2. 150 yard setback for all shooting facilities.
- 3. Height
  - a. As is for conversion or reconstruction that does not exceed 135 percent of the original footprint of existing structures
  - b. 35 feet for new structures
- 4. Landscaping requirements to meet standard found in of this Ordinance apply, with the following exception:
  - a. Perimeter landscaping shall be as approved by staff in order to preserve existing vegetation.
- 5. Minimum of 150 acres under common ownership.

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C. Special Exceptions for Hunting, Shooting and Fishing Clubs [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 28, 2006]

Comment [SB261]: Moved from 5.7(f)

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- 1. Limits exceeding requirements outlined above can be increased with Board of Zoning Appeals approval provided that the Board of Zoning Appeals find that the increase is

compatible with the neighborhood after taking into consideration neighborhood character, traffic, and buffering. Such decision shall be rendered after a public hearing as outlined in the Board of Zoning Appeals Rules and Procedures.

**Comment [SB262]:** Inclusion of commercial more reflects applicability of section, as currently established by Zoning Ordinance..

**Section 8.9 Industrial and Commercial Uses**

A. Industrial and commercial uses in all districts shall comply with the following standards:

1. Noise

All noise shall be muffled so as not to be objectionable due to intermitting, beat frequency, or shrillness. Noise levels shall not exceed the following sound levels dB(A). The sound-pressure level shall be measured at the property line with a sound level meter.

| <u>Sound Measured In</u>                                     | <u>DAY</u>         | <u>NIGHT</u>       |
|--------------------------------------------------------------|--------------------|--------------------|
|                                                              | <u>7 AM - 6 PM</u> | <u>6 PM - 7 AM</u> |
| <u>Adjoining Agricultural or Residential Growth District</u> | <u>60 dB(A)</u>    | <u>50 dB(A)</u>    |
| <u>Residential Uses in R.L.C. District</u>                   | <u>65 dB(A)</u>    | <u>55 dB(A)</u>    |
| <u>Commercial Uses</u>                                       | <u>70 dB(A)</u>    | <u>60 dB(A)</u>    |
| <u>Light Industrial Uses adjacent to noise source</u>        | <u>85 dB(A)</u>    | <u>80 dB(A)</u>    |

The following sources of noise are exempt:

- a. Transportation vehicles not under the control of the industrial use.
- b. Occasionally used safety signals, warning devices and emergency pressure relief valves.
- c. Temporary construction activity between 7:00 a.m. and 7:00 p.m.

2. Odor

No operation shall result in the creation of odors of such intensity and character as to be detrimental to the health and welfare or the public or which interferes with the comfort of the public. Odor thresholds shall be in accordance with ASTM d139-57 "Standard Method for Measurement of Odor in Atmospheres (Dilution Method)" or its equivalent.

Odorous material released from any operation or activity shall not exceed the odor threshold concentration beyond the state line, measured either at ground level or habitable elevation.

3. Smoke

No smoke, dust, fumes, or particulate matter shall be perceptible at any lot line. Further, the regulations and standards governing the control of air pollution shall be the same as those adopted by the State of West Virginia.

For the purpose of grading the density or equivalent capacity of smoke, the Ringelman Chart as published by the United States Bureau of Mines shall be used.

The emission of smoke darker than Ringelmann No. 1 from any chimney, stack, vent, opening, or combustion process is prohibited.

The total emission rate of dust and particulate matter from all vents, stacks, chimneys, flues or other opening or any process, operation, or activity except solid waste incinerators within the boundaries of any lot, will not exceed the levels set forth below.

Particulate matter emission from materials or products subject to becoming wind borne will be kept to a minimum by paving, sodding, oiling, wetting, covering or other means, such as to render the surface wind resistant. Such sources include vacant lots, unpaved roads, yards and storage piles or bulk material such as coal, sand, cinders, slag, sulfur, etc.;

#### 4. Ambient Air Quality Standard

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##### Particulate Matter

###### Suspended

|                                    |            |
|------------------------------------|------------|
| <u>Annual Arithmetic Mean ug/m</u> | <u>65</u>  |
| <u>24-hour Maximum b. ug/m</u>     | <u>140</u> |

###### Settleable

|                                                            |             |
|------------------------------------------------------------|-------------|
| <u>Annual Arithmetic Average, mg/cm<sup>3</sup> /month</u> | <u>0.35</u> |
| <u>Monthly Maximum</u>                                     | <u>0.7</u>  |

#### 5. Vibration

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No vibration shall be produced which is transmitted through the ground and is discernible without the aid of instruments at any point beyond the lot line nor shall any vibration produced exceed 0.002g peak measured at or beyond the lot line using either seismic or electronic vibration-measuring equipment.

#### 6. Glare and Heat

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No direct or sky-reflected glare, whether from floodlights or from high temperature processes, such as combustion or welding or otherwise, so as to be visible at the lot line, shall be permitted. There shall be no emission or transmission of heat or heated air so as to be discernable at the lot line.

#### 7. Toxic Matter

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The ambient air quality standards for the State of West Virginia shall be the guide to the release of airborne toxic materials across lot lines. Where toxic materials are not listed in the ambient air quality standards of the State, the release of such materials shall be in accordance with the fractional quantities permitted below, of those toxic materials currently listed in the threshold limit values adopted by the American Conference of Governmental Industrial Hygienists. Unless otherwise stated, the measurement of toxic matter shall be at ground level or habitable elevation, and shall be the average of any twenty-four (24) hours sampling period.

The release of airborne toxic matter will not exceed one-thirteenth of the threshold limit value across lot lines.

Such materials shall include but are not limited to: all primary explosives such as lead azide, lead styphnate, fulminates and tetracene; all high explosives such as TNT, RDX, HMX, PETN, and picric acid; propellants and components thereof, such as dry derivatives; pyrotechnics and fireworks such as acetylates, tetrazoles, and ozonides; unstable oxidizing agents such as perchloric acid, per-chlorates, and hydrogen peroxide in concentration greater than thirty-five (35) per cent; and nuclear fuels, fissionable materials and products, and reactor elements such as Uranium 235 and Plutonium 239.

The storage, utilization or manufacture of materials or products which decompose by detonation is prohibited.

#### 8. Fire Hazards

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The storage, utilization or manufacture of solid materials which are active to intense burning shall be conducted within spaces having fire resistive construction of no less than two (2) hours and protected with an automatic fire extinguishing system.

The total capacity of flammable liquids and gasses shall not exceed those quantities permitted in the following Table for each of the industrial districts:

| <u>CAPACITY</u>       | <u>STORAGE</u>        |
|-----------------------|-----------------------|
| <u>Liquids</u>        | <u>60,000 gallons</u> |
| <u>Gasses</u>         |                       |
| <u>- Above ground</u> | <u>150,000 SCF</u>    |
| <u>- Below ground</u> | <u>300,000 SCF</u>    |

SCF - Standard Cubic Feet at sixty (60) degrees Fahrenheit and 29.92 inches Mercury. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 4, 1989]

The following setback requirements will apply to the location of any container which holds flammable liquids or gasses:

Container Setback from Lot Lines

| <u>Water Capacity per Container (Gallons)</u> | <u>Containers</u>         |                                       | <u>Between Above Ground Containers (ft.)</u>         |
|-----------------------------------------------|---------------------------|---------------------------------------|------------------------------------------------------|
|                                               | <u>Underground (Feet)</u> | <u>Above Ground Containers (Feet)</u> |                                                      |
| <u>0 to 2,000</u>                             | <u>25</u>                 | <u>25</u>                             | <u>3</u>                                             |
| <u>2,000 to 30,000</u>                        | <u>50</u>                 | <u>50</u>                             | <u>5</u>                                             |
| <u>30,000 to 60,000</u>                       | <u>50</u>                 | <u>75</u>                             |                                                      |
| <u>In excess of 60,000</u>                    | <u>75</u>                 | <u>100</u>                            | <u>¼ the sum of diameters of adjacent containers</u> |

9. Frontage Road

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Easements or fee simple dedications will be provided along all limited access highways at the site plan or subdivision phases. Said easement/dedication shall not exceed 60 feet in width. The width may vary but must be adequate for extension, continuation or establishment of a minimum 20' wide paved frontage road.

10. Landscape Buffer

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A fifty (50) foot wide landscape buffer strip will be provided along all limited access highways. Said buffer shall be adjacent to the frontage road. In the case where existing roads not adjacent to controlled access highway serve as frontage road the landscape buffer may be placed against the highway right-of-way.

All front setbacks (building and parking lot) are to be measured from the landscape buffer. (See diagram sketch)

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ROW LIMITS OF  
CONTROLLED ACCESS  
HIGHWAY



- \* Maximum 60' easement or dedication for frontage road
- \*\* 50' landscaped buffer strip
- \*\*\* Setbacks

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This provision shall also apply to any ramps or access roads connecting to a controlled access highway within ½ mile of a controlled access highway. [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

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Comment [SB263]: Moved from section 4.18.

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**Section 8.10 Model Homes/Sales Offices**

Model homes with a staffed sales office for sales exclusively within the residential subdivision that in which they are located are permitted provided that they are contained on the first lot on either or both sides of any road/right-of-way that enters the subdivision; provided also that they are so designated on the preliminary and final plats during the subdivision process.

Model homes with a staffed sales office in any other location within the subdivision must be approved or denied by the Zoning Board of Zoning Appeals after a ~~45 day~~ public hearing advertised for 15 days. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

Comment [SB264]: Clarifies intent of notice period.

Model homes without staffed sales offices are permitted internally within the subdivision. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

Comment [SB265]: From section 5.6b

**Section 8.11 Petroleum products refining or storage**

Petroleum refining or storage (above ground in tanks) requires adherence to all state and federal laws, as well as National Fire Underwriters Codes.

Comment [SB266]: From section 4.17

**Section 8.12 West Virginia Legal Fireworks**

Sales of fireworks are only permitted in the commercial zones provided all other restrictions such as setbacks and the requirements of the Jefferson County Subdivision and Land Development Regulations are met. [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]

**Section 8.13 Dormitory**

A dormitory shall be located on the same property or campus as the use it is intended to serve. A dormitory shall not offer accommodations to the general public or to persons who are visiting the property or campus primarily for the purpose of being a spectator at a sporting event or other gathering held at the facility. A dormitory may include one common kitchen or dining facility and common gathering rooms for social purposes for use only by its temporary occupants.

Comment [SB267]: Text moved from Sec. 2.2.

Section 8.1 — Filing an Appeal

Comment [SB268]: Section moved to 3.4

A. An appeal to the Board may be taken by any person, board, associate, corporation or official allegedly aggrieved by any administrative decision based or claimed to be based, in whole or in part, upon the provisions of this Ordinance. The property owner of the subject appeal shall sign the application or an affidavit allowing an agent for the property owner to file the application which shall be submitted.

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B. Such appeal shall be filed with the Board within thirty (30) days from the decision appealed.

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C. Appeal applications shall be made on the forms designated by the Planning and Zoning Commission and shall be accompanied by three (3) copies of the copies of the application and an accurate drawing of the property showing distance of all structures from property lines and any pertinent data deemed necessary for the request. Submittal of the application shall be made to the Planning and Zoning Office.

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D. All zoning fees, in accordance with the approved County fee structure, shall be paid upon application.

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E. No application shall be accepted in the Planning and Zoning Office unless it contains all pertinent information and is accompanied by the required fees.

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Section 8.2 — Processing Procedures

A. Appeal applications filed in the proper form shall be numbered serially, docketed, and placed upon the calendar of the Board of Appeals.

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B. The Board shall hold a hearing within forty five days (45) from the date the appeal is received in the Department of planning, Zoning, and Engineering Office. [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON SEPTEMBER 13, 1990 AND MAY 18, 1996] [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

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C. Notice of the hearing shall be advertised in two issues of a newspaper having general general circulation in the County at least 15 days before the hearing. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON SEPTEMBER 13, 1990] [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

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D. Property upon which the application is concerned shall be posted conspicuously by a zoning notice no less than twenty-eight (28) inches by twenty-two (22) inches, in size, at inches, in size, at least 15 days before the hearing. The sign will be prepared by the Planning Office but is the responsibility of the applicant for the posting of the property. The Board, in its discretion, may otherwise visit the specific property prior to or after the hearing.

