

AGENDA
JEFFERSON COUNTY COMMISSION
THURSDAY, JUNE 30, 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

APPROVAL OF PURCHASE ORDERS

APPROVAL OF ACCOUNTS PAYABLE

PUBLIC COMMENT

PRESENTATIONS:

1. 9:45 a.m. Ralph Lorenzetti, Prosecuting Attorney
- Request approval to hire Cynthia Danner as Legal Assistant/Paralegal effective July 1, 2011 - Discussion/Action
2. 10:00 a.m. Roger Goodwin, Chief County Engineer
- Request the Commission to allow staff to call on any Letters of Credit that have not been renewed by Monday, July 11, 2011 - Discussion/Action
3. 10:15 a.m. Mike Mood, Chief, Middleway Volunteer Fire Dept.
- Request the Commission's endorsement for the Middleway Volunteer Fire Department to start an EMS Ambulance Transport Service - Discussion/Action
4. 10:30 a.m. **Break**
5. 10:45 a.m. Barbara Miller, Director of Homeland Security and Emergency Management
- Community Rating System of the National Flood Insurance Program
- Contract with CERVIS
- Memorandum of Understanding (MOU) between Jefferson County Department of Health and Jefferson County Homeland Security and Emergency Management/Jefferson County Commission
6. 11:00 a.m. Patricia Sanderson, Shenandoah Professional Center, LLC

- Request to accept petition to allow the Zoning Map Amendment Request for Shenandoah Professional Center, LLC from the current zoning of Residential Growth (RG) to Residential-Light Industrial-Commercial (RLC), with not further public hearings since it is not a requirement by WV State Code - Discussion/Action

7. 11:30 a.m. Interviews and Appointments to the following Agency, Boards, Commission or Committees:
 - Summit Point Library Committee
 - Jefferson County Parks and Recreation Commission
 - Jefferson County Board of Health
 - Eastern Panhandle Regional Planning and Development Council
 - Jefferson County Property Safety Enforcement Agency

8. 12:00 p.m. Joseph Sacchet, Director, Berkeley Jefferson Day Report Center
 - Request for matching funds from the Commission in the amount of \$36,940.00 for fiscal year 2011/2012 in connection with the WV Community Corrections Grant Program - Discussion/Action

NEW BUSINESS:

9. Request to approve renewal of Mutual Aid Agreement between City of Martinsburg and Jefferson County - Discussion/Action

10. Approval of acquisition of property to address the needs of the Prosecuting Attorney, the Courts and the County Commission (PN) - Discussion/Action

11. I move that the move the unencumbered balance remaining at the end of the current budget year (ending June 30, 2011) be allocated in the following manner: the first 1.6 million dollars be allocated to meet encumbrances existing in next year's budget, 75 percent of the remaining balance be placed in the Capital Fund and the final 25 percent be placed in the County Commission Fund (DM) - Discussion/Action

12. Review and discussion of draft of Commission policy to require public improvement projects in excess of \$100,000.00 to be consistent with an adopted Capital Improvement Plan (LW) - Discussion/Action

13. Mark Schiavone, Director, Capital Planning & Management
 - Approval of the FY 2012 Impact Fee Fundable Projects List - Discussion/Action

14. Approval of Resolution changing the Scope of Work for the Governor's Community Participation Grant Program for Camp Frame - Discussion/Action

15. Request approval of the Memorandum of Understanding between the Department of Homeland Security, Mount Weather Emergency Operations Center and Jefferson County Fire

and Rescue Association regarding Mutual Aid Assistance - Discussion/Action

16. Request approval of the Contract for Lease between the Jefferson County Commission and the State of West Virginia on behalf of the Bardane Public Health Center at Bardane - Discussion/Action

COUNTY ADMINISTRATOR REPORTS

COUNTY COMMISSION REPORTS

----- *Afternoon Session* -----

17. Senator Unger
Update on training with Jefferson County Board of Health and Non-Profits

ADJOURN

CORRESPONDENCE:

Letter from the Public Service Commission of West Virginia regarding the pending disbursement of \$168,327.17 of Wireless E-911 subscriber fees.

Letter to Commissioners from the Division of Public Transit regarding a Public and Stakeholder Meeting on July 12, 2011 to Update the Region IX Public Transit-Human Services Transportation Plan.

Pleading received from David Tabb d/b/a Shenandoah Sales and Service, Inc. - Supplemental Ground of Error In the Supreme Court of Appeals of West Virginia.

Letter received from Nance L. Briscoe of Charles Town, WV expressing her views on the easing of requirements of coal permits.

Letter received from the West Virginia State Auditor regarding the State Auditor's in-service training program for all County Commissioners on August 7-9, 2011.

Information received from the County Commissioners' Association of West Virginia regarding various topics.

Copy of the West Virginia "Ethics Reporter" for June, 2011 received from the WV Ethics Commission.

Notice that Jefferson County Offices will be closed on Monday, July 4, 2011 in observation of Independence Day.

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

Nichelle Hosby

From: Tim Boyde [tboyde@jeffersoncountywv.org]
Sent: Friday, June 24, 2011 2:49 PM
To: 'Nichelle Hosby'
Subject: FW: NEW EMPLOYEE

From: Ralph Lorenzetti [mailto:rlorenzetti@jeffersoncountywv.org]
Sent: Tuesday, June 21, 2011 11:37 AM
To: tboyde@jeffersoncountywv.org; mschiavone@jeffersoncountywv.org; sgran@jeffersoncountywv.org
Cc: bsims@jeffersoncountywv.org
Subject: NEW EMPLOYEE

Starting Friday, July 1, 2011, Cynthia Danner will be a new employee with the Prosecuting Attorney's Office. Ms. Danner will be a legal assistant/paralegal with an initial salary of \$29,690.42/yr Grade II-5. RALPH LORENZETTI

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| <p>Commission Office Use Only</p> <p>Date on Agenda: <u>6/30/11</u></p> <p>Appt Time or New Business: <u>10:10 am</u></p> |
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AGENDA REQUEST FORM

Name: Roger Goodwin

Department or Entity: Department of Engineering

Estimation of amount of time needed for appointment: 5 minutes

Date Requested – 1st Choice: June 30, 2011

Date Requested – 2nd Choice: _____

If a specific date is needed, please provide reason for specific date: This is the last date the County Commission meets prior to the July 15, 2011 deadline that Letter of Credits must be renewed by that would give Staff time to prepare the necessary paperwork to call any Letter of Credits that have not been renewed.

Subject: Letter of Credits securing construction bonds.

Please provide the County Commission with a description of your request or presentation, including any background information: Ask the Commission to allow Staff to call on any Letter of Credits that have not been renewed by Monday, July 11, 2011.

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): I authorize Staff to call on any Letter of Credits that are due that have not been renewed by the close of business on Monday, July 11, 2011.

Attachments:

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| <p>Commission Office Use Only</p> <p>Date on Agenda: <u>6/30/11</u></p> <p>Appt Time or New Business: <u>11:00 am</u></p> |
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AGENDA REQUEST FORM

Name: Mike Mood, Chief

Department or Entity: Middleway Volunteer Fire Dept.

Estimation of amount of time needed for appointment: 10 – 15 minutes

Date Requested – 1st Choice: 06-30-11

Date Requested – 2nd Choice: _____

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

Subject: **Endorsement to start EMS Ambulance Transport Service**

Please provide the County Commission with a description of your request or presentation, including any background information: **Request endorsement to start EMS Ambulance Transport Service previously endorsed by the Fire and Rescue Association, Jefferson County Emergency Services Agency and the fire companies.**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **Move to endorse Middleway Volunteer Fire Department in its endeavor to start an EMS Ambulance Transport Service, which project was previously endorsed by the Fire and Rescue Association, Jefferson County Emergency Services Agency and the fire companies.**

Attachments: **Copies of endorsements by the Fire and Rescue Association, Jefferson County Emergency Services Agency and the fire companies**

Debbie Stellato

From: u [speed990@aol.com]
Sent: Thursday, June 23, 2011 7:13 AM
To: laura@jeffersoncountywv.org; sandymcdonald@frontiernet.net
Subject: Agenda Item

Please place the Middleway Volunteer Fire Company, Inc on the Count Commission Agenda next week to request endorsement to start EMS, Ambulance, transport service. This request as already been endorsed by the Fire And Rescue Association, Jefferson County Emergency Services Agency and the fire companies.

Thanks
Mike Mood
MVFC Chief

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

Name: Barbara Miller

Department or Entity: Homeland Security and Emergency Management

Estimation of amount of time needed for appointment: 10-15 minutes –total for all subjects submitted.

Date Requested – 1st Choice: June 30, 2011

Date Requested – 2nd Choice: _____

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

Subject: **Community Rating System of the National Flood Insurance Program**

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

Jefferson County is a part of the Community Rating System of the National Flood Insurance Program. Since 2009, our residents have received a 5% discount on all flood insurance premiums because of the County’s participation in this program. Staff from JCHSEM and the Engineering Department have worked diligently to further get additional benefits for those who have to pay flood insurance in the unincorporated sections of Jefferson County. I am pleased to let you know that we have increased our rating to a Class 8, which will mean that our residents will enjoy a 10% discount to their flood insurance premiums.

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **No motion required, but I will need a signature on a modification cover sheet that needs to be submitted.**

Attachments: Copy of modification cover sheet

Community: Jefferson County, WV

230 MODIFICATION COVER PAGE

1. Community Name: Jefferson County State: WV BCEGS: 5/5
NFIP Number: 540065 FIRM Effective Date: 10/15/80
Population 50,000 Current FIRM Date: 12/15/09
Modification Date: County: Jefferson

2. Chief Executive Officer: CRS Coordinator:
Name: Ms. Patricia Noland Ms. Barbara J. Miller
Title: President, County Commission Homeland Security and Emergency
Management Director
Address: P. O. Box 250 28 Industrial Blvd., Suite 101
Charles Town, WV 25414 Kearneysville, WV 25430

Coordinator's Telephone: 304-728-3290 FAX: 304-728-3320
Coordinator's email: bmill@jeffersoncountywv.org

3. I hereby certify that Jefferson County is implementing the following activities (check the ones that apply). We are modifying or adding activities that have an "m" for modifying, "a" for addition, or "d" for dropping in the blank and have attached new activity worksheets and documentation. We will continue to implement these activities and will advise FEMA if any of them are not being conducted in accordance with this certification. We will cooperate with the ISO/CRS Specialist verification visit and will submit the documentation and annual recertification needed to validate our program.

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| <input checked="" type="checkbox"/> 310 Elevation Certificates | <input checked="" type="checkbox"/> 440 Flood Data Maintenance |
| <input checked="" type="checkbox"/> 320 Map Information | <input checked="" type="checkbox"/> 450 Stormwater Management |
| <input checked="" type="checkbox"/> 330 Outreach Projects | Repetitive Loss Requirements |
| <input checked="" type="checkbox"/> 340 Hazard Disclosure | <input type="checkbox"/> A 510 Floodplain Management Planning |
| <input checked="" type="checkbox"/> 350 Flood Protection Information | <input checked="" type="checkbox"/> 520 Acquisition and Relocation |
| <input type="checkbox"/> 360 Flood Protection Assistance | <input type="checkbox"/> 530 Flood Protection |
| <input type="checkbox"/> 410 Additional Flood Data | <input type="checkbox"/> 540 Drainage System Maintenance |
| <input checked="" type="checkbox"/> 420 Open Space Preservation | <input checked="" type="checkbox"/> 610 Flood Warning Program |
| <input checked="" type="checkbox"/> 430 Higher Regulatory Standards | <input type="checkbox"/> 620 Levee Safety |
| <input type="checkbox"/> 430LD Land Development Criteria | <input checked="" type="checkbox"/> 630 Dam Safety |

4. I hereby certify that to the best of my knowledge and belief, we are maintaining in force all flood insurance policies that have been required of us as a condition of federal financial assistance for insurable buildings owned by us and located in the Special Flood Hazard Area shown on our Flood Insurance Rate Map. I further understand that disaster assistance for public buildings in the Special Flood Hazard Area will be reduced by the amount of flood insurance available from the National Flood Insurance Program for the buildings, even if we do not have a policy.

5. Signed: _____ (Chief Executive Officer)

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

Name: Barbara Miller

Department or Entity: Homeland Security and Emergency Management

Estimation of amount of time needed for appointment: 10-15 minutes –total for all subjects submitted.

Date Requested – 1st Choice: June 30, 2011

Date Requested – 2nd Choice: _____

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

Subject: **Contract with CERVIS**

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

Jefferson County Homeland Security and Emergency Management received as a part of the Citizen Corps Grant, funding to pay for a web-based volunteer management system. The grant will pay the full amount of this contract. I did send this contract to Stephanie Grove for legal review.

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **I move that we approve the contract with CERVIS.**

Attachments: Contract



5.3 Voluntary Service Cancellation. A Customer may cancel this Service Agreement and use of the Service at anytime. To cancel CERVIS, Customer must complete and sign a Service Cancellation Form and must also pay any outstanding account balance immediately upon cancellation. The voluntary cancellation is not effective until CERVIS receives the signed and completed Service Cancellation Form via fax, e-mail, or in-person and all required payments have been made. All set-up fees and service fees are billed in advance and no paid set-up fees, service fees or credit balances from credits previously issued will be refunded, unless cancellation is within thirty (30) days of the Effective Date as described below in paragraph 5.4. If Customer wishes to obtain its Stored Data, the Customer is responsible for retrieving their Stored Data from the System prior to their cancellation. Customer grants CERVIS the right to destroy all Stored Data and information left in cancelled accounts. CERVIS will remove Customer's Stored Data from the System upon Customer cancellation.

5.4 Termination Within First Thirty (30) Days. Customer may opt to cancel their Service within thirty (30) days of the Effective Date and receive a full refund of the monthly or annual fees that they have previously paid. Customer will not receive a refund of their set-up fee. To cancel Service pursuant to this Section 5.4, CERVIS must receive the signed and completed Service Cancellation Form from Customer via fax, e-mail, or in-person no later than thirty (30) days from the Effective Date.

FEES AND PAYMENTS

6.1 Fees. Customer agrees to pay the Set-Up and Service Fees that they have selected on Schedule A.

6.2 Fee Changes. CERVIS will not, at any time, increase the monthly and annual fees to Customer. CERVIS reserves the right to change fees or increase fees for new Customers only.

6.3 Taxes. CERVIS shall charge Customer all federal, state and local taxes, if any, which are applicable by law to all fees and services. If Customer is exempt from paying federal, state or local taxes, the proper paperwork must be submitted to CERVIS within ninety (90) days of the Effective Date.

GENERAL PROVISIONS

7.1 Attachments. This Service Agreement is accompanied by the following attachments:

Schedule A - Fees and Payment Terms

Each attachment to this Service Agreement is incorporated herein by reference in its entirety, the same as though fully set forth at length herein.

7.2 Customer Reference. You agree that CERVIS may identify Customer as a recipient of services and use Customer logo in sales presentations, marketing materials, press releases, and for promotional purposes on www.cervistech.com.

7.3 Entire Service Agreement. This Service Agreement shall become effective only upon acceptance by an authorized representative of CERVIS. The Service Agreement supersedes all



prior Service Agreements and understandings, constitutes the entire Service Agreement, and may not be modified or terminated orally.

7.4 Governing Law. This Service Agreement shall be governed by the laws of the State of Colorado and the United States of America without regard to conflicts of law principles and without regard to the provisions of the 1980 United Nations Convention on the International Sale of Goods. Customer agrees that the venue for any dispute concerning the Service Agreement shall be in El Paso County, Colorado.

7.5 Force Majeure. Except for the obligation to make payments, neither party shall be deemed in default of this Service Agreement and shall be excused from liability for any failure to perform or delay in performance to the extent that performance is rendered impossible by strike, fire, explosion, flood, act of God, governmental acts or orders or restrictions, failure of suppliers (including telecommunications vendors), or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

7.6 Severability. In the event any provision of this Service Agreement or portion thereof is adjudged by any court of competent jurisdiction to be illegal, unenforceable, or invalid, that provision shall be stricken or modified to the minimum extent necessary so that this Service Agreement shall remain enforceable, and the remaining provisions of this Service Agreement shall remain in full force and effect. In addition, the illegal, unenforceable, or invalid provision shall be automatically amended so as to best accomplish the objectives of the illegal, unenforceable, or invalid provision within the limits of applicable law. All titles, headings and captions are placed in this Service Agreement merely as a matter of convenience and shall not affect the construction or interpretation of any of its provisions.

7.7 Notices. Any notices, requests or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by a widely recognized national overnight courier service or mailed by United States registered or certified mail, return receipt requested, postage prepaid, or by email or facsimile transmission, and addressed to each party at its address set forth below:

CERVIS:

PO Box 64181
Colorado Springs, CO 80962
Fax: 1-888-549-3601
Email: support@cervistech.com

Customer:

28 Industrial Blvd., Suite 101
Kearneysville, WV 25430
Fax: (304) 728-3320
Email: bmillier@jeffersoncountywv.org

Either party may change their notice address by notice to the other. Notices will be effective on the date delivered or on which delivery is attempted unsuccessfully if by national courier service or United States mail.



ARBITRATION

8.1 If there is any dispute or claim between a customer and CERVIS, the Customer agrees to submit the dispute for resolution to binding arbitration. Arbitration means that neither the Customer nor CERVIS can sue each other in court over a dispute and that an arbitrator will decide the dispute, not a judge or jury. The arbitrator shall be selected by CERVIS and unless mandated by applicable law, each customer shall bear their own attorney's fees and costs.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto, having been duly authorized, execute this Service Agreement on the date indicated:

CERVIS Technologies, LLC

Jefferson County Commission

Signature

Matthew Mayberry

Printed Name

Director of Sales

Title

Date

Signature

Patricia Noland

Printed Name

President

Title

Date



**SCHEDULE A
FEES AND PAYMENT TERMS**

Jefferson County Commission, P.O. Box 250, Charles Town, WV 25414 ("Customer") hereby orders and CERVIS Technologies, LLC ("CERVIS") agrees to provide the Service described in the Service Agreement to which this Schedule is attached pursuant to the terms and conditions in the Service Agreement agreed to by Customer and CERVIS on the ____ day of _____ 2011.

| Set-Up Fees |
|---|
| Choose your set-up from the options below. |
| <input type="checkbox"/> Basic Set-Up: \$100 |
| <input type="checkbox"/> Advanced Set-Up: \$300 |

| Premier Service Fees |
|--|
| Choose your plan from the options below. |
| <input type="checkbox"/> Monthly Plan: \$150/month |
| <input type="checkbox"/> Annual Plan: \$1,500/year |

Set-Up Fees. The Set-Up fee is due upon execution of this Agreement.

Monthly Service Fees. For customers choosing the Monthly Plan, payment is due on the first (1st) day of each month for Service that month, for so long as the Service Agreement is in effect.

Annual Service Fees. For customers choosing the Annual Plan, payment of the annual fee is due upon execution of the Service Agreement and on every annual anniversary thereof, for so long as the Service Agreement is in effect.

Late Fees. If any fees are not paid when due, a late fee of 10% of the late payment shall immediately be due and payable in addition to the amount due.

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

Name: Barbara Miller

Department or Entity: Homeland Security and Emergency Management

Estimation of amount of time needed for appointment: 10-15 minutes –total for all subjects submitted.

Date Requested – 1st Choice: June 30, 2011

Date Requested – 2nd Choice: _____

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

Subject: **Memorandum of Understanding (MOU) between Jefferson County Department of Health and Jefferson County Homeland Security and Emergency Management/Jefferson County Commission**

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

As a part of the Health Department's, Strategic National Stockpile (SNS) plan, under certain conditions, they will need to distribute medications to the County's entire population within 48 hours. The health department is operating Closed Dispensing Sites as a way to enable them to get meds distributed effectively and efficiently. Our Emergency Operations Center would be activated during this type of event and would have as many as 40 persons in the EOC during that time. When activated, the people in the EOC would be unable to leave to go to the health department or other POD site to receive medications. This MOU will enable Health Department staff to come to our site to distribute medicines to our EOC staff and for their families.

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **I move that we approve the MOU between the Health Department and the Jefferson County Homeland Security and Emergency Management/Jefferson County Commission.**

Attachments: Copy of MOU

MEMORANDUM OF UNDERSTANDING (MOU)

**Between
Jefferson County Health Department
And**

Jefferson County Commission/Jefferson County Homeland Security & Emergency Management

FOR OPERATING A CLOSED DISPENSING SITE

1. **Participants.** This MOU is made and entered into between the Jefferson County Health Department (JCHD) and Jefferson County Commission/Jefferson County Homeland Security & Emergency Management
2. **Purpose.** Distribution of Federal Strategic National Stockpile (SNS) assets (medical supplies, vaccine, etc.) through Closed Dispensing Sites can provide the fastest most convenient and least disruptive for dispensing among employees, employee family members and clients/patients/members of participating organizations. Closed Dispensing Sites are activated only in a mass dispensing situation (disaster, bioterrorism, pandemic event, etc.) is necessary. The undersigned parties have developed an understanding that will allow Jefferson County Health Department to manage and operate a Closed Dispensing Site to distribute SNS assets.
3. **Conditions.** The components of the Closed Dispensing Site Program are as follows:
 - Employing or contracting necessary credentialed medical staff
 - Joining (by signing the MOU)
 - Education and Training (JCHD will assist)
 - Planning (by creating a specific organization dispensing plan)
 - Activating (when determined necessary)
 - Exercising (participants are encouraged to participate in local exercises)
4. **Witness.** The undersigned representatives of their respective organizations have activated this MOU to become effective on the date of the latest signature and to remain in effect unless terminated in writing by either party with a 30 day notice of termination.

Signing on behalf of:

**Jefferson County Commission
Organization**

Organization Signature

Date

Patricia Noland, President
Printed Name and Title of Organization Representative

JCHD Signature

Printed Name and Title of Organization Representative

Date

JCHD Signature

Printed Name and Title of Organization Representative

Date



SERVICE AGREEMENT STANDARD TERMS & CONDITIONS

This SERVICE AGREEMENT, made as of the ____ day of _____ 2011 ("Effective Date"), is by and between Jefferson County Commission, P.O. Box 250, Charles Town, WV 25414 (hereinafter referred to as the "Customer") and CERVIS Technologies, LLC (hereinafter referred to as "CERVIS").

Now, therefore, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto for themselves, their lawful successors and assigns, hereby covenant and agree as follows:

WARRANTIES, EXCLUSIONS, REMEDIES AND LIMITATION OF LIABILITY

1.1 Warranty. CERVIS warrants that the online volunteer and event management service ("Service") functions in accordance with the specifications described on the CERVIS web site (the "Site").

1.2 Disclaimer. CERVIS does not warrant that the Service will be error free nor that Customer will be able to utilize the Service without experiencing periodic problems or interruptions. Except for the express limited warranties set forth herein and to the extent allowed by applicable law, CERVIS hereby disclaims all other warranties, whether expressed, implied, statutory or otherwise, regarding the Service, including the warranties of merchantability and fitness for a particular purpose.