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### Section 8.3 — Public Hearing

~~A. The Board following action in Section 8.2, shall hold such hearing. At the hearing, any party may appear and be heard in person or by agent or attorney.~~

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~~B. The Board shall render its determination on the application no more than thirty (30) days following the public hearing by registered mail. Any party aggrieved by a decision of the Board may appeal to the circuit court of Jefferson County within thirty (30) days of the Board's decision. The Court may affirm, reverse, vacate, or modify the decision subject to the appeal.~~

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### Section 8.4 — Continuance of Hearing

~~The Board may continue a hearing at another time and/or date once such hearing has been started; however, the Board shall announce the date and hour of continuance of such hearing while in session. Any hearing continued shall be held within thirty (30) days from the initial hearing.~~

## ARTICLE 9. EXCEPTIONS

### Section 9.1 General

The regulations specified in this ordinance shall be subject to the following exceptions, modifications and interpretations.

### Section 9.2 Building Height Limitations

Building height limitations shall not apply for public utilities, agricultural uses, communication poles and towers, chimneys, steeples, water tanks, electric generating plants, electric transforming or switching equipment, flagpoles, fire or observation towers, monuments, or to tanks, ventilating fans, air conditioning equipment or similar equipment required to operate and maintain the building, hospitals, schools, colleges and public buildings. Commercial wireless communications facilities shall comply with Article 4B. [AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993, JULY 1, 1998 AND MARCH 10, 2011]

### Section 9.3 Lot Area Modification

In any district where a single-family dwelling is permitted, a dwelling may be erected on any lot or parcel of record, despite the fact that the lot or parcel does not meet the minimum area requirements of this ordinance, provided:

- A. The lot or parcel was lawfully created in compliance with the applicable subdivision regulations in effect at the time the lot was created; and
- B. Health Department regulations can be met.

## Section 9.4 Setback Modifications

- A. Where the average setback line of at least two (2) existing buildings on lots which are on the same side of the street or road within two hundred (200) feet of the lot in question is less than the minimum setback prescribed by this ordinance, the minimum setback line shall be the average setback line of all buildings within two hundred (200) feet of the proposed building. However, in no case shall the setback line be less than thirty-five (35) feet from the centerline of any abutting road or street.
- B. A structure may be located on a common side or rear lot line of contiguous property owned by the same entity. Provided, however, that the structure shall only be a single family dwelling or an accessory structure. Also provided, however, that the ~~Land Use Ordinances of Jefferson County shall view the~~ contiguous lots shall be treated as one lot for all purposes ~~by the Zoning and Land Development Ordinance and the Subdivision and Land Development Regulations~~. [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]
- C. Subdivision signs, school bus shelters and/or mailboxes do not have to comply with setback restrictions provided they are shown and approved on the preliminary or final plat in the subdivision process. In subdivisions approved prior to this amendment, subdivision signs school bus shelters and/or mailboxes can be built as shown on the plat or be replaced in the same general location. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

Comment [SB269]: Reworded for clarity.

## Section 9.5 Projections Into Yards

[AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]

- A. Projections such as bay windows, chimneys, entrances, uncovered porches, balconies, and eaves may extend into any required yard not more than four (4) feet; ~~provided any required yard not more than four (4) feet;~~ provided that such projections are not over ten (10) feet in ~~lengthwidth~~. All roof overhangs may extend into any required yard not more than two (2) feet; provided that the primary structure is located entirely within the appropriate setback.
- B. Fences and walls over six (6) feet in height shall meet building lines and yard requirements. ~~An Improvement Location~~ ~~building~~ permit is required before construction. Fences and walls six (6) feet and under in height shall be exempt from building lines and yard requirements unless obstructions to vision at an intersection as referenced in Section 4.9.

Comment [SB270]: Text appears to have been inadvertently repeated.

Comment [SB271]: Clarifies intent of section as interpreted by the Board of Zoning Appeals and staff.

Comment [SB272]: Updated term.

## Section 9.6 Accessory Structures

Accessory structures, defined by Section 2.2, shall be permitted in all districts where single-family and two-family dwelling units are permitted. The provisions for accessory structures are as follows.

- A. The minimum distance to a lot line in any District from a single-story utility or storage shed, not exceeding one hundred fifty (150) square feet, shall be five (5) feet.
- B. In any District wherein single-family and two-family dwellings are permitted, the minimum distance from any accessory structure, not attached to the principal permitted use, to the side or rear lot line shall be not less than the longest horizontal dimension of the accessory structure or the minimum distance specified for that District, whichever is the lesser of the two.
- C. No accessory building shall be erected within the required front yard.

**Section 9.7 Other Exceptions**

[AMENDED BY ACT OF THE COUNTY COMMISSION ON OCTOBER 12 1989]

For all lots that were approved with setbacks by the Planning ~~(and Zoning)~~ Commission as part of the subdivision process prior to September 1, 1989, the setbacks and sizes shall be as established as a part of that process.

Comment [SB273]: Name corrected.

Setbacks are as follows in subdivisions ~~that did not have them for which no setback was~~ stipulated previously by the Jefferson County Planning ~~(and Zoning)~~ Commission as a part of the subdivision process:

Residential Growth District

Single family residences --

|                                    |                                  |
|------------------------------------|----------------------------------|
| Over 40,000 square feet --         | 25' front, 12' side and 12' rear |
| 30,000 sq. ft. to 40,000 sq. ft.-- | 20' front, 10' side and 12' rear |
| Under 30,000 square feet --        | 20' front, 8' side and 12' rear  |

Rural Agricultural and Industrial Commercial

Single family residences --

|                                                       |                                  |
|-------------------------------------------------------|----------------------------------|
| Over 2 acres --                                       | 40' front, 15' side and 50' rear |
| 40,000 sq. ft. to 2 acres --                          | 25' front, 12' side and 12' rear |
| 30,000 sq. ft. to <del>50,000</del> 39,999 sq. ft. -- | 20' front, 10' side and 12' rear |
| under 30,000 sq. ft. --                               | 20' front, 8'side and 12' rear   |

Comment [SB274]: Currently, ordinance has square footage "overlap".

For all lots under 40,000 square feet side and rear setbacks for residential accessory structures shall be 6'.

**Section 9.8 Exceptions, as follows: Seasonal Uses**

[AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON JULY 15, 1993 AND SEPTEMBER 13, 1990]

Seasonal uses must be approved by the Board of Zoning Appeals pursuant to a public hearing. ~~However, such public hearing need only be advertised for 15 days. Newspaper notification requirements of Section 3.4A(3)(b) apply. Seasonal Uses and Bed and Breakfast establishments (in the Rural Zone) must be approved by the Board of Zoning Appeals pursuant to a public hearing. However, such public hearing need only be advertised for fifteen (15) days. Requests for these exceptions must include all items in Section 12.2 (d).~~ Seasonal uses cannot be approved for longer than one year at a time. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

**Comment [SB275]:** New text clarifies notification requirements.

**Comment [SB276]:** Recommend deletion. Bed and breakfast is listed as a principal permitted use in 5.7; as such, it should not require Board of Zoning Appeals approval.

## ARTICLE 10. PROVISIONS FOR SIGNS

### Section 10.1 Purpose of Sign Provisions

The purpose of this section is to regulate all exterior signs and interior signs placed for exterior observance so as to protect property values and the character of the County. Any sign placed on land or on a building for the purposes of identification or for advertising a use conducted therein or thereon shall be deemed to be accessory and incidental to such land, building or use.

It is intended that the placement of a particular sign will be appropriate to the land, building, or use to which they are appurtenant and be adequate, but not excessive, for the intended purpose of identification or advertisement. It is also intended that in areas proposed for new development, that signs placed will be harmonious in color, form and proportions to its surroundings.

### Section 10.2 General Provisions

- A. No sign shall be erected, hung, or placed in any district except as provided in this Ordinance. No sign erected before the enactment of this Ordinance shall be structurally altered or moved except in accordance with this Ordinance.
- B. No zoning permit shall be required for the repainting or repairing of a sign.
- C. No signs, other than subdivision signs approved by the Planning and Zoning Commission, shall be located in the right-of-way of any road or on any slope or drainage easement for such road. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE AUGUST 31, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- D. No sign shall be permitted which is an imitation of or which resembles an official traffic control device, railroad sign or signal, or which hides from view or interferes with the effectiveness of an official traffic control device or any railroad sign, signal, or traffic sight lines. Illuminated signs shall be so constructed as to avoid glare or reflection of any portion of an adjacent highway or residential building.
- E. No sign which implies the need or requirement of stopping or the existence of danger shall be displayed.
- F. No sign shall be placed on rocks, trees, or on poles maintained by public utilities.
- G. No sign shall be permitted which becomes unsafe or endangers the safety of the building, premises, or persons and unless maintained in a good general condition.
- H. No sign shall be permitted which contains statements, words or pictures of an obscene, indecent, or immoral character.
- I. No animated signs, as defined by Section 2.2 are allowed.

### Section 10.3 Permitted Signs Without Zoning Permit

- A. Signs posted upon property relating to private parking or warning the public against trespassing or against dangers of animals.
- B. Municipal, County, State and Federal signs, including necessary traffic signs.
- C. Historical markers, monuments, or signs erected by a public authority.
- D. Plates on residential structures or premises giving the name or address of the occupant, mailboxes, papertubes, and similar uses customarily associated with residential uses.
- E. A sign indicating the name and/or premises or accessory use of a home for a home occupation or professional purpose, not exceeding one square foot in area.
- F. A sign not exceeding twenty-five (25) square feet on a farm, advertising farm products primarily grown on the premises.
- G. Directional or informational signs of a public or quasi-public nature, such as those containing the meeting date of a community or civic club, or the advertising of a public event.
- H. A temporary real estate sign designating the zoning classification of the parcel, not exceeding twenty (20) square feet and being located on the subject property for sale or lease
- I. Building contractors', subdivision and/or professional person' temporary signs on buildings or land under construction but not to exceed one hundred (100) square feet.
- J. Election signs, provided that unsuccessful candidate shall remove signs within 15 days after a primary or special election. All signs shall be removed within 15 days after the general election. Signs shall not interfere with traffic visibility.
- K. All temporary signs shall be removed thirty (30) days after the event, unless otherwise specified in Article 10.

### Section 10.4 Signs Requiring a Zoning Permit

- A. Business and outdoor advertising signs in all zoning districts shall require a Zoning Certificate before placement on any property or building. [AMENDED BY ACT OF THE COUNTY COMMISSION ON AUGUST 31, 1989]
- B. Any exterior sign or signs pertaining to the use conducted on the premises, and which is either integral with or attached to the principal building, shall have a sum total area of no more than two square feet for each foot in length of the frontage of the building. No sign shall be attached to the side of the building that faces an adjoining residence. All signs

placed on a property whose use is governed by the Development Review System is subject to Section 10.4 (e).

- C. Individual business or industrial establishments may erect a freestanding business sign, provided the lot frontage is at least forty (40) feet. The freestanding sign shall be located in such a manner that no part of the supporting structure is less than twenty-five (25) feet from the street right-of-way, and that no part of the sign is closer than five (5) feet to the right-of-way. The total area for any sign or signs on one supporting structure shall not exceed 300 square feet and the total height of the sign structure shall not exceed thirty-five (35) feet. Businesses or industries having a frontage on more than one street may have an additional freestanding sign for each street frontage, provided that the total area for all freestanding signs does not exceed 600 square feet. Where the lot adjoins a residence and a freestanding sign is on the side of the business lot adjoining the residential lot, the sign shall not face the adjoining residence. Signs governed by the Development Review System are subject to Section 10.4 (e). Structures which have more than one use shall be required to use a pylon sign. One is permitted on each street frontage. [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]
- D. All outdoor advertising signs shall be spaced in such a manner that in an Industrial District there shall be a minimum of three hundred (300) feet between signs, and in the Rural ~~Agricultural~~-District, where permitted, such signs shall be located in such a manner that there shall be one thousand (1,000) feet between signs. This shall be subject to Section 10.4 (e).
- E. All signs accessory to land use that must be evaluated by the Development Review System (DRS) shall be proposed within the DRS application and assessed at the Compatibility Assessment Meeting. Such signs shall be maintained at least one thousand (1,000) feet between signs. Consideration of the placement of such signs with less than one thousand (1,000) foot intervals shall be determined by the Commercial or Residential Uses adjacent to the subject site. Commercial uses adjacent to the subject site may allow spacing intervals of three hundred (300) feet. The ~~Planning and Zoning Commission~~ Planning Commission shall make this determination if the location cannot be agreed upon at the Compatibility Assessment Meeting. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE AUGUST 31, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- F. No outdoor advertising sign shall be placed closer than three hundred (300) feet to an intersection on a dual or proposed dual highway or within one hundred feet of any other intersection; provided, however, that such signs may be affixed to or located adjacent to a building at such intersections in such a manner as not to materially cause any greater obstruction of vision than caused by the building itself. No business sign shall be so located to obstruct the vision of traffic using entrance ways, driveways, or any public road intersection.