1.3 Limitation on Liability. Regardless of the form of any claim(s) Customer may have under this Service Agreement or otherwise, CERVIS's aggregate liability for any damages to Customer, including negligence, shall not exceed the total amount of fees paid by the Customer to CERVIS for the Service during the prior twelve (12) months. CERVIS shall not be responsible for and will bear no liability for damages, including but not limited to consequential damages, arising from any use of the Service.

OWNERSHIP

2.1 Ownership. CERVIS has sole ownership of the Service described in this Service Agreement. CERVIS warrants that, to the best of the knowledge of CERVIS, the Service does not infringe any patent or copyright.

2.2 Effect of License. CERVIS shall retain title to and ownership of Service hereunder, including any modifications and enhancements thereto. Customer's license to use the Service pursuant to this Agreement does not create any ownership rights in the Service for Customer.

2.3 Data. Data stored within the Service by the Customer is the sole property of the Customer. Title and ownership of the volunteer data entered by the Customer remains with the Customer.

LICENSE

3.1 Use. The Customer (including all Customer-authorized users) is granted a non-exclusive license to use the Service according to the terms of this Service Agreement.



3.2 Restrictions. Customer shall not and shall not allow any third party to (i) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover, in any way, any source code, programming, algorithms, design structure, interoperability interfaces, concepts, construction methods, underlying ideas, of file formats of the Service or any files contained in the Service, for any purpose, (ii) remove any identification markings, including but not limited to copyright notices and Trademarks, from the Service, or (iii) make any modification or enhancement to the Software, or incorporate the Service, or any portions thereof, into or with any other software.

3.3 Stored Information. The Customer is solely responsible for the content or data stored in the Service ("Stored Data"). The Customer warrants the Stored Data will not contain content that is libelous, obscene, scandalous or defamatory, and that the Stored Data will not contain content that violates the personal, proprietary, or intellectual property rights of any third party.

AVAILABILITY

4.1 Availability. CERVIS uses commercially reasonable efforts to maintain availability of the Service twenty-four (24) hours per day, seven (7) days per week. However, scheduled and unscheduled interruptions may occur, and CERVIS does not warrant or guarantee totally uninterrupted availability of the Service. Scheduled maintenance is normally conducted during non-peak hours so as to cause minimum inconvenience to the Customer. Scheduled interruptions will be posted in advance. In the event that an unscheduled interruption occurs, CERVIS will apply reasonable resources to resolve the problem and return the Service to availability as soon as possible. During these scheduled and unscheduled interruptions, the Customer may be unable to use the Service.

4.2 Reliability. CERVIS uses commercially reasonable practices including redundancy and backup practices to minimize unscheduled interruptions of service and loss of Customer data. However, CERVIS does not warrant or guarantee that such events will not occur. CERVIS' sole and exclusive obligation for any loss or damage to the Stored Data is to use reasonable efforts to provide Customer with the most recent backup of the Stored Data.

TERM AND TERMINATION

5.1 Term of Service. Service will commence on the Effective Date for both the Monthly and Annual Plan. Service shall continue unless cancelled or terminated as provided in the Service Agreement.

5.2 Involuntary Service Termination or Suspension. CERVIS may, at its option, terminate or temporarily suspend a Customer's service if a Customer fails to make timely payments of service fees set forth in Schedule A. If payment has not been received within thirty (30) days after the due date, CERVIS will suspend Service until payment, including any late fees, have been received. CERVIS may terminate this Service Agreement, for any reason or for no reason, with thirty (30) days notice to Customer. If this Service Agreement is terminated for reasons other than Customer breach, Customer will receive a refund of any unused portion of their fees and Stored Data will be made available by CERVIS for Customer downloading for up to ninety (90) days after termination. After ninety (90) days CERVIS shall destroy remaining data in Customer's account.

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| <p>Commission Office Use Only</p> <p>Date on Agenda: <u>6/30/11</u></p> <p>Appt Time or New Business: <u>11:00</u> <u>Unlimited Business</u></p> |
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AGENDA REQUEST FORM

Name: Patricia Sanderson

Department or Entity: Shenandoah Professional Center, LLC

Estimation of amount of time needed for appointment: 30 mins

Date Requested – 1st Choice: June 30th, 2011

Date Requested – 2nd Choice: July 7th, 2011

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

Subject: **Request per attached letter dated 06/15/11 for Zoning Map Amendment Request from the current zoning of Residential Growth (RG) to Residential-Light Industrial-Commercial (RLC) to be heard before the County Commissioners and be voted upon, with no further public hearings.**

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

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **We would like the Commission to accept our petition to allow the Zoning Map Amendment Request for Shenandoah Professional Ctr, LLC, TM 9, Par 37 & 37.2 from the current zoning of Residential Growth (RG) to Residential-Light Industrial-Commercial (RLC), with no further public hearings since it is not a requirement by WV State Code.**

- Attachments: **1.) Formal Agenda Request Letter from Applicant – Ltr Date 06/15/11**
2.) Applicant Proposed Zoning Request Supporting Documents and Information (5) copies for CC.



June 15, 2011

Via Fax 304/725/7916

Jefferson County Commission
124 E. Washington Street
Charles Town, WV 25414

Attn: Mr. Tim Boyde
County Administrator

Re: Shenandoah Professional Center, LLC
TM 9, Parcel 37 & 37.2
DB 996, Pg 552, Lot 1&2

Subj: **Formal Petition for Zoning Map Amendment**
Current Zoning of Residential Growth (RG) to proposed zoning of
Residential-Light Industrial-Commercial (RLC)

Dear Mr. Boyde,

As you are aware, Potomac Professional Services, LLC, on behalf the property owner/Applicant, Shenandoah Professional Center, LLC (SPC) (Applicant), has diligently been pursuing a Zoning Map Amendment for a 9.6+/- acre parcel within Jefferson County, Harpers Ferry District, TM 9, Parcels 37 & 37.2 (DB 996, Pg 552, Lot 1&2), since November 2009. The requested Zoning Map Amendment would change the current zoning of Residential Growth (R-G) to the proposed zoning of Residential/Light Industrial/Commercial (R-L-C), thus allowing potential commercial development to occur on this property.

On June 14th, 2011, the Applicant did make a presentation to the Jefferson County Planning Commission via a Public Hearing pursuant to West Virginia State Code. The next step in this process is for this Applicant to come before the County Commissioners to make a formal presentation as to why this proposed zoning request is consistent with the current Comprehensive Plan, or demonstrate that there have been major changes of an economic, physical or social nature large enough to warrant the granting of our request.

It is our request that we be permitted to come before the Commissioners on June 30, 2011, without any further public hearing, and present our request, and to have a decision rendered during that meeting, if feasible. As you are aware, there have already been three (3) public hearings on this rezoning request to date. It is not a requirement of the County Commission per West Virginia State Code to hold yet another public hearing prior to the final decisive vote.

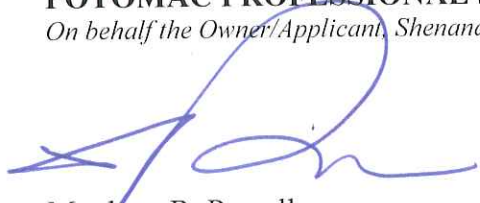
The attached are documents the Applicant believes support their request for rezoning this parcel to a Commercial Zoning Classification. Included in these documents are point by point comments by the Applicant throughout the issued Staff Report. We respectfully request that the Commissioners accept this as a formal submission prior to our presentation, and thoroughly review the documents and information provided.

Please confirm our request to be heard and scheduled Agenda Date by contacting the undersigned at 1(304) 725-3712.

Sincerely,

POTOMAC PROFESSIONAL SERVICES, LLC

On behalf the Owner/Applicant, Shenandoah Professional Center, LLC



Matthew R. Powell



April 15, 2011

Via U.S. Mail

Jefferson County Planning and Zoning Department
116 East Washington Street
Charles Town, WV 25414

Attn: Ms. Jennifer M. Brockman, AICP
Director of Planning and Zoning

Re: **Zoning Map Amendment Request**

Dear Ms. Brockman,

Pursuant to the recent election results in association with the proposed adoption of new zoning ordinances and districts, Potomac Professional Services, LLC (Potomac), on behalf the property Owner Shenandoah Professional Center, LLC, would like to formally request a Zoning Map Amendment for the following property within Jefferson County, West Virginia.

Article 12, Map and Text Amendments, of the current Jefferson County Zoning Ordinances requires the following information for any petition for a zoning map amendment.

1. Substantiation for the Request
 - a. Current Zoning: Residential Growth (R-G)
 - b. Requested Zoning: Residential/Light Industrial/Commercial (R-L-C)
 - c. The property is located at the intersection of Rt. 340 and Bakerton Rd and is visible from Rt. 340 heading north and south. The Shenandoah Professional Center, a professional office building, is currently an operational commercial use on the property. The Shenandoah Professional Center was approved as a commercial use under a Conditional Use Permit, approved on January 14, 2003. With public input and concerns, the building was renovated from an 1800's era farmhouse to a historically correct, updated professional office building which is an impressive site along the route from Harpers Ferry to Charles Town.

The undeveloped rear property, referred to on the recorded plat as Lot 2, is currently approved as a single family lot, but with any proposed development would need to adhere to the current entitlement process within Jefferson County.

Through planning for the recent zoning ordinance election, the property was proposed by the County to be rezoned to General Commercial due to its' proximity to a high traffic roadway and viable commercial potential. The requested zoning map amendment stays consistent with the intent of the County Commissioners and their vision for the future needs of Jefferson County.

- d. The property is in a location that is beneficial for commercial growth within the County. This proposed zoning amendment would provide the County with a concentrated area of potential commercial development along a major traffic corridor, in lieu of spot development.
2. Tax District, Map and Parcel Number
 - a. Harpers Ferry District, TM 9, Parcel 37 & 37.2
 3. Deed Book Reference
 - a. DB 996, Page 552, Lot 1 and 2
 4. Plat or Sketch pursuant to Section 7.4(b)
 - a. See attached
 5. Tract Size
 - a. Lot 1 – 1.491 acres, Lot 2 – 8.185 acres, Total = 9.676 acres
 6. Discussion on:
 - a. Comprehensive Plan compatibility of the proposed change.
 - i. This proposed zoning change from residential to a predominately commercial zone stays consistent with the 2004 Jefferson County Comprehensive Plan in that growth was encouraged in areas where water, sewer, schools, and other public facilities are available, and the encouragement and support of commercial and industrial to provide a diversified and sound local economy.

The location of this property is consistent with the 2004 Comprehensive Plan is all of the aforementioned ways, as well as being adjacent to a major roadway feeding Jefferson County.
 - b. Any change of transportation characteristics and neighborhood from when the original ordinance was adopted.
 - i. Although this request is believed to be consistent with the current Comprehensive Plan adopted in 2004, the area has undergone significant growth since that time that has increased traffic on primary and secondary roadway systems. The influx of home sales

between 2005 through 2007 was primarily driven from buyers who are commuting to and from the Washington DC/Metropolitan area, thus significantly taxing the major roadway systems, especially the Rt. 340 Corridor running from Maryland to West Virginia. In addition, the recent approval of table games at the Charles Town Race Track has increased traffic even more throughout the region.

This significant growth and impact to the major roadways has emphasized the need to centralize the potential commercial uses on or in close proximity to the major road networks for easy access and increased visibility.

It is our hope that this request could be heard before the Jefferson County Planning Commission via Public Hearing on the May 10, 2011 Agenda. Please inform us if this is possible, and if not, what the expected date for a Public Hearing would be.

If you have any further questions or comments, please contact the undersigned at 1(304) 725-3712, ext. 217.