G. All outdoor advertising, excluding billboards subject to Section 10.4 (h), shall comply with front yard setback provisions in the districts in which they are permitted.

H. Billboards

1. No billboard shall be closer to any public highway right-of-way than three (300) feet.
2. Placement of a billboard must be in a location that is within eight hundred (800) feet of an existing business.
3. There shall be a minimum of one thousand (1000) feet between billboards.
4. A billboard shall be no closer than five hundred (500) feet from a church, school, or cemetery.

**Section 10.5 Special Exception Uses (Requiring Board of Zoning Appeals After Public Hearing)**

Outdoor advertising signs including billboards may be approved by the Board of Zoning Appeals if it conforms to existing State law and does not have a negative effect on the neighborhood or intent of this Ordinance.

[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

**Section 10.6 Zoning Certificate**

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON AUGUST 31, 1989]

All Zoning Certificate applications for signs may be approved by the Departments of Planning and Zoning ~~and Engineering Staff~~ if in conformance with the regulations.

[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

ARTICLE 11. OFF-STREET PARKING STANDARDS

Section 11.1 Non-Residential Parking Standards

A. To decrease congestion ~~in the streets,~~ permanent off-street automobile parking space and truck loading space shall be provided for all new structures and uses, and for existing structures or uses ~~that are~~ increased in size by 20 percent or more after adoption of these regulations.

Comment [SB277]: Unnecessary.

Spaces shall be required per use and are as follows: [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990]

|                                                                                                                |                                                                                                                |
|----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| Ambulance Facility                                                                                             | 2 spaces per ambulance                                                                                         |
| Auto Sales and Service                                                                                         | 1 space per 300 square feet of gross floor space.                                                              |
| Auto Service Station                                                                                           | 2 spaces per service bay plus 1 space per employee                                                             |
| Banks, Financial Institution                                                                                   | 1 space per 200 square feet of floor space plus 5 <del>reservoir-queuing</del> spaces for each drive-up teller |
| Bowling Lanes                                                                                                  | 5 spaces per bowling lane                                                                                      |
| Churches                                                                                                       | 1 space for each 5 persons for which seating is provided in the sanctuary                                      |
| Commercial Retail Sales<br>(Less than 2,000 square foot floor space)                                           | 1 space per 150 square feet retail floor space                                                                 |
| Commercial Retail<br>(Low customer turn over, large indoor display, e.g. carpet, furniture or appliance sales) | 1 space per 500 square feet retail floor space                                                                 |
| Community Center, <del>Cultural Facility</del> Library, Museum                                                 | 1 space per 400 square feet floor space                                                                        |
| Private Club, Lodge                                                                                            | 1 space for each 2 persons for which seating or lodging is provided                                            |
| Educational<br>(Schools)                                                                                       | 1 space per employee; ample student and visitor parking                                                        |

Comment [SB278]: "Queuing spaces" is the standard zoning ordinance term for waiting areas in drive-through facilities.

|                                                                                    |                                                                                                                                                                                                                                               |
|------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Fire Stations                                                                      | 10 spaces minimum                                                                                                                                                                                                                             |
| Hospitals                                                                          | 1.5 <u>spaces</u> for each bed plus <del>one</del> <u>1 space</u> for every employee                                                                                                                                                          |
| Hotel, Resort                                                                      | 1 space per guest room plus 1 space per 5 employees                                                                                                                                                                                           |
| Manufacturing Plant                                                                | 1 space per employee on maximum working shift                                                                                                                                                                                                 |
| Medical or Dental Offices/Clinics                                                  | 5 spaces per 1000 square feet of gross floor space                                                                                                                                                                                            |
| Mortuary or Funeral Parlor                                                         | 1 <u>space</u> per 150 square feet of floor area devoted to viewing and <del>one</del> <u>1 space</u> per vehicle used in activity PLUS <del>one</del> <u>1 space</u> per each two employees; <u>with a minimum of, but 20 spaces minimum</u> |
| Motels, Tourist Homes                                                              | 1 space per guest room or suite                                                                                                                                                                                                               |
| Nursing Homes                                                                      | 1 space per 400 square feet floor space                                                                                                                                                                                                       |
| Office Building                                                                    | 1 space per 300 square feet floor space                                                                                                                                                                                                       |
| Professional Building (Other than Medical)                                         | 2 spaces per 300 square feet floor space                                                                                                                                                                                                      |
| Recreational Establishment (Other than theaters, swimming pools and bowling lanes) | 1 space per 80 square feet of floor <u>space</u> and/or as determined by extent of outdoor use                                                                                                                                                |
| Restaurants, Taverns, Lounges, Nightclubs                                          | 1 space per 50 square feet customer floor space                                                                                                                                                                                               |
| Shopping Center (Retail greater than 2,000 square feet of floor space-)            | 5.5 spaces per 1,000 square feet floor <u>space</u>                                                                                                                                                                                           |
| Swimming Pool                                                                      | 1 space for every 7 persons permitted at any one time                                                                                                                                                                                         |
| Theaters, Auditoriums, Stadiums                                                    | 1 space per every 2 seats                                                                                                                                                                                                                     |
| Transportation Terminals                                                           | 1 space per main shift employee                                                                                                                                                                                                               |

Warehouses or Wholesale Establishments 1 space per main shift employee plus 2 spaces per wholesale establishment

B. Parking requirements for uses not listed in 11.1(a) may be either approved or established by the Departments of Planning and Zoning and Engineering Staff on a case-by-case basis. Justification for said requirements must be documented. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON MAY 18, 1996] [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

#### ~~Section 11.2 Internal Circulation, Entrance and Parking Requirements~~

~~All site plans for non-residential development are subject to the provisions and regulations for internal circulation, entrance requirements, and parking space and lane requirements referenced in Article 11 of the Jefferson County Subdivision Ordinance.~~

**Comment [SB279]:** Redundant with Section 4.10, which states that the site plan requirements of the Subdivision and Land Development Regulations must be followed.

#### Section 11.3 Residential Parking Standards

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE AUGUST 31, 1989]

To decrease congestion ~~in the streets,~~ permanent off-street automobile parking space and truck loading space shall be provided for all new structures and uses, and for existing structures or uses ~~that are:~~ increased in size by 20 percent or more after adoption of these regulations.

**Comment [SB280]:** Unnecessary.

Spaces shall be required per residential uses as follows:

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

**ARTICLE 12. MAP AND TEXT AMENDMENTS**

Comment [SB281]: Separate amendments for this article currently under review.

**Section 12.1 Purpose**

- A. These regulations, restrictions, provisions, and the boundaries of districts provided herein may from time to time be amended, modified, or repealed by the County Commission. Any person, individual, board, commission or bureau of the County may petition the County Commission for such change.
- B. The County Commission shall refer any amendment or alteration of this Ordinance to the ~~Planning and Zoning Commission~~ **Planning Commission** for analysis, study, report, and recommendations. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

**Section 12.2 Procedure for Amendment by Governing Body**

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 4, 1989]

- A. After the enactment of the zoning ordinance, the governing body of the County may amend the zoning ordinance without holding an election. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- B. Before amending the zoning ordinance, the governing body with the advice of the ~~P~~lanning ~~C~~ommission, must find that the amendment is consistent with the adopted comprehensive plan. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

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**Section 12.3 Procedure for Amendment by Petition**

- A. The procedure for amendment shall be as dictated in §8A-1-1 et seq of the West Virginia State Code, as amended. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- B. Petitions to the County Commission for an amendment must contain the following information:
  - 1. Substantiation for the request
  - 2. Tax District, Map and Parcel number
  - 3. Deed Book reference
  - 4. Plat or sketch pursuant to Section 7.4 (b)
  - 5. Tract size
  - 6. Discussion on:
    - a. Comprehensive Plan compatibility of the proposed change.
    - b. Any change of transportation characteristics and neighborhood from when the original ordinance was adopted. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

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**APPENDIX A: RESIDENTIAL SITE DEVELOPMENT STANDARDS TABLE**

This table is for reference purposes only. In the event of a conflict with the text of the Zoning and Land Development Ordinance, the Ordinance shall prevail.

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| Zoning District                             | Land use                                                                              | Land Use Subtype                    | Minimum Lot Area (MLA) in square feet*** | Area per Dwelling Unit (ADU) in square feet | Lot Width (feet) | Maximum Building Height (feet)* | Setbacks (feet) |      |             |      |
|---------------------------------------------|---------------------------------------------------------------------------------------|-------------------------------------|------------------------------------------|---------------------------------------------|------------------|---------------------------------|-----------------|------|-------------|------|
|                                             |                                                                                       |                                     |                                          |                                             |                  |                                 | Front           | Side | Street Side | Rear |
| Residential Growth                          | Single family detached dwelling                                                       | Public/Central water and sewer      | 6,000                                    | 10,000                                      | N/A              | 40                              | 25              | 12   | 15          | 20   |
|                                             |                                                                                       | Public/Central water or sewer       | 20,000                                   | N/A                                         | N/A              | "                               | "               | "    | "           | "    |
|                                             |                                                                                       | No Public/Central water or sewer    | 40,000                                   | N/A                                         | N/A              | "                               | "               | "    | "           | "    |
|                                             | Duplex dwelling unit                                                                  | Public/Central water and sewer      | 3,200                                    | 7,500                                       | N/A              | 40                              | 25              | 15** | 15          | 20   |
|                                             |                                                                                       | Public/Central water or sewer       | N/A                                      | 10,000                                      | N/A              | "                               | "               | "    | "           | "    |
|                                             | Townhouse                                                                             | Public/Central water and sewer      | 1,400                                    | 3,500                                       | N/A              | 40                              | 25              | 12** | 15          | 20   |
|                                             | Multi-family dwelling                                                                 | Public/Central water and sewer      | 20,000                                   | 2,000                                       | N/A              | 40                              | 25              | 12** | 15          | 30   |
|                                             | Single-family dwelling with setbacks not previously stipulated by Planning Commission | Over 40,000 square feet --          | N/A                                      | N/A                                         | N/A              | 40                              | 25              | 12   | ‡           | 12   |
|                                             |                                                                                       | 30,000 sq. ft. to 40,000 sq. ft. -- | N/A                                      | N/A                                         | N/A              | 40                              | 20              | 10   | ‡           | 12   |
|                                             |                                                                                       | Under 30,000 square feet --         | N/A                                      | N/A                                         | N/A              | 40                              | 20              | 8    | ‡           | 12   |
| Rural                                       | Dwellings                                                                             |                                     | 40,000                                   | N/A                                         | 100              | 35                              | 40              | 15   | ‡           | 50   |
|                                             | Single-family dwelling with setbacks not previously stipulated by Planning Commission | Over 2 acres --                     | N/A                                      | N/A                                         | N/A              | 35                              | 40              | 15   | ‡           | 50   |
|                                             |                                                                                       | 40,000 sq. ft. to 2 acres --        | N/A                                      | N/A                                         | N/A              | 35                              | 25              | 12   | ‡           | 12   |
|                                             |                                                                                       | 30,000 sq. ft. to 39,999 sq. ft. -- | N/A                                      | N/A                                         | N/A              | 35                              | 20              | 10   | ‡           | 12   |
|                                             |                                                                                       | under 30,000 sq. ft. --             | N/A                                      | N/A                                         | N/A              | 35                              | 20              | 8    | ‡           | 12   |
|                                             | Cluster Subdivision                                                                   | See Residential Growth              |                                          |                                             |                  |                                 |                 |      |             |      |
|                                             | Residential use that complies with the Development Review System                      | See Residential Growth              |                                          |                                             |                  |                                 |                 |      |             |      |
| Village                                     | Residential uses                                                                      | See Residential Growth              |                                          |                                             |                  |                                 |                 |      |             |      |
| Residential / Light Industrial / Commercial | Residential uses                                                                      | See Residential Growth              |                                          |                                             |                  |                                 |                 |      |             |      |
| Industrial-Commercial                       | Residential uses                                                                      | See Residential Growth              |                                          |                                             |                  |                                 |                 |      |             |      |

\* Maximum height subject to Section 9.2

\*\*Exterior side only

\*\*\* The balance square footage between the ADU and the MLA shall not include land set aside in a Sensitive Natural Area, Buffer to a Sensitive Natural Area, land qualifying as Hillside development or a 100 Year Flood Plain.

‡See setback requirements noted in Sec. 2.2, definition of "Lot, Corner."

All detached accessory structures under 144 square feet in size - 6' setback. (Res Growth District)

For all lots approved prior to Sept. 1, 1989, lots under 40,000 square feet side and rear setbacks for residential accessory structures shall be 6'.

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**APPENDIX B: NON-RESIDENTIAL SITE DEVELOPMENT STANDARDS TABLE**

This table is for reference purposes only. In the event of a conflict with the text of the Zoning and Land Development Ordinance, the Ordinance shall prevail.

| Zoning District                             | Development Type                        | Minimum Lot Area (MLA)             | Minimum Lot Width | Maximum Building Height* | Impervious Surface Limit | Setbacks                                   |                                            |      |
|---------------------------------------------|-----------------------------------------|------------------------------------|-------------------|--------------------------|--------------------------|--------------------------------------------|--------------------------------------------|------|
|                                             |                                         |                                    |                   |                          |                          | Front                                      | Side                                       | Rear |
| Industrial - Commercial**                   | Commercial sites 1.5 acres and smaller  | N/A                                | N/A               | 75                       | 80%                      | 25'                                        |                                            |      |
|                                             | Commercial sites greater than 1.5 acres | N/A                                | N/A               | 75                       | 80%                      | 25'                                        | 50' (or 25' if adjacent to industrial use) |      |
|                                             | Industrial                              | 3 acres***                         | N/A               | 75                       | 90%                      | 50' (or 25' if adjacent to industrial use) |                                            |      |
| Residential / Light Industrial / Commercial | Commercial or Industrial                | See Industrial-Commercial District |                   |                          |                          |                                            |                                            |      |
| Rural                                       | Churches                                | 2 acres                            | 200               | 35                       | N/A                      | 25                                         | 50                                         | 50   |
|                                             | Schools, Grades K-4****                 | 10 acres +                         | 500               | 35                       | N/A                      | 100                                        |                                            |      |
|                                             | Schools, Grades 5-8****                 | 20 acres +                         | 500               | 35                       | N/A                      | 100                                        |                                            |      |
|                                             | Schools, Grades 9-12****                | 30 acres +                         | 500               | 35                       | N/A                      | 100                                        |                                            |      |
|                                             | Hospitals                               | 10 acres                           | 500               | 35                       | N/A                      | 100                                        |                                            |      |
|                                             | Other Rural principal permitted uses    | 40,000 sq. ft.                     | 100               | 35                       | N/A                      | 40                                         | 50                                         | 50   |
|                                             | Commercial or Industrial**              | See Industrial-Commercial District |                   |                          |                          |                                            |                                            |      |
| Village District                            | Commercial†                             | N/A                                | N/A               |                          | N/A                      | 25                                         | 10                                         | 40   |
|                                             | Industrial**                            | See Industrial-Commercial District |                   |                          |                          |                                            |                                            |      |
| Residential Growth                          | Commercial or Industrial**              | See Industrial-Commercial District |                   |                          |                          |                                            |                                            |      |

\*These yard requirements are also for an approved commercial or industrial use proposed for any other zone.

[Source: Section 5.]

\*\*If land use(s) approved via Neighborhood Compatibility Meeting process or Development Review System process in accordance with the Zoning and Development Review Ordinance.

\*\*\*MLA for Industrial uses does not apply if the site is located in an approved Industrial Park [source: Section 5.6(e)]

\*\*\*\*For schools in Rural district: Plus one (1) additional acre for every 100 pupils. Minimum lot size for Vocational Schools shall be based on State of West Virginia Code. If a sewer treatment plant and retention ponds are required, acreage shall be increased accordingly. [Source: 5.7(b)]

†Village Commercial setbacks may be reduced as a result of a Compatibility Assessment Meeting based on other structures existing in the neighborhood [Source: 5.10c]

‡Setback may be reduced if adjacent to industrial use.

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**APPENDIX C: PRINCIPAL PERMITTED USES TABLE**

This table is for reference purposes only. In the event of a conflict with the text of the Zoning and Land Development Ordinance, the Ordinance shall prevail.

| Land Use                                    | R  | RG | R-LI-C | I-C | V  | General Standards | Additional Standards |
|---------------------------------------------|----|----|--------|-----|----|-------------------|----------------------|
| <b>Residential Uses</b>                     |    |    |        |     |    |                   |                      |
| Dwelling, Single Family                     | P  | P  | P      | NP  | P  |                   |                      |
| Dwelling, Two Family                        | P  | P  | P      | NP  | P  |                   |                      |
| Dwelling, Duplex                            | NP | P  | P      | NP  | P  |                   |                      |
| Dwelling, Townhouse                         | NP | P  | P      | NP  | NP |                   |                      |
| Dwelling, Multi-Family                      | NP | P  | P      | NP  | NP |                   |                      |
| Day Care Center, Small                      | P  | P  | NP     | P   | NP |                   |                      |
| Mobile Home                                 | P  | NP | NP     | NP  | NP |                   |                      |
| Mobile Home Park                            | NP | P  | P      | NP  | NP |                   |                      |
| Model Homes/Sales Office                    | P  | P  | P      | NP  | NP | Sec. 8.10         |                      |
| <b>Home Uses</b>                            |    |    |        |     |    |                   |                      |
| Cottage Industry                            | P  | NP | P      | P   | PC | 4A.3              |                      |
| Home Occupation, Level 1                    | P  | P  | P      | P   | P  | 4A.1              |                      |
| Home Occupation, Level 2                    | P  | P  | P      | P   | P  | 4A.2              |                      |
| <b>Institutional Uses</b>                   |    |    |        |     |    |                   |                      |
| Church                                      | P  | P  | P      | NP  | PC |                   |                      |
| Day Care Center, Large                      | NP | P  | P      | P   | PC |                   |                      |
| Hospital                                    | P  | P  | P      | NP  | NP |                   |                      |
| Group Residential Facility                  | P  | P  | P      | NP  | P  |                   |                      |
| Group Residential Home                      | P  | P  | P      | NP  | P  |                   |                      |
| Residential Care Home                       | P  | P  | P      | NP  | P  |                   |                      |
| Nursing or Retirement Home                  | NP | P  | P      | NP  | NP |                   |                      |
| Cultural Facility                           | P  | NP | P      | P   | P  |                   |                      |
| Elementary or Secondary School              | P  | P  | P      | NP  | NP |                   |                      |
| Preschool                                   | P  | P  | P      | NP  | NP |                   |                      |
| Vocational and Training Facility for Adults | P  | P  | P      | NP  | NP |                   |                      |
| Public Safety Facility                      | P  | P  | P      | P   | P  |                   |                      |
| Publicly Owned Facility                     | P  | P  | P      | P   | NP |                   |                      |
| Essential Utility Equipment                 | P  | P  | P      | P   | P  | 4.7               |                      |
| <b>Industrial</b>                           |    |    |        |     |    |                   |                      |
| Salvage Yards                               | NP | NP | NP     | PC  | NP |                   |                      |
| Slaughterhouses, Stockyards                 | NP | NP | NP     | PC  | NP |                   |                      |
| Heavy Industrial Uses                       | NP | NP | NP     | P   | NP |                   | Sec. 8.9             |
| Light Industrial Uses                       | NP | ** | P      | P   | NP |                   | Sec. 8.9             |
| Shooting Range                              | NP | NP | NP     | P   | NP |                   |                      |

Principal Permitted Uses Table (continued)

| Land Use                                                                         | R  | RG | R-LI-C | I-C | V  | General Standards | Additional Standards |
|----------------------------------------------------------------------------------|----|----|--------|-----|----|-------------------|----------------------|
| <b>Industrial Manufacturing &amp; Processing</b>                                 |    |    |        |     |    |                   |                      |
| Acid or heavy chemical manufacturer, processing or storage                       | NP | NP | NP     | PC  | NP |                   |                      |
| Bituminous concrete mixing and recycling plants                                  | NP | NP | NP     | PC  | NP |                   |                      |
| Cement or Lime Manufacture                                                       | NP | NP | NP     | PC  | NP |                   |                      |
| Commercial Sawmills                                                              | NP | NP | NP     | PC  | NP |                   |                      |
| Concrete and ceramic products manufacture, including ready mixed concrete plants | NP | NP | NP     | PC  | NP |                   |                      |
| Explosive manufacture or storage                                                 | NP | NP | NP     | PC  | NP |                   |                      |
| Foundries and/or casting facilities                                              | NP | NP | NP     | PC  | NP |                   |                      |
| Garbage or dead animal reduction or processing                                   | NP | NP | NP     | PC  | NP |                   |                      |
| Jails and Prisons                                                                | NP | NP | NP     | PC  | NP |                   | Sec. 8.7             |
| Mineral extraction, mineral processing                                           | NP | NP | NP     | PC  | NP |                   |                      |
| Petroleum products refining or storage                                           | NP | NP | NP     | PC  | NP |                   | Sec. 8.11            |
| <b>Adult Uses</b>                                                                |    |    |        |     |    |                   |                      |
| Adult Uses                                                                       | NP | NP | NP     | P   | NP |                   | Sec. 8.1             |
| <b>Recreational Uses</b>                                                         |    |    |        |     |    |                   |                      |
| Hunting, Shooting, Archery and Fishing Clubs, public or private                  | P  | NP | NP     | NP  | NP |                   | Sec. 8.8             |
| <b>Commercial Uses</b>                                                           |    |    |        |     |    |                   |                      |
| Antique Shop                                                                     | NP | NP | P      | P   | PC |                   |                      |
| ATM                                                                              | NP | NP | P      | P   | PC |                   |                      |
| Branch Bank                                                                      | NP | NP | P      | P   | PC |                   |                      |
| Barber/Beauty Shop, Limited                                                      | NP | NP | P      | P   | PC |                   |                      |
| Bed and Breakfast                                                                | P  | NP | NP     | NP  | PC |                   | Sec. 8.3             |
| Commercial Uses                                                                  | *  | ** | P      | P   | *  |                   | Sec. 8.9             |
| Country Inn                                                                      | NP | NP | P      | P   | PC |                   |                      |
| Kennel                                                                           | P  | NP | P      | P   | NP |                   | Sec. 8.4             |
| Dry Cleaners                                                                     | NP | NP | P      | P   | PC |                   |                      |
| Florist                                                                          | NP | NP | P      | P   | PC |                   |                      |
| Medical/Dental/Optical Office, Small                                             | NP | NP | P      | P   | P  |                   |                      |
| Non/Not for Profit Commercial Uses                                               | NP | NP | P      | P   | NP |                   |                      |
| Non-Profit Community Centers                                                     | P  | NP | P      | P   | NP |                   |                      |
| Restaurant, Fast Food, Limited                                                   | NP | NP | P      | P   | PC |                   |                      |
| Restaurant, Limited                                                              | NP | NP | P      | P   | PC |                   |                      |
| Retail Food Store, Limited                                                       | NP | NP | P      | P   | PC |                   |                      |
| Veterinary Services                                                              | P  | NP | P      | P   | NP |                   | Sec. 8.x             |
| Video Rental Stores                                                              | NP | NP | P      | P   | PC |                   |                      |
| Wireless telecommunications facilities                                           | P  | PC | PC     | P   | PC | 4B                |                      |

Principal Permitted Uses Table (continued)

| Land Use                                                                                          | R | RG | R-LI-C | I-C | V  | General Standards | Additional Standards |
|---------------------------------------------------------------------------------------------------|---|----|--------|-----|----|-------------------|----------------------|
| <b>Agricultural Uses</b>                                                                          |   |    |        |     |    |                   |                      |
| Agricultural Repair Center                                                                        | P | NP | P      | P   | NP |                   |                      |
| Agricultural Tourism                                                                              | P | NP | P      | P   | NP |                   |                      |
| Agricultural Uses as defined in Article 2                                                         | P | P  | P      | P   | P  |                   |                      |
| Farm Brewery or Winery                                                                            | P | NP | P      | P   | NP |                   | Sec. 8.5             |
| Farm Market                                                                                       | P | NP | P      | P   | NP |                   | Sec. 8.6             |
| Farm Vacation Enterprise                                                                          | P | NP | P      | P   | NP |                   |                      |
| Feed and/or Farm Supply Center                                                                    | P | NP | P      | P   | NP |                   |                      |
| Horticultural Nurseries and Commercial Greenhouses                                                | P | NP | P      | P   | NP |                   |                      |
| Landscaping Business                                                                              | P | NP | P      | P   | NP |                   |                      |
| Rental of Existing Farm Building for Commercial Storage (structure must have existed for 5 years) | P | NP | P      | P   | NP |                   |                      |
| <b>Accessory Uses</b>                                                                             |   |    |        |     |    |                   |                      |
| Accessory Uses                                                                                    | P | P  | P      | P   | P  |                   |                      |

P = Permitted use

NP = Not permitted use

PC = Use permitted conditionally subject to requirements of district

\* = Limited permitted uses

\*\* = Accessory use to a planned residential community



JEFFERSON COUNTY COMMISSION

OFFICES WILL BE CLOSED

MONDAY, JUNE 20, 2011

IN ORDER TO OBSERVE

WEST VIRGINIA DAY.