Sincerely,

POTOMAC PROFESSIONAL SERVICES, LLC

On behalf Owner, Shenandoah Professional Ctr, LLC

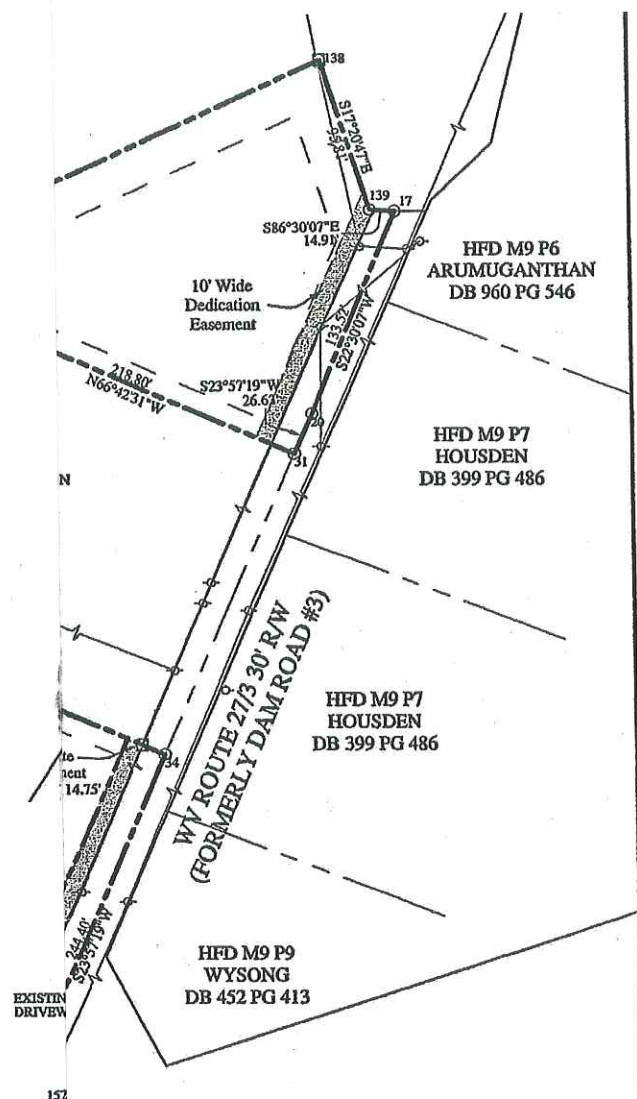


Matthew R. Powell
Vice President Development

**Harpers Ferry District, TM 9, Parcel 37 & 37.2
DB 996, Page 552, Lot 1 and 2
Lot 1 – 1.491 acres, Lot 2 – 8.185 acres, Total = 9.676 acres**

- **Reasons for Requested Rezoning Change from Residential Growth (R-G) to Residential/Light Industrial/Commercial (R-L-C)**
 - ***Property adjacent and fronting along major travel corridor, including established entrance roadway and extension of existing jurisdiction, making it a preferred location for commercial development.***
 - ***Location is consistent with desired County planning ideals by concentrating commercial in close proximity to established jurisdictions to act as an extension thereof, and fronting or being serviced by major travel roadways and arteries.***
 - ***Adjacent to and in close proximity to other R-L-C properties.***
 - ***Ability to market property for commercial uses is beneficial to County commercial growth and tax base, possibility of increased job opportunities, and economic viability.***
 - ***Provides owners flexibility to market property for either commercial and residential uses, or well planned mix.***
 - ***Follows the intent of the County Commissioners and Planning Commission prior to vote on proposed zoning ordinance and map amendments.***
 - ***All public infrastructures present at property and available for use.***
 - ***No traffic issues evident in this area. Roadway infrastructure in place to handle commercial or residential development. Location fronting major artery reduces traffic impacts on secondary roadways by centralizing any increased traffic in or around already high traffic areas.***
 - ***Is consistent with prior County assessments that any development in this area would not deteriorate view sheds or scenic vistas.***
 - ***Existing uses on property are commercial – Professional Office Space***

Magnetic North
 WV GRID NORTH (NAD 83)



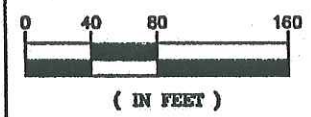
| LEGEND | |
|--------|------------------------------|
| | 5/8" iron rebar w/ID cap set |
| | concrete monument |
| | overhead electrical lines |
| | fence line |
| | utility pole |
| | points |

NOTES:

A. GENERAL

- BUILDING SETBACK LIMITS FOR LOTS 1-2 (ZONED RESIDENTIAL GROWTH): 25' FRONT, 12' SIDE (RESIDENTIAL) & 50' SIDE (COMMERCIAL), AND 20' REAR (RESIDENTIAL) & 50' REAR (COMMERCIAL) WITH A MINIMUM LOT SIZE OF 40,000 SQ.FT. DETACHED ACCESSORY STRUCTURES UNDER 144 SQUARE FEET IN SIZE SHALL HAVE A 6' SETBACK LIMIT. ATTACHMENTS TO UNITS MAY NOT PROJECT INTO REQUIRED YARDS MORE THAN 4' WITH MAXIMUM 10' LENGTH, EXCEPT AS PROVIDED FOR IN THE EXCEPTIONS WITHIN ARTICLE 9 OF THE JEFFERSON COUNTY PLANNING AND ZONING COMMISSION. BUILDING SETBACKS FROM 100 YR FLOOD PLAIN ARE 25' OR 1' VERTICAL, WHICHEVER IS GREATER IN THE HORIZONTAL PLANE, UNTIL SUCH TIME AS A LOMAR HAS BEEN APPROVED BY FEMA. THE FEMA FLOOD PLAIN WILL GOVERN THE SETBACK.
- BY GRAPHIC PLOTTING ONLY, THIS PROPERTY IS IN ZONE "C" PER F.I.R.M. MAP 54 0065 0036 DATED AUGUST 2, 1993, BASED ON THE ABOVE INFORMATION, NO PORTION OF THIS SITE IS IN A SPECIAL FLOOD HAZARD AREA.
- HIGHWAY ENTRANCE PERMIT #: 5-03-0167 FOR LOT 1; 5-05-1307 FOR LOT 2
- HEALTH DEPARTMENT PERMIT FOR INDIVIDUAL ON-SITE WELL AND SEWAGE DISPOSAL SYSTEM PERMIT #: 5DA-19-0506-32.
- PROPERTY CORNERS ARE TO BE SET 5/8" x 30" REBARS WITH I.D. CAPS. ALL OTHER CORNERS ARE AS NOTED. CORNER MARKERS TO BE IN PLACE PRIOR TO CONVEYANCE OF INDIVIDUAL LOTS.
- ALL LOTS HAVE VEHICULAR ACCESS FROM WV RTE. 27 AND 27/3 ONLY.
- VARIANCES GRANTED FOR THIS SITE ARE AS FOLLOWS:
 - VARIANCE FROM THE FRONTAGE ROAD REQUIREMENTS FOR ENTIRE LENGTH OF US ROUTE 340 RIGHT-OF-WAY (ARTICLE 5, SECTION 5.8 (B)9). DATED MARCH 20, 2003
 - VARIANCE FROM THE LANDSCAPE BUFFER REQUIREMENTS (ARTICLE 5, SECTION 5.8 (B) DATED MARCH 20, 2003
 - VARIANCE FROM THE SETBACK REQUIREMENTS FROM 25 FEET TO 17.36 FEET FOR THE EXISTING STRUCTURE (ARTICLE 5, SECTION 5.6(A) 1). DATED MARCH 20, 2003
 - VARIANCE TO ADVANCE TO FINAL PLAT STAGE. (ARTICLE 8, SECTION 8.1b & ARTICLE 11, SECTION 11.2-a-2. DATED OCTOBER 11, 2005.
- ALL BUILDINGS TO BE SERVED BY WELL AND SEPTIC SYSTEMS.
- ELECTRIC AND TELEPHONE SERVICE SHALL BE UNDERGROUND.
- THE LOT 2 (RESIDUE) CREATED BY THIS SUBDIVISION WILL BE REQUIRED TO PREPARE A COMMUNITY WELLS STATEMENT IN ACCORDANCE WITH ARTICLE 7 OF THE JEFFERSON COUNTY SUBDIVISION ORDINANCE FOR ANY USE OTHER THAN ONE SINGLE FAMILY DWELLING.
- EFFECTIVE MARCH 1, 1989, IN SUBDIVISIONS TO BE SERVED BY INDIVIDUAL WELLS ALL SUCH WELLS SHALL BE PRESSURE GROUTED. A NOTE SHALL BE PLACED ON ALL PLATS STATING THE FOLLOWING: "VERIFICATION FROM A WELL DRILLER THAT A PRESSURE GROUTED WELL HAS BEEN DRILLED AND IS PRODUCING WATER AT A QUANTITY APPROVED BY THE LOCAL OR STATE HEALTH DEPARTMENT PRIOR TO THE ISSUANCE OF AN IMPROVEMENT LOCATION PERMIT. CERTIFICATION THAT THIS WATER IS POTABLE MUST BE SUBMITTED TO THE PLANNING COMMISSION OFFICE WITHIN 6 MONTHS OF THE ISSUANCE OF AN IMPROVEMENT LOCATION PERMIT."
- BASED ON AVAILABLE RECORDS, THERE ARE NO EXISTING EASEMENTS OR RIGHT-OF-WAYS ON THIS PROPERTY EXCEPT AS SHOWN. THERE ARE NO EASEMENTS OR RIGHT-OF-WAYS BEING PROPOSED ON THIS SITE.
- PUBLIC SERVICE DISTRICT MAY REQUIRE HOOKING UP TO A CENTRALIZED SYSTEM WHEN AND IF ONE BECOMES AVAILABLE.
- THE SELLER OF ANY LOT WITHIN THIS SUBDIVISION SHALL PROVIDE THE BUYER WITH A REASONABLE OPPORTUNITY, BEFORE SETTLEMENT, TO DETERMINE THAT THE LOT IS SUITABLE FOR THE CONSTRUCTION OF A SEPTIC DISPOSAL SYSTEM. IF, BEFORE SETTLEMENT, THE BUYER IS DENIED A SEPTIC SYSTEM CONSTRUCTION PERMIT BY THE JEFFERSON COUNTY HEALTH DEPARTMENT, THE BUYER MAY REFUSE TO PURCHASE THE LOT WITHOUT PENALTY.
- A BLANKET EASEMENT SHALL BE GIVEN TO THE APPROPRIATE PUBLIC SERVICE DISTRICT IN ALL SUBDIVISION RIGHTS-OF-WAY FOR THE PURPOSE OF CONSTRUCTING WATER AND/OR SEWER LINES AND FACILITIES.
- THERE ARE NO KNOWN WETLANDS.
- THERE ARE NO RESTRICTIVE COVENANTS.