RECEIVED

JUN 02 2011

JEFFERSON COUNTY COMMISSION

# Impact Fee Status Report May 2011

Department of Capital Planning and Management/Office of Impact Fees

## Summary

Date Range: Monday 02 through Tuesday 31 May 2011

Report Date: 01 June 2011.

Process Number Range: 1100056 - 1100062

Total Applications: 7

Total Non-Exempt: 5

*Of which:*

Commercial: 0

Residential: 5

*Of which:*

County: 2

Municipal: 3

Total Exempt: 2

*Of which:*

Commercial: 0

Residential: 2

*Of which:*

County: 1

Municipal: 1

Tables 1 through 7 summarize impact fee processing for the month of May 2011:

**Table 1. Form 100 Tallies**

|                        | Exempt | Residential Applications | Commercial Applications | Total       |
|------------------------|--------|--------------------------|-------------------------|-------------|
| 1-31 May 2011          | 2      | 5                        | 0                       |             |
| Fees collected         |        | \$51,494.00              |                         | \$51,494.00 |
| <i>Of which</i>        |        |                          |                         |             |
| School Impact Fee      |        | \$45,432.00              |                         | \$45,432.00 |
| Law Enforcement Fee    |        | \$262.00                 |                         | \$262.00    |
| Parks & Recreation Fee |        | \$3,008.00               |                         | \$3,008.00  |
| Fire & EMS Fee         |        | \$2,792.00               |                         | \$2,792.00  |

**Table 2. Financial Data – Department of Impact Fees General Account (3111776)**

| Description                                                          | Amount        |
|----------------------------------------------------------------------|---------------|
| Opening Statement Balance (1 May 2011)                               | \$94,764.31   |
| May Deposits (1 – 31 May 2011)                                       | \$51,494.00   |
| Interest Earned (31 May 11)                                          | \$52.86       |
| School Apr Transactions (withdraws via transfer on 10 May 2010)      | (\$82,375.34) |
| Law Apr Transactions (withdraws via transfer on 10 May 2010)         | (\$1,977.69)  |
| Parks & Rec Apr Transactions (withdraws via transfer on 10 May 2010) | (\$5,359.06)  |
| Fire & EMS Apr Transactions (withdraws via transfer on 10 May 2010)  | (\$5,052.22)  |
| Ending Statement Balance 31 May 2011)                                | \$51,546.86   |
| <i>Outstanding Credits (deposits through 01 June 2011)</i>           | <i>0.00</i>   |

**Table 3. Financial Data – School Impact Fee Account (3107582)**

| Description                                               | Amount         |
|-----------------------------------------------------------|----------------|
| Opening Balance (1 May 2011)                              | \$1,650,018.41 |
| Interest Earned (31 May 2011)                             | \$1,451.04     |
| April Transactions (deposits via transfer on 10 May 2011) | \$82,375.34    |
| Ending Balance (31 May 2011)                              | \$1,733,844.79 |

**Table 4. Financial Data – Law Enforcement Impact Fee Account (3120120)**

| Description                                               | Amount      |
|-----------------------------------------------------------|-------------|
| Opening Balance (1 May 2011)                              | \$44,980.31 |
| Interest Earned (31 May 2011)                             | \$39.40     |
| April Transactions (deposits via transfer on 10 May 2011) | \$1,977.69  |
| Ending Balance (31 May 2011)                              | \$46,997.40 |

**Table 5. Financial Data – Parks & Recreation Impact Fee Account (3122808)**

| Description                                               | Amount       |
|-----------------------------------------------------------|--------------|
| Opening Balance (1 May 2011)                              | \$219,108.38 |
| Interest Earned (31 May 2011)                             | \$189.32     |
| April Transactions (deposits via transfer on 10 May 2011) | \$5,359.06   |
| Ending Balance (31 May 2011)                              | \$224,656.76 |

**Table 6. Financial Data – Fire & EMS Impact Fee Account (3122816)**

| Description                                               | Amount       |
|-----------------------------------------------------------|--------------|
| Opening Balance (1 May 2011)                              | \$416,016.00 |
| Interest Earned (31 May 2011)                             | \$356.37     |
| April Transactions (deposits via transfer on 10 May 2011) | \$5,052.22   |
| Ending Balance (31 May 2011)                              | \$421,424.59 |

**Table 7. Total Impact Fees as of 01 June 2011 /1**

| Description                               | Amount                |
|-------------------------------------------|-----------------------|
| Department of Impact Fees General Account | \$51,546.86           |
| School Impact Fee Account                 | \$1,733,844.79        |
| Law Enforcement Fee Account               | \$46,997.40           |
| Parks & Recreation Impact Fee Account     | \$224,656.76          |
| Fire & EMS Impact Fee Account             | \$421,424.59          |
| <b>Total</b>                              | <b>\$2,478,470.40</b> |

Notes:

/1 These values represent both impact fees collected and interest earned. The general account includes the outstanding credits listed in table 2 and outstanding debits, if any, listed in tables 3-6.

# Form 100 Transaction Summary

Jefferson County Government – Department of Impact Fees

Applications with IFC Signature Dates/Form 190 Processing Dates between 01 and 31 May 2011

| Process Number | Application Date | Last Name     | First Name  | Tax District    | Deed | Page | Tax Parcel | Impact Fee | Agreement Date | Exemption Reason                            |
|----------------|------------------|---------------|-------------|-----------------|------|------|------------|------------|----------------|---------------------------------------------|
| 1100059        | 05/16/2011       | McKinney, Jr. | Waitman     | 08 Ranson Corp  | 1023 | 138  | 3 118      | \$0.00     | 05/16/2011     | Replacement of habitable DU with another DU |
| 1100062        | 05/27/2011       |               | Mockingbird | 02 Charles Town | 481  | 619  | 2 21       | \$0.00     | 05/27/2011     | Replacement of habitable DU with another DU |

Category Count: 2

Category Total \$0.00

### Non-Exempt Applications

|         |            |  |          |                 |      |     |       |             |            |                     |
|---------|------------|--|----------|-----------------|------|-----|-------|-------------|------------|---------------------|
| 1100056 | 05/04/2011 |  | Builders | 08 Ranson Corp  | 1053 | 304 | 7 42  | \$9,668.00  | 05/04/2011 | Not in Fee District |
| 1100057 | 05/06/2011 |  | Dan Ryan | 08 Ranson Corp  | 0    | 0   | 8 1.2 | \$12,808.00 | 05/06/2011 | N/A                 |
| 1100058 | 05/06/2011 |  | Dan Ryan | 02 Charles Town | 1018 | 71  | 6A 50 | \$13,070.00 | 05/06/2011 | N/A                 |
| 1100060 | 05/17/2011 |  | Dan Ryan | 03 Charles Town | .    | .   | 3 10  | \$12,808.00 | 05/17/2011 | Not in Fee District |
| 1100061 | 05/18/2011 |  | Builders | 08 Ranson Corp  | 1053 | 304 | 7 42  | \$3,140.00  | 05/18/2011 | Not in Fee District |

Category Count: 5

Category Total \$51,494.00

Grand Total \$51,494.00

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

COPY

F. Mark Schiavone  
Director  
Impact Fee Coordinator

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

MEMORANDUM

TO: Tim Boyde, Vivian Fields, and Teresa Hendricks  
FROM: F. Mark Schiavone *ms*  
DATE: Wednesday, 01 June 2011  
SUBJECT: **Transfer of Funds from Office of Impact Fees General Account to Sheriff's School Impact Fee Account.**

Attached please find Office of Impact Fees Form 655 which documents the transfer of impact fee funds from the Office of Impact Fees General Account (Bank of Charles Town account 3111776) to the **Sheriff of Jefferson County School Impact Fee Account (Bank of Charles Town account 3107582)** and an invoice to serve as the bill head for the transfer. This transfer is for Impact Fees collected by the Office of Impact Fees for the month of May 2011.

This transfer consists of two components:

- Impact Fee Process Numbers **1100056** through **1100062**, inclusive. Within this range there were 5 non-exempt impact fee payments. This amounts to **\$45,432.00**.
- Interest earned by the Office of Impact Fees General Account in May 2011 amounts to **\$52.86**, of which **\$46.52** is attributed to fees collected for School.

As per the attached invoice, the total amount of this transfer is **\$45,478.52**.

Check # 803

RECEIVED  
JUN 02 2011  
JEFFERSON COUNTY COMMISSION

# Jefferson County Commission

P.O. Box 250  
Charles Town, WV 25414

# Invoice

Number: 11021

Date: 6/1/2011

**Bill To:**

Department of Capital Planning and Management  
114 E. Washington Street  
Charles Town, WV 25414

**Pay To:**

Jefferson County Sheriff  
102 Industrial Blvd.  
Suite 100  
Kearneysville, WV 25430

**P.O. Number**

0

**Vendor Number**

| Dept./Line<br>Item # Charged | Description                                                                                                                                                                                           | Amount             |
|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
|                              | Impact Fee payments collected for month of May 2011 into the Office of Impact Fees General Account (3111776) to be paid to the Sheriff of Jefferson County School Impact Fees Bank Account (3107582). | \$45,432.00        |
|                              | Interest earned by the Office of Impact Fees General Account May 2011.                                                                                                                                | \$46.52            |
|                              | Impact Fee Process Numbers 1100056 through 1100062, inclusive. Within this range, there were 5 non-exempt impact fee payments.                                                                        |                    |
| <b>Total:</b>                |                                                                                                                                                                                                       | <b>\$45,478.52</b> |

Notes/Comments: Transfer of funds into School Impact Fee Account (3107582).