GRAPHIC SCALE



ACREAGE TABLE

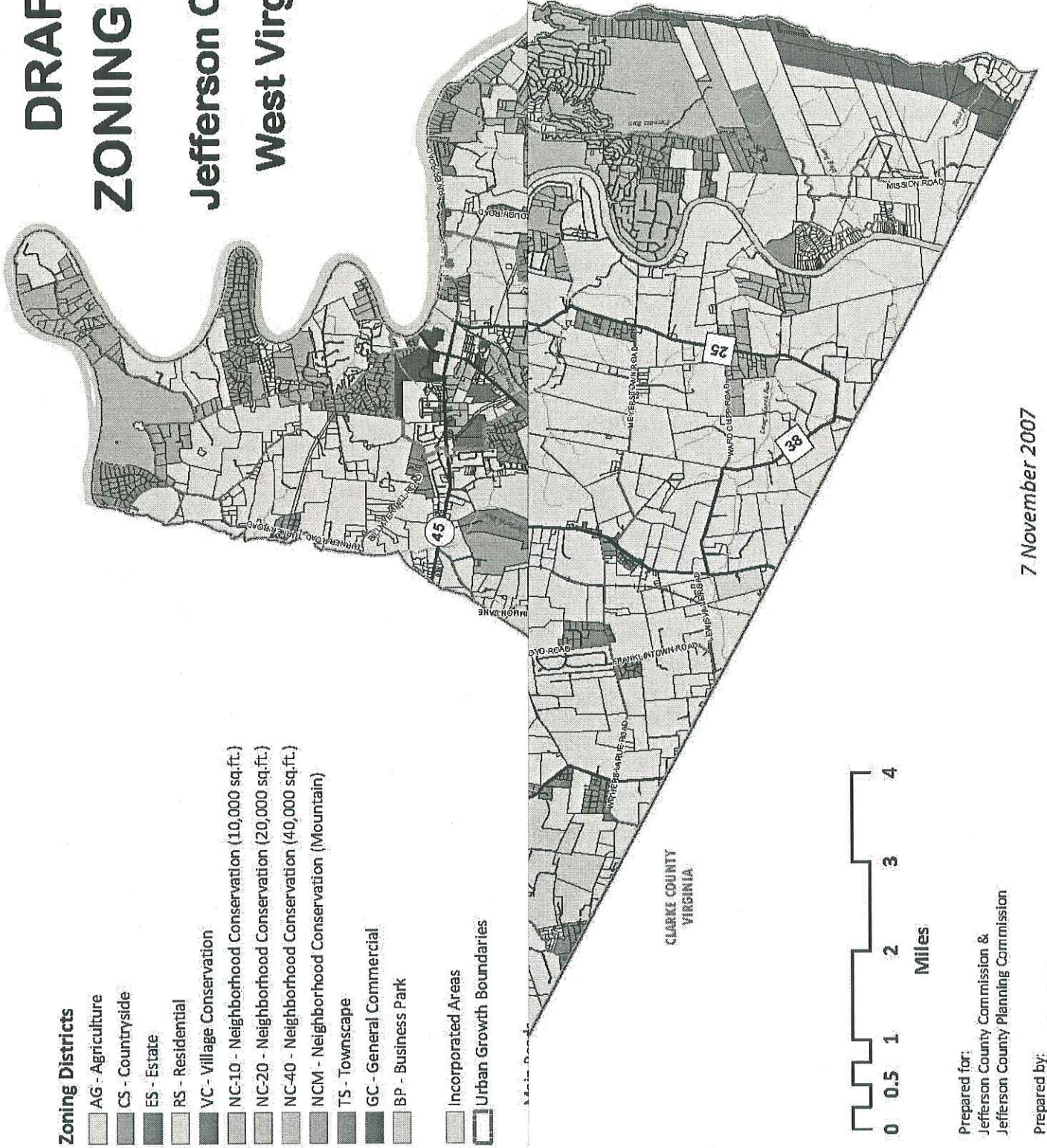
| LOT 1 | 1.491 ACS. |
|-------|------------|
| LOT 2 | 8.185 ACS. |
| TOTAL | 9.676 ACS. |

Final Plat showing
 Lot 2 (Residue) of
 Professional Center
 District
 Parcel 37 DB996 PG. 552
 March 2, 2005 Scale: 1"=80'

ewberry
 ewberry & Davis, LLC
 S. FAIRFAX BOULEVARD
 ANSON, WV 25438-1611
 PHONE: 304.725.4572
 FAX: 304.725.6896

10001621

DRAFT ZONING MAP Jefferson County West Virginia



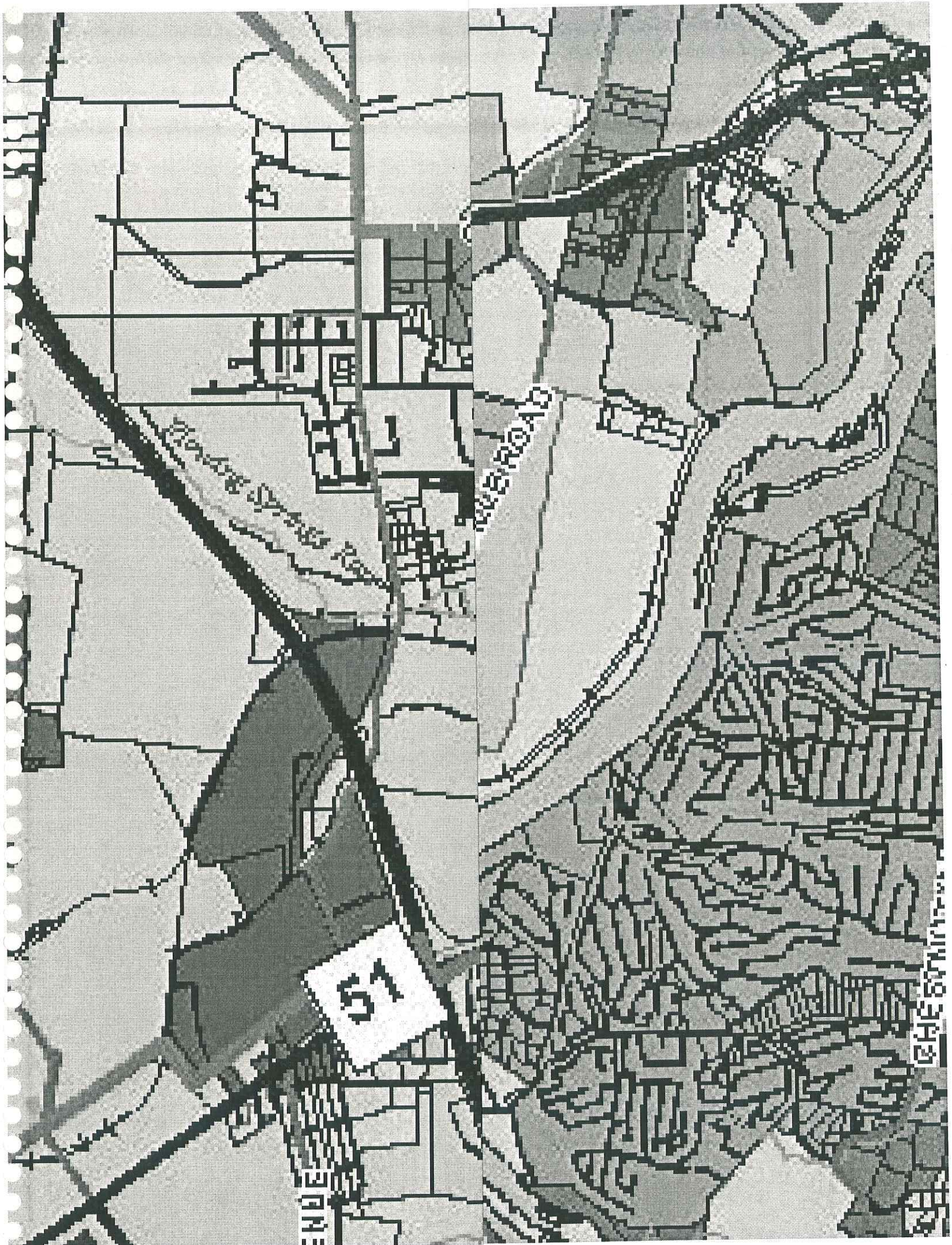
- Zoning Districts**
- AG - Agriculture
 - CS - Countryside
 - ES - Estate
 - RS - Residential
 - VC - Village Conservation
 - NC-10 - Neighborhood Conservation (10,000 sq.ft.)
 - NC-20 - Neighborhood Conservation (20,000 sq.ft.)
 - NC-40 - Neighborhood Conservation (40,000 sq.ft.)
 - NCM - Neighborhood Conservation (Mountain)
 - TS - Townscape
 - GC - General Commercial
 - BP - Business Park
 - Incorporated Areas
 - Urban Growth Boundaries



Prepared for:
Jefferson County Commission &
Jefferson County Planning Commission

Prepared by:
Jefferson County Planning Department

7 November 2007



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Frequently Asked Questions

about the proposed Jefferson County Zoning Ordinance and Subdivision Regulations

- ***What zoning classification is proposed for my property?***

The proposed County Zoning Map provides the answer to this question. To determine the proposed zoning for your property(s), simply find your property on the map, ascertain the color shown on your property and consult the legend in the upper left corner of the map to determine the designation (e.g. Agriculture, Countryside, Residential etc.).

- ***How did you determine the zones on the zoning map?***

By and large the zone districts shown on the Zoning Map were delineated based on the existing use of the land and the prevailing lot sizes in existing developments. Areas developed into various parcel sizes are generally mapped based according to the "zone district" that best reflects these conditions. For example, areas where large parcels prevail are either zoned Agriculture or Countryside.

- ***If my land was zoned for "Residential Growth" or "Commercial-Industrial" on the current zoning map will it be the same on the proposed map?***

Not necessarily. There are over nine proposed zone districts that do not always correspond to the previous five districts. As already stated, the existing land use provided the basis for delineating districts on the proposed map. Areas currently zoned "Residential Growth" or "Commercial-Industrial" will be reconsidered when the County Comprehensive Plan is prepared during the coming year. The map is not a "plan map" or a "growth plan" map. Such maps are the province of a Comprehensive Plan and will likely be considered when the Comprehensive Plan is revised during the coming year or two. A Zoning Ordinance and Zoning Map are not a Comprehensive Plan or Plan Maps.

- ***What if I don't think the proposed zoning designation of my property is appropriate?***

If you feel the designation is not a fitting one based on your lot size or use of the property, you may submit a written request for consideration by the County for a change in designation. A simple form is available at the County Planning Office or you may submit a letter requesting such change. Your request should clearly describe the property address and include the tax map and parcel number for reference purposes. It should also indicate the zone designation you feel should be applied and why.

None of the proposed changes will be considered until the December 17, 2007, public comment deadline. At that time, the process for considering proposed amendments by the Planning Commission and the County Commissioners will begin.

- ***What can I do on my property? What uses can I make of my property? How can I use my property?***

Once you've identified the zone district in which your property is located, you will need to consult the zoning ordinance to answer this question. Tables **2.201A** and **2.201B** provide a list of uses on the left column of the table. The various zone districts are located near the first row of the table. Read across the row to find your district; then read down that column to see if a "P", "L", "C," or "N" is located in the column for each of the uses to the left. The P, L, C, and N are defined at the bottom of the table. If additional provisions apply with regard to a specific use, a reference to the additional provision section is provided in the far right column of the row in which the use is identified. For example, if you are trying to determine if you can conduct a home occupation or home business you will need to consult Sections 2.410 through 2.413 of the ordinance.

- ***If I want to subdivide lots on my property how many lots will be permitted?***

The number of lots into which a property may be subdivided depends on the zone district in which you are located. Once you identify the zone district applied to your property, consult tables **3.201A** and **3.201B**. The tables identify the Maximum Gross and Net densities of development permitted on the property for each zone district and also identify the minimum amount of open space that must be maintained. As shown in the table, the density and open space standards change depending on the form of development proposed. Generally speaking, as density increases so also does the requirement for additional open space to be maintained.

- ***Is the proposed ordinance more restrictive than the existing one with regard to the use of land on farms?***

No. The proposed ordinance permits a wider range of both farm-related and non-farm uses. These uses include: Agriculture and Farming, Viniculture, farm supply services, equipment repair and dealership, grain storage, animal hospitals and kennels, personal and commercial stabling, training horses and riding facilities, light automobile services, light industry, meat processing, trucking, welding, sheet metal and blacksmithing, warehousing, bed and breakfast facilities, country inns and farm markets among others.

The ordinance also permits modestly higher density in a cluster development form should a farmer need to develop lots to supplement farm income.