**Account Withdraws**  
Department of Impact Fees - Jefferson County Government

Account 3111776

Schools

Check Number 803

Trace 20110601:38700.07

Date 6/1/2011 Series 1

Recipient Sheriff of Jefferson County

Amount \$45,432.00

Account 3107582

Signature 1 Patsy Noland

Signature 2 Bobby Shirley

Signature 3 Jennifer Maghan

Notes:

| Deposit Date | Process Number | Ordinance | Enact Date | Amount      |
|--------------|----------------|-----------|------------|-------------|
| 5/5/2011     | 1100056        | 2003-3    | 11/24/2005 | \$8,560.00  |
| 5/6/2011     | 1100057        | 2003-3    | 11/24/2005 | \$11,358.00 |
| 5/6/2011     | 1100058        | 2003-3    | 11/24/2005 | \$11,358.00 |
| 5/18/2011    | 1100060        | 2003-3    | 11/24/2005 | \$11,358.00 |
| 5/19/2011    | 1100061        | 2003-3    | 11/24/2005 | \$2,798.00  |

**Total amount for this withdraw \$45,432.00**

**Total amount for this account \$45,432.00**

**Total amount all accounts \$45,432.00**

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

COPY

F. Mark Schiavone  
Director  
Impact Fee Coordinator

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

MEMORANDUM

TO: Tim Boyde, Vivian Fields, and Teresa Hendricks  
FROM: F. Mark Schiavone *ms*  
DATE: Wednesday, 01 June 2011  
SUBJECT: **Transfer of Funds from Office of Impact Fees General Account to Sheriff's Law Enforcement Impact Fee Account.**

Attached please find Office of Impact Fees Form 655 which documents the transfer of impact fee funds from the Office of Impact Fees General Account (Bank of Charles Town account 3111776) to the **Sheriff of Jefferson County Law Enforcement Impact Fee Account (Bank of Charles Town account 3120120)** and an invoice to serve as the bill head for the transfer. This transfer is for Impact Fees collected by the Office of Impact Fees for the month of May 2011.

This transfer consists of two components:

- Impact Fee Process Numbers **1100056** through **1100062**, inclusive. Within this range there were 1 non-exempt impact fee payments. This amounts to **\$262.00**.
- Interest earned by the Office of Impact Fees General Account in May 2011 amounts to **\$52.86**, of which **\$0.53** is attributed to fees collected for Law Enforcement.

As per the attached invoice, the total amount of this transfer is **\$262.53**.

Check # 804

RECEIVED

JUN 02 2011

JEFFERSON COUNTY COMMISSION

**Jefferson County Commission**

P.O. Box 250  
Charles Town, WV 25414

**Invoice**

**Number:** 11022

**Date:** 6/1/2011

**Bill To:**

Department of Capital Planning and Management  
114 E. Washington Street  
Charles Town, WV 25414

**Pay To:**

Jefferson County Sheriff  
102 Industrial Blvd.  
Suite 100  
Kearneysville, WV 25430

**P.O. Number**

0

**Vendor Number**

**Dept./Line**

**Item # Charged**

**Description**

**Amount**

|               |                                                                                                                                                                                                                |                 |
|---------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
|               | Impact Fee payments collected for month of May 2011 into the Office of Impact Fees General Account (3111776) to be paid to the Sheriff of Jefferson County Law Enforcement Impact Fees Bank Account (3120120). | \$262.00        |
|               | Interest earned by the Office of Impact Fees General Account May 2011.                                                                                                                                         | \$0.53          |
|               | Impact Fee Process Numbers 1100056 through 1100062, inclusive. Within this range, there was 1 non-exempt impact fee payments.                                                                                  |                 |
| <b>Total:</b> |                                                                                                                                                                                                                | <b>\$262.53</b> |

**Notes/Comments:** Transfer of funds into Law Enforcement Impact Fee Account (3120120).



**Account Withdraws**  
 Department of Impact Fees - Jefferson County Government

Account 3111776

Law Enforcement

Check Number 804

Trace 20110601:38790.88

Date 6/1/2011 Series 2

Recipient Sheriff of Jefferson County  
 Amount \$262.00

Account 3120120  
 Signature 1 Patsy Noland  
 Signature 2 Bobby Shirley  
 Signature 3 Jennifer Maghan

Notes:

| Deposit Date | Process Number | Ordinance | Enact Date | Amount   |
|--------------|----------------|-----------|------------|----------|
| 5/5/2011     | 1100056        | 2005-1    | 3/22/2005  | \$0.00   |
| 5/6/2011     | 1100057        | 2005-1    | 3/22/2005  | \$0.00   |
| 5/6/2011     | 1100058        | 2005-1    | 3/22/2005  | \$262.00 |
| 5/18/2011    | 1100060        | 2005-1    | 3/22/2005  | \$0.00   |
| 5/19/2011    | 1100061        | 2005-1    | 3/22/2005  | \$0.00   |

Total amount for this withdraw \$262.00

Total amount for this account \$262.00

Total amount all accounts \$262.00

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

COPY

F. Mark Schiavone  
Director  
Impact Fee Coordinator

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

MEMORANDUM

TO: Tim Boyde, Vivian Fields, and Teresa Hendricks  
FROM: F. Mark Schiavone *ms*  
DATE: Wednesday, 01 June 2011  
SUBJECT: **Transfer of Funds from Office of Impact Fees General Account to Sheriff's Parks & Recreation Impact Fee Account.**

Attached please find Office of Impact Fees Form 655 which documents the transfer of impact fee funds from the Office of Impact Fees General Account (Bank of Charles Town account 3111776) to the **Sheriff of Jefferson County Parks & Recreation Impact Fee Account (Bank of Charles Town account 3122808)** and an invoice to serve as the bill head for the transfer. This transfer is for Impact Fees collected by the Office of Impact Fees for the month of May 2011.

This transfer consists of two components:

- Impact Fee Process Numbers **1100056** through **1100062**, inclusive. Within this range there were 5 non-exempt impact fee payments. This amounts to **\$3,008.00**.
- Interest earned by the Office of Impact Fees General Account in May 2011 amounts to **\$52.86**, of which **\$3.17** is attributed to fees collected for Parks & Recreation.

**As per the attached invoice, the total amount of this transfer is \$3,011.17.**

**Check # 805**

**Jefferson County Commission**

P.O. Box 250  
Charles Town, WV 25414

**Invoice**

Number: 11023

Date: 6/1/2011

**Bill To:**

Department of Capital Planning and Management  
114 E. Washington Street  
Charles Town, WV 25414

**Pay To:**

Jefferson County Sheriff  
102 Industrial Blvd.  
Suite 100  
Kearneysville, WV 25430

**P.O. Number**

**Vendor Number**

0

| Dept./Line<br>Item # Charged | Description                                                                                                                                                                                                       | Amount            |
|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
|                              | Impact Fee payments collected for month of May 2011 into the Office of Impact Fees General Account (3111776) to be paid to the Sheriff of Jefferson County Parks & Recreation Impact Fees Bank Account (3122808). | \$3,008.00        |
|                              | Interest earned by the Office of Impact Fees General Account May 2011.                                                                                                                                            | \$3.17            |
|                              | Impact Fee Process Numbers 1100056 through 1100062, inclusive. Within this range, there were 5 non-exempt impact fee payments.                                                                                    |                   |
| <b>Total:</b>                |                                                                                                                                                                                                                   | <b>\$3,011.17</b> |

Notes/Comments: Transfer of funds into Parks & Recreation Impact Fee Account (3122808).



**Account Withdraws**  
 Department of Impact Fees - Jefferson County Government

Account 3111776

Parks & Rec

Check Number 805

Trace 20110601:38829.02

Date 6/1/2011 Series 3

Recipient Sheriff of Jefferson County

Amount \$3,008.00

Account 3122808

Signature 1 Patsy Noland

Signature 2 Bobby Shirley

Signature 3 Jennifer Maghan

Notes:

| Deposit Date                          | Process Number | Ordinance | Enact Date | Amount            |
|---------------------------------------|----------------|-----------|------------|-------------------|
| 5/5/2011                              | 1100056        | 2005-2    | 5/12/2005  | \$575.00          |
| 5/6/2011                              | 1100057        | 2005-2    | 5/12/2005  | \$752.00          |
| 5/6/2011                              | 1100058        | 2005-2    | 5/12/2005  | \$752.00          |
| 5/18/2011                             | 1100060        | 2005-2    | 5/12/2005  | \$752.00          |
| 5/19/2011                             | 1100061        | 2005-2    | 5/12/2005  | \$177.00          |
| <b>Total amount for this withdraw</b> |                |           |            | <b>\$3,008.00</b> |
| <b>Total amount for this account</b>  |                |           |            | <b>\$3,008.00</b> |
| <b>Total amount all accounts</b>      |                |           |            | <b>\$3,008.00</b> |

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

COPY

F. Mark Schiavone  
Director  
Impact Fee Coordinator

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

MEMORANDUM

TO: Tim Boyde, Vivian Fields, and Teresa Hendricks  
FROM: F. Mark Schiavone *ms*  
DATE: Wednesday, 01 June 2011  
SUBJECT: **Transfer of Funds from Office of Impact Fees General Account to Sheriff's Fire & EMS Impact Fee Account.**

Attached please find Office of Impact Fees Form 655 which documents the transfer of impact fee funds from the Office of Impact Fees General Account (Bank of Charles Town account 3111776) to the **Sheriff of Jefferson County Fire & EMS Impact Fee Account (Bank of Charles Town account 3122816)** and an invoice to serve as the bill head for the transfer. This transfer is for Impact Fees collected by the Office of Impact Fees for the month of May 2011.

This transfer consists of two components:

- Impact Fee Process Numbers **1100056** through **1100062**, inclusive. Within this range there were 5 non-exempt impact fee payments. This amounts to **\$2,792.00**.
- Interest earned by the Office of Impact Fees General Account in May 2011 amounts to **\$52.86**, of which **\$2.64** is attributed to fees collected for Fire & EMS.

As per the attached invoice, the total amount of this transfer is **\$2,794.64**.

Check # 806

RECEIVED

JUN 02 2011

JEFFERSON COUNTY COMMISSION

# Jefferson County Commission

P.O. Box 250  
Charles Town, WV 25414

# Invoice

Number: 11024

Date: 6/1/2011

**Bill To:**

Department of Capital Planning and Management  
114 E. Washington Street  
Charles Town, WV 25414

**Pay To:**

Jefferson County Sheriff  
102 Industrial Blvd.  
Suite 100  
Kearneysville, WV 25430

**P.O. Number**

0

**Vendor Number**

**Dept./Line**

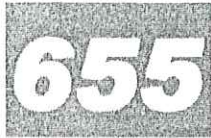
**Item # Charged**

**Description**

**Amount**

|               |                                                                                                                                                                                                           |                   |
|---------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
|               | Impact Fee payments collected for month of May 2011 into the Office of Impact Fees General Account (3111776) to be paid to the Sheriff of Jefferson County Fire & EMS Impact Fees Bank Account (3122816). | \$2,792.00        |
|               | Interest earned by the Office of Impact Fees General Account May 2011.                                                                                                                                    | \$2.64            |
|               | Impact Fee Process Numbers 1100056 through 1100062, inclusive. Within this range, there were 5 non-exempt impact fee payments.                                                                            |                   |
| <b>Total:</b> |                                                                                                                                                                                                           | <b>\$2,794.64</b> |

**Notes/Comments:** Transfer of funds into Fire & EMS Impact Fee Account (3122816).



**Account Withdraws**  
 Department of Impact Fees - Jefferson County Government

Account 3111776

Fire & EMS

Check Number 806

Trace 20110601:38884.48

Date 6/1/2011 Series 4

Recipient Sheriff of Jefferson County

Amount \$2,792.00

Account 3122816

Signature 1 Patsy Noland

Signature 2 Bobby Shirley

Signature 3 Jennifer Maghan

Notes:

| Deposit Date | Process Number | Ordinance | Enact Date | Amount   |
|--------------|----------------|-----------|------------|----------|
| 5/5/2011     | 1100056        | 2005-3    | 5/12/2005  | \$533.00 |
| 5/6/2011     | 1100057        | 2005-3    | 5/12/2005  | \$698.00 |
| 5/6/2011     | 1100058        | 2005-3    | 5/12/2005  | \$698.00 |
| 5/18/2011    | 1100060        | 2005-3    | 5/12/2005  | \$698.00 |
| 5/19/2011    | 1100061        | 2005-3    | 5/12/2005  | \$165.00 |