- ***Does the proposed ordinance limit the number of animals I can have on a farm?***

Yes. The June 2007 draft of the ordinance limited keeping of livestock to one animal unit per acre. Although the intent was to delete this provision it is still contained in the current draft. It is the intent of the Planning Department to recommend it be deleted in the final ordinance as it is largely unenforceable and may be inconsistent with State Law.

- ***Can I keep horses if I'm not zoned Agricultural?***

Yes. The ordinance permits both Stables for personal enjoyment of horses and Commercial Stables for breeding and training of horses in the Countryside and Estate Districts as well as the Agricultural District. The provisions for stables for the personal use of residents apply in any

district provided the lot is three or more acres in size and no more than one horse per acre of lot area is kept for personal enjoyment. Commercial stables are permitted in the Countryside (CS) or Estate (ES) district, provided such facilities are located on a minimum lot area of 10 acres or 1.2 acres per horse, whichever is greater. Barns or riding rings for commercial stables shall be set back at least 50 feet from all property lines. All other outdoor areas for riding, paddocks, or pastures shall be set back a minimum of 10 feet from all property lines.

- ***Will I be able to conduct a business in my home or on my property?***

Generally speaking the answer is yes. However, it depends on the nature and type of business you wish to conduct and the level of activity it generates. In Table 2.201A, Zone Districts for each category of home business are identified. There are four categories of home business provided for in the proposed ordinance. They include: home occupations, home businesses, home industries and home work space. More specific details regarding these categories are provided in later sections of Article 2. (See sections 2.410 through 2.413 for details)

- ***What about my current home business? Can I stay in business?***

Yes. Any home businesses known as a Home Occupation Level 2 under the 1988 code, as amended, that is in existence on the effective date of the proposed Ordinance and which is not located on a farmstead within the Agriculture (AG) or Countryside (CS) districts, shall be considered a conforming accessory use. However, two stipulations apply: 1) the home business may not be expanded or enlarged, and 2) if the home business activity is discontinued for a period of 12 months or longer, it may not be re-established.

- ***If I have an existing use on my property or an existing building on my property that doesn't meet the ordinance requirements or standards can I continue with my use?***

Yes, you can continue to use the property as you currently are, and you will not have to move or relocate any structures. Such uses and structures are treated as non-conforming uses and structures in Article 6 of the Zoning Ordinance.

- ***What's wrong with the current ordinances?***

The current ordinances depend on a development review system to guide development that has led to major subdivisions being located in scattered form throughout the County. Such development impacts farming, and leads to greater costs to provide public services. This sprawl pattern of development provides little or no control over where development or larger subdivisions may next occur. The pamphlet titled "Key Points" about the new ordinance provides comparisons between the existing and proposed ordinances and identifies additional deficiencies with the existing ordinance that limit its ability to provide the County with any real growth management program.

- ***What happens next in the process?***

There are several steps remaining in the process to adopt the zoning ordinance and subdivision regulations. They include:

1. Finish the initial round of 6 public meetings.

2. Compile and evaluate comments received during the meetings.
3. Prepare recommendations for change based on comments.
4. Revise the proposed texts and map (edits).
5. Compile a report and present it to the Planning Commission and County Commissioners.
6. Secure a recommendation and proposed zoning map from the Planning Commission for submission to the County Commissioners.
7. Conduct two formal public hearings prior to consideration by the County Commissioners for adoption.
8. Action taken by the County Commissioners to Adopt the Ordinances or reconsider for further study.

- ***How do I suggest a change in the proposed zoning text, zoning map or subdivision text?***

Your request must be in writing. Simple forms are available at the County Planning Office, or you may submit a letter requesting such changes. Each text change request should clearly describe the section of the Ordinance or regulations you proposed be changed. If possible, please provide specific language for the change. Map change requests should clearly describe the property address and include the tax map and parcel number.

None of the proposed changes will be considered until the December 17, 2007, public comment deadline. At that time, the process for considering proposed amendments by the Planning Commission and the County Commissioners will begin.

- ***Why is the proposed Zoning Ordinance so long?***

The proposed Jefferson County Zoning Ordinance is comprehensive, and thus lengthy - a total of 276 pages. But let's look at what constitutes the majority of these pages.

Legal definitions require 55 pages, and provisions for administration, procedures, and enforcement require another 37 pages. Standards for parking and lighting, and for landscaping and signs, in new developments requires another 42 pages. Twenty-seven more pages apply only to particular and/or temporary uses, for instance, home occupations, hospitals, garage sales, and model homes. Together these sections account for about 60% of the total draft.

While these sections are important overall for good public administration, it is the remaining 115 pages that address the four things that most people find most important in land use planning: what are the zoning districts, what can be built in each of these districts, how do we protect the environment, and how do we provide affordable housing.

- ***What is the impact of the Ordinance on build-out?***

No one can truly predict when build-out will occur. Our best estimate is that total build-out, if the ordinance is adopted, is to be between 190,000 and 200,000 residents. Over the next 30 years, fifty thousand new residents are anticipated assuming a sustained growth rate of 2.5% annually.

Perhaps of greatest importance is the fact that under the terms of the proposed ordinance, even at build-out, only 23,000 to 26,000 new residents are anticipated in all rural areas outside the towns and the delineated townscape boundaries as shown on the proposed zoning map. The rest of the population increase would be located within the Towns or areas adjacent to the Towns.

Under the terms of the present ordinance under the Development Review System or LESA, the population in the rural areas at build-out could be well over 90,000 new residents as compared to the 23,000 to 26,000 under the proposed ordinance.

- ***How reliable is any build-out scenario?***

No build-out scenario is more reliable than the quality of assumptions used to project or estimate future population. If worst case assumptions are used then the figures reflecting build-out can be excessive or higher.

Keep in mind the County ordinances can change over time through amendments. Such changes can dramatically affect any current assumptions or estimates regarding a build-out population.

- ***What are the Key Principles guiding development of the Ordinances?***

- Create a process and procedures to “manage growth” rather than be overrun by it.
- Balance developer needs and resident needs.
- Abolish LESA to ensure more fair process of review and approval.
- Provide farm owners more options to continue to provide for themselves.
- Protect natural resources.
- Provide predictability in growth.
- Reduce the incidence of variances.
- Better the quality of planned development.
- Provide more affordable housing.
- Protect open space.

- ***Can I subdivide lots from my property for immediate family members?***

Yes you can, provided you have enough land to do so. For example, in the agricultural district each lot can be 1 to 1.5 acres in area, but the number of lots is limited to one lot per nine (9) acres as currently proposed. In the Countryside District, lots can be only one acre in size, but you would need to allocate approximately 4.5 acres for each lot. Family lots can be served by a road that does not meet full county road standards, thereby reducing costs in comparison to a more traditional subdivision.

- ***Who is the new County Planning Director and what is his background?***

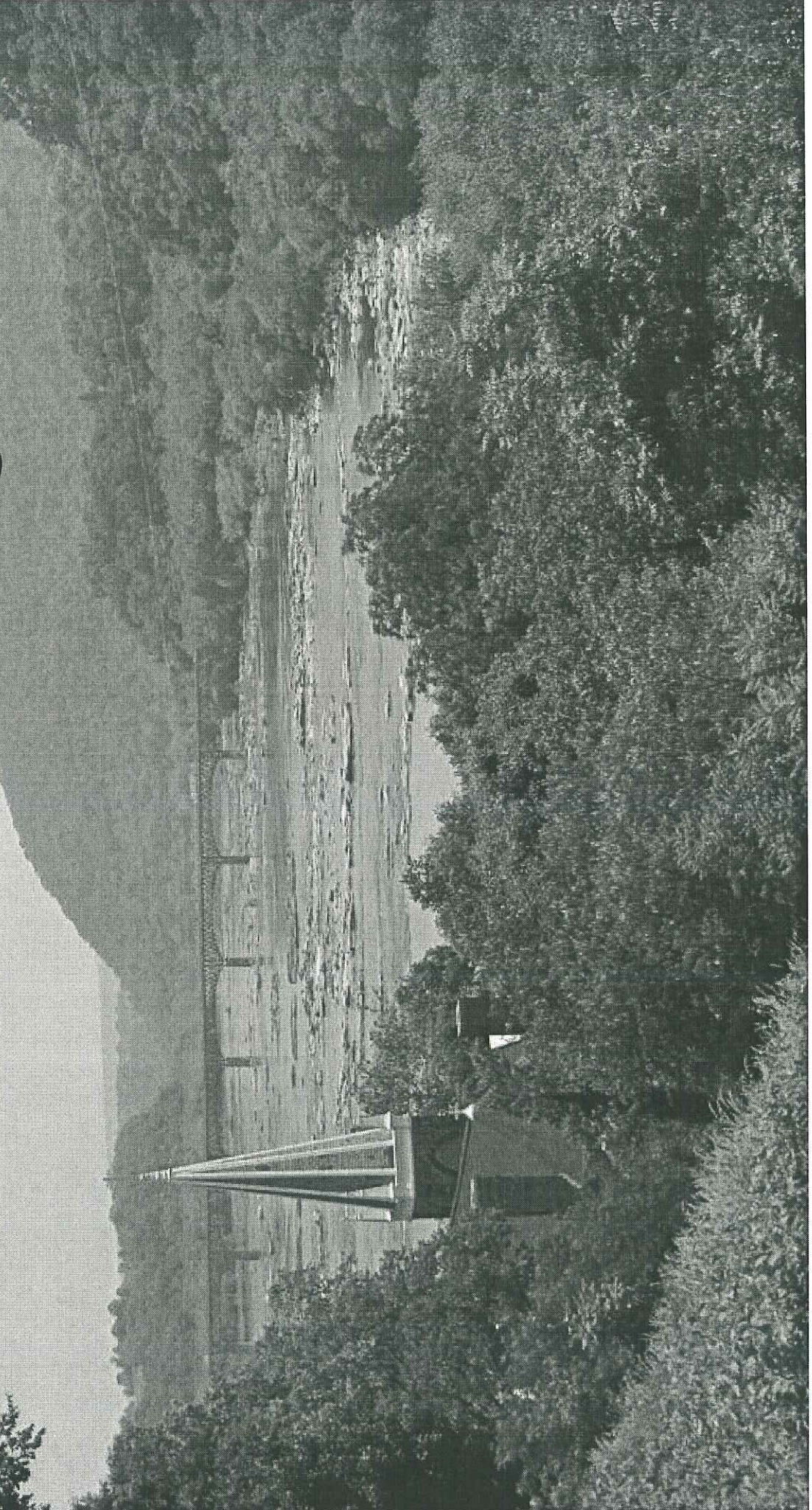
Tony Redman holds a Masters degree in Urban and Regional Planning from the University of Virginia and is a member of the American Institute of Certified Planners. Tony has over 30 years combined public and private practice experience in planning. He served as Deputy Director of Planning in Kent County, Maryland and Director of Planning in Talbot County, Maryland, from 1975 through 1984.

He established A.D. Redman Associates in July 1984, which later restructured as Redman/Johnston Associates, Ltd., in October 1985. In private practice he has served as a consultant to the Maryland Chesapeake Bay Critical Area Commission, and served as Chairman of the Planning Subcommittee of the Maryland State Planning Commission. He has prepared or directed preparation of community comprehensive

plans, growth management programs and land use regulatory ordinances for over 50 county and municipal governments in the states of Maryland, Delaware, Pennsylvania, Virginia, West Virginia, New York, South Carolina, and Washington.