**Total amount for this withdraw \$2,792.00**

**Total amount for this account \$2,792.00**

**Total amount all accounts \$2,792.00**

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

|                                                          |                             |
|----------------------------------------------------------|-----------------------------|
| <b>Week Ending Date</b>                                  | Week Ending<br>May 28, 2011 |
| <b>To be Deposited on:</b>                               | June 6, 2011                |
| <b>Amount Played</b>                                     | 74,506,194.87               |
| <b>Amount Won</b>                                        | 66,768,093.23               |
| <b>Amount Promo</b>                                      | 246,891.00                  |
| <b>MWAP Contribution</b>                                 | <u>0.00</u>                 |
| <b>Adjusted Gross Terminal Revenue</b>                   | <u>7,491,210.64</u>         |
| <b>Administrative Costs @ 4%</b>                         | 0.00                        |
| <b>Excess Lottery Fund @ 4%</b>                          | <u>299,648.43</u>           |
| <b>Net Terminal Revenue</b>                              | <u>7,191,562.21</u>         |
| <b>Surcharge @ 10%</b>                                   | 719,156.23                  |
| <b>State Share Excess @ 58%</b>                          | 417,110.61                  |
| <b>Track Share of Capital Reinvestment @ 42%</b>         | 302,045.62                  |
| <i>Track Share of Capital Reinvestment @ 42% - 96%</i>   | \$ 289,963.80               |
| <i>Track Share of Capital Reinvestment @ 42% - 4%</i>    | \$ 12,081.82                |
| <b>Adjusted Net Terminal Revenue</b>                     | <u>6,472,405.98</u>         |
| <b>Racetrack @ 46.50% / 42%</b>                          | 2,718,410.51                |
| <b>Lottery Fund @ 30% / 0%</b>                           | 0.00                        |
| <b>Excess Lottery Fund @ 0% / 41%</b>                    | 2,653,686.47                |
| <b>Race Track Purses @ 7% / 14% / 8%</b>                 | 517,792.48                  |
| <b>Workers' Compensation Debt Reduction @ 7%</b>         | 0.00                        |
| <b>Employee Pension Fund @ 1% / .5%</b>                  | 32,362.03                   |
| <b>Greyhound Development @ .75%</b>                      | 48,543.04                   |
| <b>Thoroughbred Development @ .75%</b>                   | 48,543.04                   |
| <b>Racing Commission @ 1%</b>                            | 64,724.06                   |
| <b>County/Municipality @ 2%</b>                          | 129,448.12                  |
| <b>3% Funds:</b>                                         |                             |
| <b>Tourism Promotion Fund @ 1.375%</b>                   | 88,995.58                   |
| <b>Development Office Promotion Fund @ .375%</b>         | 24,271.52                   |
| <b>Research Challenge Fund @ .5%</b>                     | 32,362.03                   |
| <b>Capitol Renovation and Improvement Fund @ .6875%</b>  | 44,497.79                   |
| <b>2004 Capitol Complex Parking Garage Fund @ .0625%</b> | 4,045.25                    |
| <b>1% Funds:</b>                                         |                             |
| <b>State Capitol Complex Parking Garage @ 1%</b>         | 0.00                        |
| <b>Cultural Facilities and Capitol Resources @ .5%</b>   | 0.00                        |
| <b>Capitol Dome and Capitol Improvements @ .5% / 1%</b>  | <u>64,724.06</u>            |
|                                                          | <u>6,472,405.98</u>         |

**WEST VIRGINIA LOTTERY**  
**First Benchmark**  
**Charles Town**  
**County / City Split**  
**Fiscal Year 2011**

Charles Town  
 Net Terminal Revenue \$ 45,603,174  
 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:                     |                              |                           |                      |                   |                           |                           |                  |                             |
| 07/10/10                         | \$ 205,731.64                | \$ 205,731.64             | \$ -                 | \$ -              | \$ -                      | \$ -                      | \$ -             | \$ -                        |
| 07/17/10                         | \$ 161,386.76                | \$ 161,386.76             | \$ -                 | \$ -              | \$ -                      | \$ -                      | \$ -             | \$ -                        |
| 07/24/10                         | \$ 160,368.28                | \$ 160,368.28             | \$ -                 | \$ -              | \$ -                      | \$ -                      | \$ -             | \$ -                        |
| 07/31/10                         | \$ 157,802.08                | \$ 157,802.08             | \$ -                 | \$ -              | \$ -                      | \$ -                      | \$ -             | \$ -                        |
| 08/07/10                         | \$ 161,617.82                | \$ 136,494.98             | \$ 25,122.84         | \$ 3,120.27       | \$ 8,682.45               | \$ 916.98                 | \$ 8,813.09      | \$ 3,590.05                 |
| 08/14/10                         | \$ 156,753.36                | \$ 78,376.68              | \$ 78,376.68         | \$ 9,734.38       | \$ 27,086.98              | \$ 2,860.75               | \$ 27,494.54     | \$ 11,200.03                |
| 08/21/10                         | \$ 152,398.04                | \$ 76,199.02              | \$ 76,199.02         | \$ 9,463.92       | \$ 26,334.38              | \$ 2,781.26               | \$ 26,730.62     | \$ 10,888.84                |
| 08/28/10                         | \$ 144,920.06                | \$ 72,460.03              | \$ 72,460.03         | \$ 8,999.54       | \$ 25,042.19              | \$ 2,644.79               | \$ 25,418.97     | \$ 10,354.54                |
| 09/04/10                         | \$ 152,725.68                | \$ 76,362.84              | \$ 76,362.84         | \$ 9,484.26       | \$ 26,391.00              | \$ 2,787.24               | \$ 26,788.09     | \$ 10,912.25                |
| 09/11/10                         | \$ 165,938.72                | \$ 82,969.36              | \$ 82,969.36         | \$ 10,304.79      | \$ 28,674.21              | \$ 3,028.39               | \$ 29,105.65     | \$ 11,856.32                |
| 09/18/10                         | \$ 135,277.56                | \$ 67,638.78              | \$ 67,638.78         | \$ 8,400.74       | \$ 23,375.96              | \$ 2,468.82               | \$ 23,727.68     | \$ 9,665.58                 |
| 09/25/10                         | \$ 140,870.12                | \$ 70,435.06              | \$ 70,435.06         | \$ 8,748.03       | \$ 24,342.36              | \$ 2,570.88               | \$ 24,708.62     | \$ 10,065.17                |
| 10/02/10                         | \$ 142,027.72                | \$ 71,013.86              | \$ 71,013.86         | \$ 8,819.92       | \$ 24,542.39              | \$ 2,592.01               | \$ 24,911.66     | \$ 10,147.88                |
| 10/09/10                         | \$ 138,623.00                | \$ 69,311.50              | \$ 69,311.50         | \$ 8,608.49       | \$ 23,954.06              | \$ 2,529.87               | \$ 24,314.47     | \$ 9,904.61                 |
| 10/16/10                         | \$ 150,469.24                | \$ 75,234.62              | \$ 75,234.62         | \$ 9,344.14       | \$ 26,001.08              | \$ 2,746.06               | \$ 26,392.31     | \$ 10,751.03                |
| 10/23/10                         | \$ 140,581.60                | \$ 70,290.80              | \$ 70,290.80         | \$ 8,730.12       | \$ 24,292.50              | \$ 2,565.61               | \$ 24,658.01     | \$ 10,044.56                |
| 10/30/10                         | \$ 131,230.08                | \$ 65,615.04              | \$ 65,615.04         | \$ 8,149.39       | \$ 22,676.56              | \$ 2,394.95               | \$ 23,017.75     | \$ 9,376.39                 |
| 11/06/10                         | \$ 122,675.24                | \$ 61,337.62              | \$ 61,337.62         | \$ 7,618.13       | \$ 21,198.28              | \$ 2,238.82               | \$ 21,517.24     | \$ 8,765.15                 |
| 11/13/10                         | \$ 129,190.56                | \$ 64,595.28              | \$ 64,595.28         | \$ 8,022.73       | \$ 22,324.13              | \$ 2,357.73               | \$ 22,660.02     | \$ 9,230.67                 |
| 11/20/10                         | \$ 112,020.16                | \$ 56,010.08              | \$ 56,010.08         | \$ 6,956.45       | \$ 19,357.08              | \$ 2,044.37               | \$ 19,648.34     | \$ 8,003.84                 |
| 11/27/10                         | \$ 142,341.80                | \$ 71,170.90              | \$ 71,170.90         | \$ 8,839.43       | \$ 24,596.66              | \$ 2,597.74               | \$ 24,966.75     | \$ 10,170.32                |
| 12/04/10                         | \$ 106,430.16                | \$ 53,215.08              | \$ 53,215.08         | \$ 6,609.31       | \$ 18,391.13              | \$ 1,942.35               | \$ 18,667.85     | \$ 7,604.44                 |
| 12/11/10                         | \$ 93,888.00                 | \$ 46,944.00              | \$ 46,944.00         | \$ 5,830.44       | \$ 16,223.85              | \$ 1,713.46               | \$ 16,467.95     | \$ 6,708.30                 |
| 12/18/10                         | \$ 84,153.52                 | \$ 42,076.76              | \$ 42,076.76         | \$ 5,225.93       | \$ 14,541.73              | \$ 1,535.80               | \$ 14,760.53     | \$ 6,012.77                 |
| 12/25/10                         | \$ 100,900.56                | \$ 50,450.28              | \$ 50,450.28         | \$ 6,265.92       | \$ 17,435.62              | \$ 1,841.44               | \$ 17,697.96     | \$ 7,209.35                 |
| 01/01/11                         | \$ 170,304.24                | \$ 85,152.12              | \$ 85,152.12         | \$ 10,575.89      | \$ 29,428.57              | \$ 3,108.06               | \$ 29,871.36     | \$ 12,168.24                |
| 01/08/11                         | \$ 108,602.60                | \$ 54,301.30              | \$ 54,301.30         | \$ 6,744.22       | \$ 18,766.53              | \$ 1,982.00               | \$ 19,048.89     | \$ 7,759.66                 |
| 01/15/11                         | \$ 108,011.80                | \$ 54,005.90              | \$ 54,005.90         | \$ 6,707.53       | \$ 18,664.44              | \$ 1,971.22               | \$ 18,945.27     | \$ 7,717.44                 |
| 01/22/11                         | \$ 121,849.48                | \$ 60,924.74              | \$ 60,924.74         | \$ 7,566.85       | \$ 21,055.59              | \$ 2,223.75               | \$ 21,372.40     | \$ 8,706.15                 |
| 01/29/11                         | \$ 96,073.88                 | \$ 48,036.94              | \$ 48,036.94         | \$ 5,966.19       | \$ 16,601.57              | \$ 1,753.35               | \$ 16,851.35     | \$ 6,864.48                 |
| 02/05/11                         | \$ 121,554.88                | \$ 60,777.44              | \$ 60,777.44         | \$ 7,548.56       | \$ 21,004.68              | \$ 2,218.38               | \$ 21,320.72     | \$ 8,685.09                 |
| 02/12/11                         | \$ 134,943.68                | \$ 67,471.84              | \$ 67,471.84         | \$ 8,380.00       | \$ 23,318.27              | \$ 2,462.72               | \$ 23,669.12     | \$ 9,641.73                 |
| 02/19/11                         | \$ 144,037.08                | \$ 72,018.54              | \$ 72,018.54         | \$ 8,944.70       | \$ 24,889.61              | \$ 2,628.68               | \$ 25,264.10     | \$ 10,291.45                |
| 02/26/11                         | \$ 151,088.04                | \$ 75,544.02              | \$ 75,544.02         | \$ 9,382.57       | \$ 26,108.01              | \$ 2,757.36               | \$ 26,500.84     | \$ 10,795.24                |
| 03/05/11                         | \$ 149,070.68                | \$ 74,535.34              | \$ 74,535.34         | \$ 9,257.29       | \$ 25,759.41              | \$ 2,720.54               | \$ 26,147.00     | \$ 10,651.10                |
| 03/12/11                         | \$ 133,958.96                | \$ 66,979.48              | \$ 66,979.48         | \$ 8,318.85       | \$ 23,148.11              | \$ 2,444.75               | \$ 23,496.40     | \$ 9,571.37                 |
| 03/19/11                         | \$ 146,226.52                | \$ 73,113.26              | \$ 73,113.26         | \$ 9,080.67       | \$ 25,267.94              | \$ 2,668.64               | \$ 25,648.13     | \$ 10,447.88                |
| 03/26/11                         | \$ 136,981.60                | \$ 68,490.80              | \$ 68,490.80         | \$ 8,506.56       | \$ 23,670.42              | \$ 2,499.91               | \$ 24,026.57     | \$ 9,787.34                 |
| 04/02/11                         | \$ 141,693.16                | \$ 70,846.58              | \$ 70,846.58         | \$ 8,799.15       | \$ 24,484.58              | \$ 2,585.90               | \$ 24,852.97     | \$ 10,123.98                |
| 04/09/11                         | \$ 134,153.56                | \$ 67,076.78              | \$ 67,076.78         | \$ 8,330.94       | \$ 23,181.74              | \$ 2,448.30               | \$ 23,530.53     | \$ 9,585.27                 |
| 04/16/11                         | \$ 129,397.12                | \$ 64,698.56              | \$ 64,698.56         | \$ 8,035.56       | \$ 22,359.82              | \$ 2,361.51               | \$ 22,696.25     | \$ 9,245.42                 |
| 04/23/11                         | \$ 135,348.28                | \$ 67,674.14              | \$ 67,674.14         | \$ 8,405.13       | \$ 23,388.18              | \$ 2,470.11               | \$ 23,740.09     | \$ 9,670.63                 |
| 04/30/11                         | \$ 133,615.00                | \$ 66,807.50              | \$ 66,807.50         | \$ 8,297.49       | \$ 23,088.67              | \$ 2,438.48               | \$ 23,436.07     | \$ 9,546.79                 |
| 05/07/11                         | \$ 132,759.48                | \$ 66,379.74              | \$ 66,379.74         | \$ 8,244.36       | \$ 22,940.84              | \$ 2,422.87               | \$ 23,286.01     | \$ 9,485.66                 |
| 05/14/11                         | \$ 133,399.52                | \$ 66,699.76              | \$ 66,699.76         | \$ 8,284.11       | \$ 23,051.44              | \$ 2,434.54               | \$ 23,398.27     | \$ 9,531.40                 |
| 05/21/11                         | \$ 126,420.88                | \$ 63,210.44              | \$ 63,210.44         | \$ 7,850.74       | \$ 21,845.53              | \$ 2,307.18               | \$ 22,174.22     | \$ 9,032.77                 |
| 05/28/11                         | \$ 129,448.12                | \$ 64,724.06              | \$ 64,724.06         | \$ 8,038.73       | \$ 22,368.64              | \$ 2,362.43               | \$ 22,705.19     | \$ 9,249.07                 |
| Subtotal                         | \$ 6,524,662.90              | \$ 3,718,363.19           | \$ 2,806,299.71      | \$ 348,542.42     | \$ 969,857.19             | \$ 102,430.00             | \$ 984,449.85    | \$ 401,020.25               |