Jefferson County

**Protecting and Preserving Heritage
while Accommodating Growth**



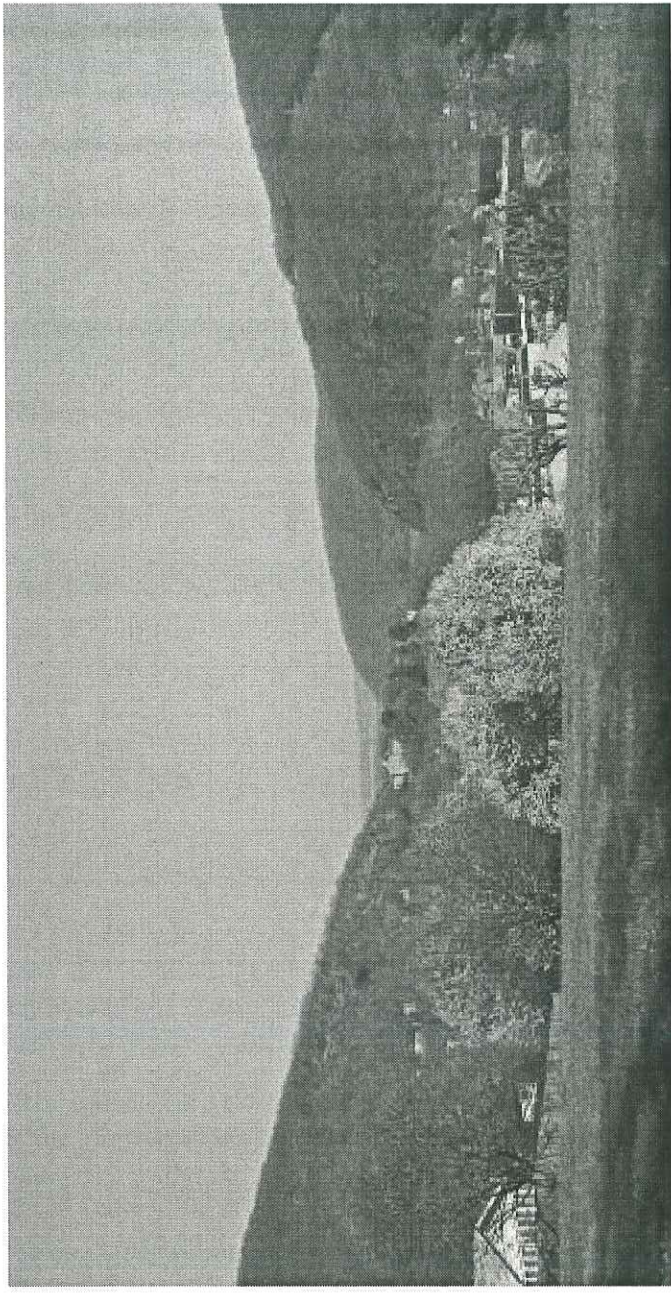
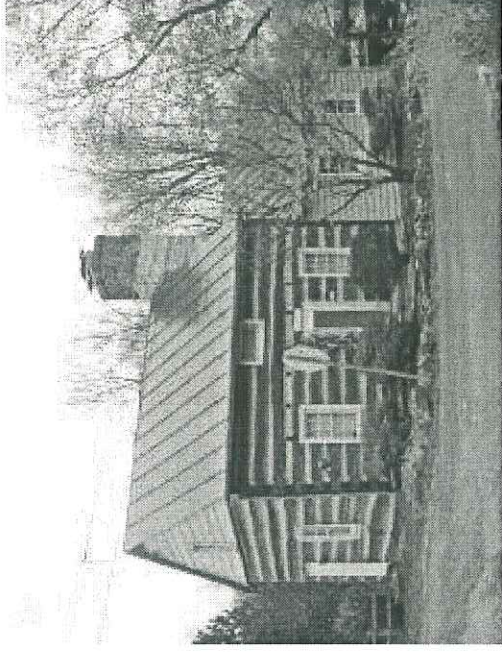
Key Objectives of the new Ordinances

- Channel development into appropriate areas
- Minimize future public service delivery costs
- Reflect the character of the community



Key Objectives of the new Ordinances

- Preserve our heritage and our natural and scenic resources to the greatest extent possible
- Minimize traffic impact

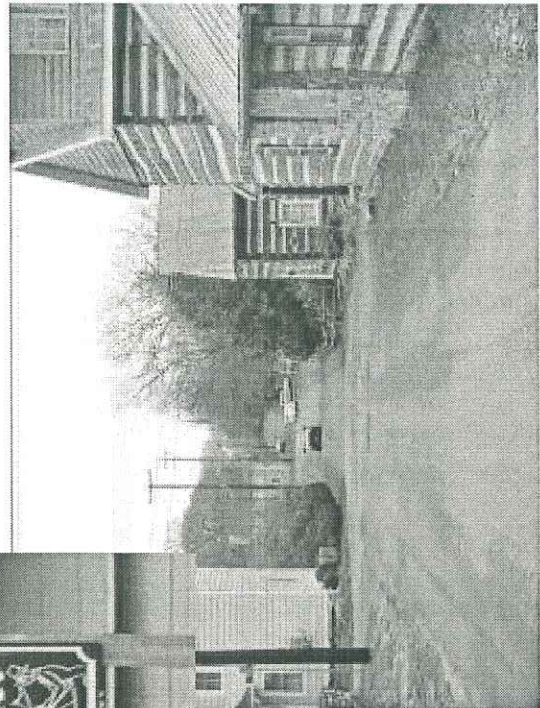
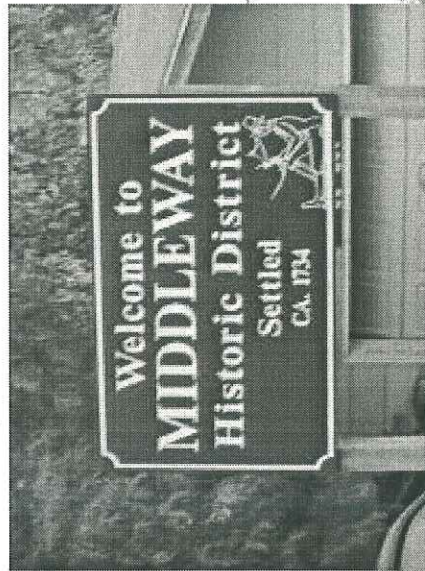
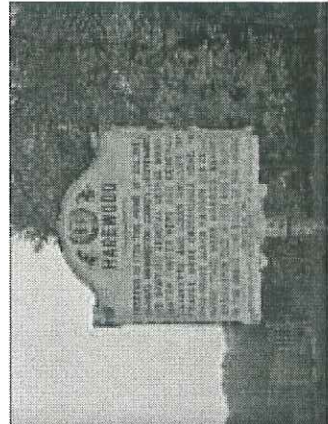


The new Ordinance protects rural character

The new ordinance has measures built in to it to protect Jefferson County's rural character.

The components of character protected include:

- Villages
- Farmsteads
- Historic resources
- Open space



Staff Assessment

Shenandoah Professional Services Rezoning Application

Submitted By:

Jefferson County Department of Planning and Zoning

Prepared for:

Jefferson County Planning Commission

&

The Jefferson County Commission

Request at a Glance:

Applicant: Potomac Professional Services, LLC on behalf of Shenandoah Professional Center, LLC

Address: 36 Bakerton Road, Harpers Ferry, WV 25425

Current Zoning: Residential Growth

Proposed Zoning: Residential-Light Industrial-Commercial

Acreage: 9.676 on two contiguous parcels

Background

The property at 36 Bakerton Road, Harpers Ferry, WV, known as the Shenandoah Professional Center, was approved on January 14, 2003 for a Conditional Use Permit (CUP). At that time the property was a single parcel. On February 7, 2006 the property was subdivided into two parcels. One parcel, which is 1.491 acres, has the historic house which is used for offices. The residue parcel is 8.185 acres and is primarily vacant with the exception of some ruins of an old barn.

The original CUP application requested that both office use and a self storage facility be permitted in 2002. The office use was approved and the self storage facility was not approved, since it was not in keeping with the character of the area (See Image 1).

In 2010, the applicant requested a rezoning of this property from the Residential Growth District to the Residential-Light Industrial-Commercial District. That requested was heard by and had a public hearing before both the Planning Commission and County Commission. The applicant requested that the County Commission postpone the vote regarding the rezoning twice and then requested a withdrawal of the application. This new request is the same as the last request. As this is the second time the applicant has made this request, this analysis has been amended to include further consideration in this matter.

Introduction and Purpose

Shenandoah Professional Services has requested rezoning of this property, which is the purpose of this report. The property is located at the corner of Bakerton Road and Route 340. Access to the property is from Bakerton Rd. The site is located to the west of the Town of Bolivar. Nearly all of the property is surrounded by lands owned by the National Park Service, which is part of the Harpers Ferry National Park. While this property and property to the north, south, west and east are zoned Residential Growth, a vast majority of this property is owned by the National Park Services. It is not anticipated or proposed to be developed under this zoning classification. Image 2 shows the National Park Service Property and Image 3 shows the current zoning for those parcels.

Applicant: Ownership of property does NOT determine zoning. (If ownership of property determines zoning, the applicant would not need to apply for this zoning change). Most of the property to the east and west which line the 340 corridor are commercial. The Residential Growth zoned property is behind the commercially zoned property. See Image 3.

The property is identified on the Jefferson County Tax Map as two parcels. They include parcel 37, as shown on Tax Map 9, consisting of 1.491 acres and parcel 37.2, as shown on Tax Map 9, consisting of 8.185 acres. The property is zoned Residential Growth.

The applicant has requested rezoning of the entire subject parcels from Residential Growth to Residential-Light Industrial-Commercial. The following report has been prepared to assist the efforts of the Jefferson County Planning Commission and Jefferson County Commission to make findings regarding the consistency of the proposed rezoning with the Jefferson County Comprehensive Plan, in accordance with West Virginia State Code requirements.

Statutory Authority and Requirements

The West Virginia State Code, Section 12.1(a) provides that the boundaries of zoning districts may be amended by the County Commission with the advice of the Planning Commission. The County Zoning Ordinance also requires that the “procedure for amendment [by petition] shall be as dictated in Section 8A-1-1 et seq of the West Virginia State Code as amended.” As concerns amendments by petition, State statute provides that, “Before amending the zoning ordinance, the governing body with the advice of the planning commission must find that the amendment is consistent with the adopted comprehensive plan.” [See *WVC 8A-7-9(c)*] This subsection of the State Code also states that, “If the amendment is inconsistent, then the governing body with the advice of the planning commission, must find that there have been major changes of an economic, physical or social nature within the area involved, which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.”

Scope of this Assessment

This report focuses on whether or not the rezoning application is consistent with the Comprehensive Plan. It assumes that there major changes of an economic, physical or social nature, within the area involved, have occurred that were not anticipated when the comprehensive plan was adopted, such that they would “substantially” alter the basic characteristics of the area. Those changes will be addressed in both the Historic Preservation section and the recommendation. This assumption is also limited to the proposal to rezone the subject site.

The format for this assessment includes quotes from specific provisions of the Comprehensive Plan, which are identified by page number citation at the end of the sentence where it is quoted. Staff has used these notations and quotations in order to address sections of the Comprehensive Plan as it relates to the proposed rezoning. Identification of the specific page numbers where these provisions can be found in the Plan, permits the Planning Commission

and/or County Commission to easily locate the particular provision and personally evaluate the provision in the context of the larger Plan document. When available or appropriate, map references are provided with maps located in the Appendix to this report.

It should also be noted that the Comprehensive Plan states, "Its recommendations are (by their nature and intent) general and, as such, sometimes conflicting. It will not be difficult to find two that individually justify and conflict with many land use proposals." In that sense, there are many plan references that are identified in this report that can or may appear to support or fail to support a finding of consistency between the proposed rezoning and the Comprehensive Plan. In the final analysis, each member of the Planning Commission and the County Commission will need to weigh the degree to which various plan provisions are of greater or less importance, in establishing their respective findings regarding the application.