Benchmark Goal @ 2% \$ 912,063.48

Remainder until 1% / 1% Split \$ -

VIDEO LOTTERY REPORT  
FY 2009

Table Game Revenues  
FY 2011

VIDEO LOTTERY REPORT  
FY 2009

| FY 2009    |            | FY 2010    |            | FY 2011           |            |
|------------|------------|------------|------------|-------------------|------------|
| Date       | Amount     | Date       | Amount     | Date              | Amount     |
| 7/5/2008 * | 169,912.56 | 7/4/2009 * | 128,262.42 | 7/3/2010          | 115,402.58 |
| 7/12/2008  | 176,592.38 | 7/11/2009  | 168,815.08 | 7/10/2010         | 205,731.64 |
| 7/19/2008  | 160,344.08 | 7/18/2009  | 160,652.98 | 7/17/2010         | 161,386.76 |
| 7/26/2008  | 162,982.74 | 7/25/2009  | 158,869.08 | 7/24/2010         | 160,368.28 |
| 8/2/2008   | 178,171.04 | 8/1/2009   | 174,493.08 | 7/31/2010         | 157,802.08 |
| 8/9/2008   | 123,538.04 | 8/8/2009   | 138,408.80 | 8/7/2010          | 136,494.98 |
| 8/16/2008  | 82,482.89  | 8/15/2009  | 81,222.14  | 8/14/2010         | 78,376.68  |
| 8/23/2008  | 76,426.18  | 8/22/2009  | 76,260.31  | 8/21/2010         | 76,199.02  |
| 8/30/2008  | 89,459.86  | 8/29/2009  | 80,472.92  | 8/28/2010         | 72,460.03  |
| 9/6/2008   | 91,644.46  | 9/5/2009   | 80,798.15  | 9/4/2010          | 76,362.84  |
| 9/13/2008  | 79,729.93  | 9/12/2009  | 86,286.92  | 9/11/2010         | 82,969.36  |
| 9/20/2008  | 71,269.36  | 9/19/2009  | 70,010.15  | 9/18/2010         | 67,638.78  |
| 9/27/2008  | 79,735.73  | 9/26/2009  | 69,316.87  | 9/25/2010         | 70,435.06  |
| 10/4/2008  | 75,186.22  | 10/3/2009  | 72,286.04  | 10/2/2010         | 71,013.86  |
| 10/11/2008 | 77,139.04  | 10/10/2009 | 69,650.63  | 10/9/2010         | 69,311.50  |
| 10/18/2008 | 80,668.26  | 10/17/2009 | 73,560.21  | 10/16/2010        | 75,234.62  |
| 10/25/2008 | 64,379.44  | 10/24/2009 | 67,581.66  | 10/23/2010        | 70,290.80  |
| 11/1/2008  | 68,352.42  | 10/31/2009 | 64,528.30  | 10/30/2010        | 65,615.04  |
| 11/8/2008  | 70,823.02  | 11/7/2009  | 63,741.59  | 11/6/2010         | 61,337.62  |
| 11/15/2008 | 65,565.50  | 11/14/2009 | 65,959.64  | 11/13/2010        | 64,595.28  |
| 11/22/2008 | 63,883.80  | 11/21/2009 | 59,547.05  | 11/20/2010        | 56,010.08  |
| 11/29/2008 | 69,850.12  | 11/28/2009 | 72,399.98  | 11/27/2010        | 71,170.90  |
| 12/6/2008  | 55,696.68  | 12/5/2009  | 51,006.51  | 12/4/2010         | 53,215.08  |
| 12/13/2008 | 60,178.04  | 12/12/2009 | 52,460.58  | 12/11/2010        | 46,944.00  |
| 12/20/2008 | 52,189.19  | 12/19/2009 | 32,834.39  | 12/18/2010        | 42,076.76  |
| 12/27/2008 | 72,205.91  | 12/26/2009 | 53,406.34  | 12/25/2010        | 50,450.28  |
| 1/3/2009   | 96,504.65  | 1/2/2010   | 92,980.40  | 1/1/2011          | 85,152.12  |
| 1/10/2009  | 53,286.62  | 1/9/2010   | 55,020.46  | 1/8/2011          | 54,301.30  |
|            |            |            |            | July/August, 2010 | 154,185.68 |
|            |            |            |            | September, 2010   | 94,247.84  |
|            |            |            |            | October, 2010     | 105,903.60 |
|            |            |            |            | November, 2010    | 108,717.67 |
|            |            |            |            | December, 2010    | 118,721.11 |

|               |           |           |           |           |           |            |
|---------------|-----------|-----------|-----------|-----------|-----------|------------|
| 1/17/2009     | 56,068.87 | 1/16/2010 | 60,551.28 | 1/15/2011 | 54,005.90 |            |
| 1/24/2009     | 71,474.63 | 1/23/2010 | 69,943.53 | 1/22/2011 | 60,924.74 |            |
| 1/31/2009     | 61,089.80 | 1/30/2010 | 48,527.75 | 1/29/2011 | 48,036.94 | 106,189.21 |
| 2/7/2009      | 83,539.63 | 2/6/2010  | 37,155.14 | 2/5/2011  | 60,777.44 |            |
| 2/14/2009     | 76,054.44 | 2/13/2010 | 44,334.00 | 2/12/2011 | 67,471.84 |            |
| 2/21/2009     | 91,838.41 | 2/20/2010 | 76,946.12 | 2/19/2011 | 72,018.54 |            |
| 2/28/2009     | 80,806.88 | 2/27/2010 | 72,024.40 | 2/26/2011 | 75,544.02 | 105,776.45 |
| 3/7/2009      | 48,837.13 | 3/6/2010  | 76,936.85 | 3/5/2011  | 74,535.34 |            |
| 3/14/2009     | 96,025.39 | 3/13/2010 | 71,007.37 | 3/12/2011 | 66,979.48 |            |
| 3/21/2009     | 79,002.82 | 3/20/2010 | 74,335.38 | 3/19/2011 | 73,113.26 |            |
| 3/28/2009     | 79,250.83 | 3/27/2010 | 69,941.88 | 3/26/2011 | 68,490.80 | 120,927.10 |
| 4/4/2009      | 75,968.30 | 4/3/2010  | 70,636.28 | 4/2/2011  | 70,846.58 |            |
| 4/11/2009     | 75,964.94 | 4/10/2010 | 69,692.79 | 4/9/2011  | 67,076.78 |            |
| 4/18/2009     | 80,598.22 | 4/17/2010 | 69,335.92 | 4/16/2011 | 64,698.56 |            |
| 4/25/2009     | 75,571.46 | 4/24/2010 | 68,714.11 | 4/23/2011 | 67,674.14 |            |
| 5/2/2009      | 73,957.05 | 5/1/2010  | 68,799.06 | 4/30/2011 | 66,807.50 | 130,654.61 |
| 5/9/2009      | 76,697.22 | 5/8/2010  | 67,403.54 | 5/7/2011  | 66,379.74 |            |
| 5/16/2009     | 71,925.70 | 5/15/2010 | 70,186.32 | 5/14/2011 | 66,699.76 |            |
| 5/23/2009     | 81,395.43 | 5/22/2010 | 64,695.71 | 5/21/2011 | 63,210.44 |            |
| 5/30/2009     | 82,161.55 | 5/29/2010 | 67,157.40 | 5/28/2011 | 64,724.06 |            |
| 6/6/2009      | 74,895.74 | 6/5/2010  | 77,371.80 |           |           |            |
| 6/13/2009     | 67,327.23 | 6/12/2010 | 66,106.29 |           |           |            |
| 6/20/2009     | 75,500.53 | 6/19/2010 | 64,888.48 |           |           |            |
| 6/27/2009     | 67,354.10 | 6/26/2010 | 63,950.29 |           |           |            |
| 6/30/2009 *** | 32,059.58 | 6/30/2010 | 29,667.19 |           |           |            |

|        |            |            |            |            |
|--------|------------|------------|------------|------------|
| TOTALS | 4403564.04 | 4041141.56 | 3718363.19 | 1045323.27 |
|--------|------------|------------|------------|------------|

RECEIVED

JUN 02 2011

JEFFERSON COUNTY COMMISSION

Christine Palank  
630 Shepherd Lane  
Shepherdstown, WV 25443  
304-283-3979  
chrispalank@hotmail.com

**Patricia A. Noland, President  
Jefferson County Commission  
P.O. Box 250  
124 E. Washington Street  
Charles Town, WV 25414**

Dear Commissioner,

On Thursday, May 19, 2011, I attended the Jefferson County Board of Zoning Appeals (BZA) hearing as a silent supporter of the hundreds of Shepherdstown residents who are adversely affected by the *Lowe's Products* industrial mulch plant. This big commercial plant is situated on 50 acres of "nonconforming" use surrounded by residential communities. I am writing this letter to apprise your members of what I and many other residents consider to be an appalling misuse of this public hearing. This was my first public hearing and I left the forum in disbelief of the "politics" that I had witnessed.

In brief, *Lowe's Products* requested and was granted a variance for property line setbacks and permission to construct a fence along their property line. What was quite shocking to me and others was that our current County Commissioner, Mr. Walt Pellish, spoke in defense of the requested variance. His impassioned speech was prefixed by his repeated statements that he spoke as a private citizen. He stated that he had been given a tour of the plant and he had concluded that the operation was clean, well-run and efficient. Obviously, if this were the case and the environmental hazards were not so apparent, there would not have been a need for this hearing. Regardless, I believe that Mr. Pellish's actions were inappropriate. As a County Commissioner, the presence of Mr. Pellish before the BZA could obviously influence or bias the decision of our Zoning Board, one which has individuals appointed (or removed) by the authority and power of the County Commissioners.

Thank you for your attention to this matter and I hope that this particular occurrence will enlighten your members (as it has for many of our county's residents) to what I consider to be the covert, but powerful, influences over zoning and ordinance decisions. I look forward to hearing from you about this issue and possible remedies to such problems.

Sincerely,

Christine Palank