Finally, this report provides a recommendation concerning the proposed rezoning based on review of the various plan sections and elements. The recommendations should be considered the professional opinion of staff; no more and no less. Since the Planning and Zoning staff has no statutory authority to make decisions in this regard, we defer to the Planning Commission and subsequently the County Commission for any final recommendation or decision that may be forthcoming with respect to the subject application.

Relevant Comprehensive Plan Elements and Commentary

As a broad outline the Comprehensive Plan notes that, "Ironically, the natural beauty and rural setting of Jefferson County, the qualities that are so attractive to new residents, are the very qualities that are most threatened by a rapid pace of growth. With houses coming at a far faster pace than jobs, Jefferson County is facing a future as just another bedroom community in the larger metropolitan area.

Applicant: This statement supports the re-zoning of this property since it will give the applicant the option of developing this property as commercial instead of just strictly residential. Economic growth through commercial development is essential to providing jobs that are desperately needed in this county.

The intent of this plan is not to recreate or recapture the past but to shape future growth in a manner that preserves the most important features of Jefferson County: the rural landscape, the natural beauty of the rivers, the rolling terrain and the strong sense of community (pg 8)." This vision for the document illustrates that the historic and scenic viewsheds of Jefferson County are threatened by the rate of growth occurring within the County. The intent is to shape growth in a manner that preserves these important features, while allowing for growth where appropriate. It may be important to note that jobs can be provided in a number of

alternative County locations. Rural landscapes and beautiful rivers can only be preserved where they exist. Once these rural landscapes and vistas are developed, they are lost forever.

Applicant: The location of commercial property is key to commercial development. Companies build their businesses in areas where there are adequate roadways and good traffic counts. The 340 corridor is ideal for commercial development. The subject property is located on a controlled access highway with a median and turn lane available for access. It should be noted that the Applicant has the right to develop the property as high density residential which would impact the "vistas" much more than developing the property as commercial.

The "...plan encourages new development patterns that foster mixed-use neighborhoods, so that a sense of community begins at the subdivision level (pg 8)." The plan further "...recommends that Jefferson County's natural features, particularly stream valleys, be conserved as green space and that significant natural features be afforded protection as development proceeds (pg 8)."

Applicant: The subject parcel is less than 10 acres and is surrounded on all three sides by a road system. There are no natural features such as these on this site.

Staff concurs with the need for mixed development to provide for a variety of uses when possible. Again, this community created document that resulted in the Comprehensive Plan emphasizes that employment centers can be provided in a number of alternative County locations, where it is appropriate for more intense uses. While providing economic opportunities, the plan recognizes the importance to protect natural resources.

Applicant: Applicant concurs with the staff regarding the need for mixed development. The only zoning that is currently available that may allow this is RLC which is what Applicant is requesting.

In this regard the plan emphasizes that "...existing population centers as the focus of new, more intense development and the importance of working with municipalities to assure a pattern of development consistent with the Plan vision (pg 8)." This is a policy statement within the document indicating that new, more intense development should be located within or adjacent to the Towns.

Rezoning the parcels included in this request to Residential-Light Industrial-Commercial will result in a more intense development currently not located in the immediate area. There are a variety of permitted uses in the proposed new zoning category which allows for more intense uses.

Applicant: The current zoning allows almost 100 apartment units. There are many commercial establishments in the immediate vicinity such as the Quality Inn, Comfort Inn, Keller Williams, Harpers Ferry Repair Shop, River Riders, Flea Market, Shenandoah Professional Center, Homeland Security, Sears, Aldies, and EZ Mart to name a few.

This spot rezoning defies “The Plan identifies strategies to assure that community facilities and transportation infrastructure are provided in sequence with new development (pg 8).”

This policy is designed to insure provisions of adequate infrastructure concurrent with development that may require it. The policy statement is also designed to minimize sprawl from existing urban core areas to rural areas, such as where the subject property is located. The subject property is an isolated parcel detached from any urban area and surrounded by protected property.

Applicant: Although the subject property is surrounded by roads, it is certainly not isolated. The National Park Service does own property near this parcel but it does not surround this parcel. Again, Ownership doesn't determine zoning.

The property to the west and southwest are part of the National Park system, the property to the south is a seasonal weekend use market and the property to the east is low density residential. This property is separated from the Cities of Boliver and Harpers Ferry by the existing residential uses, the National Park Service property and a steep slope. To allude that this property is an extension of either of those municipalities is an exaggeration. Further, this property to the west is isolated from previous developmental activity by preserved land. Based on the current zoning of this property, as it connects to existing land uses, it is appropriate for the location.

Applicant: Property is adjacent to the town of Bolivar. Recently, Bolivar attempted to incorporate the subject property into their growth district so it is no exaggeration that this area is considered by Bolivar to be an extension of their city. Again, it should be noted that ownership doesn't determine zoning.

Below is a partial “...list of general goals was adopted as guidelines for the preparation of the 1986 Comprehensive Plan. These goals were readopted, unchanged and incorporated into the 1994 Comprehensive Plan (pg 19).” These goals have been adopted in the 2004 Comprehensive Plan as well.

- Encourage growth and development in areas where sewer, water, schools and other public facilities are available or can be provided without unreasonable cost to the community.

Applicant: The subject property has sewer, water, schools public facilities readily available to the site.

- Promote growth and development that are both economically and environmentally sound.

Applicant: Allowing a RLC zoning will promote economic development.

- Encourage and support commercial, industrial, and agriculture activities to provide a diversified and sound local economy.

Applicant: Allowing a RLC zoning will promote economic development.

- Promote the conservation of the natural, cultural, and historical resources and the preservation of its scenic beauty.

Applicant: Changing the zoning will not affect the vistas any more than the current zoning allows.

- Advocate the maintenance and improvements of transportation systems so that people and goods can move safely and efficiently throughout the County.

Applicant: Subject property is on a controlled access highway which is designed for commercial development.

- Promote pedestrian friendly, livable communities.

The Comprehensive Plan addresses the possible adverse impacts commercial development on the fringe of town can have on traditional downtown central business districts. There is some evidence of underutilization of buildings located in the commercial core in Charles Town and Ranson presently. Rezoning of the subject property may lead to development which could be in direct competition with downtown commercial businesses.

Applicant: The type of business that would locate on the subject property is not the same as that which would establish their business in downtown Charles Town or Ranson so this should have no affect on downtown businesses.

These goals have been unchanged for over 20 years, there continues to be a common held vision that they are important to the County. As stated previously, encouraging and supporting residential, commercial and light industrial developments can be accomplished in a number of ways and in a number of alternative locations in the County that are more appropriate. With the current economic decline, there are a large number of residential and commercial

vacancies, in existence now, that can promote this kind of development. Adding to a saturated market is not smart growth policy. Colliers International, a global international real estate firm, has noted that commercial retail space is over built by some one billion square feet (Source 1). This glut of retail space is not expected to abate quickly. While the proposed rezoning has a mixed use element conceptually built into it, there may not be enough property to provide a work and housing mix.

Applicant: This is taken out of context and does not apply to the subject property. I can assure you that Jefferson County only has a small percentage of the listed one billion square feet of space and there is very little available on the Route 340 corridor.

As a result, this will be an auto dependent rezoning that will further cause congestion at an existing dangerous intersection and is not in keeping with pedestrian friendly, livable communities. Such activity has been established elsewhere in the County.

Applicant: The current zoning allows high density residential development. Changing the zoning and adding a potential commercial element will not increase traffic over what is allowed by the current zoning.

Since there are existing and additional locations that can provide this type of activity, the natural resources, cultural and historic preservation (the Harpers Ferry Park and viewsheds) of the scenic beauty can only occur where these features or resources are present. One of the goals mentioned above is to "Encourage and support commercial, industrial, and agriculture activities to provide a diversified and sound local economy." It is important to remember that tourism is a real and vital component of Jefferson County's economy which brings in real revenues just as other businesses do in the County. Jefferson County is number one in tourist dollars captured by any county in the State of West Virginia, capturing in \$729,000,000 for the 2008 year (Source 2). The proposed rezoning is centered within the area that visitors to the State and County view. Visitors do not enter the state to see suburban sprawl, rather the open vistas that welcome vacationers to Jefferson County and the State of West Virginia. Protecting our resources is pro-economic development that provides "...a diversified and sound local economy."

Applicant: Changing the zoning to allow commercial will potentially encourage tourism related businesses to locate here. In addition, changing the zoning to RLC should impact the vistas no more than the current Residential Growth zoning.

The effects of traffic "With the increase in population in the last three decades, Jefferson County's roads have had to bear the combined burden of increased traffic volume and heavier commercial vehicles. As a result, the deficiencies of the highway and road systems have

become more critical. Inadequate funding and increases in transportation demand are conditions which probably will be facing the people of Jefferson County indefinitely (pg 26).” As many people are aware the notion that inadequate funding and increased transportation demands are conditions the County will probably face indefinitely is ominous.

Applicant: This is why it is so important to locate commercial growth along existing highways.

The staff acknowledges that there is an existing bottleneck along Route 340, which is a major transportation route through the County. Rezoning this parcel of land to Residential-Light Industrial-Commercial use may aggravate this condition.

Applicant: There should be only minimal differences in traffic for the requested zoning change. It is entirely possible that there will be less traffic if the property is developed commercially.

While this development by itself may or may not generate a lot of traffic, allowing this type of development to sprawl along Route 340 could result in increased congestion. It is certainly possible that the intersection of Bakerton/Millville and US 340 would see an increase in traffic pressure from this rezoning. The rezoning here may open the possibility for additional neighboring properties to up zone in this location, adding to the dangers of this intersection.

Applicant: See comment above. Also, please note that any rezoning of neighboring property should be considered on their own merits and just as the subject property should be considered on its. Maryland and West Virginia are currently working to coordinate the traffic lights to better control the flow of traffic.

The Comprehensive Plan states that “A comprehensive and systematic approach to transportation planning is needed to meet the future transportation of the County (pg 26).” The plan further delineates the following general goals:

1. Reduce the occurrence and severity of roadway traffic accidents by encouraging the West Virginia Department of Transportation, Division of Highways to reduce or eliminate conditions which cause them.
2. Encourage the West Virginia Department of Transportation, Division of Highways to take measures to provide for and maintain efficient roadway traffic flow.
3. Find creative solutions to both funding and legislative limitations, in order to solve transportation problems.
4. Seek a coordinated transportation plan among all levels of government that provides for coordinated transportation planning and funding of highways, streets, commuter rail service, public transit, car/van pooling, park & ride facilities, bike paths, pedestrian access, and technological improvements to the transportation system in the County.
5. Encourage alternate forms of transportation within the County, such as pedestrian trails and bike paths, provided they are feasible and prove beneficial.

6. Encourage the State and Federal government to increase public transit service to the County, provided it is feasible and proves beneficial.

“During the Comprehensive Plan process, citizens have expressed concerns with some of the roads in the County. The County has reached a critical turning point as undeveloped land is becoming committed to new subdivision and development. As more and more land is developed future transportation improvements may become more difficult and more costly. Therefore, it is prudent for the State and County to plan for the future needs now, while the land is available and the improvements can be more easily made, or at least the land can be reserved during the development process for future improvements (pg 27).”

Applicant: This is referring to the fact that the county has required service/frontage roads to be installed parallel to control access highways. The subject property is surrounded on three sides by roads and a steep slope. The Jefferson County BZA has already determined that the subject property would not be required to have a service/frontage road.

The Comprehensive Plan reflects the growth in traffic volumes, along the Route 340 Corridor, from 1996 to 2002. It is clearly the most heavily trafficked route. The West Virginia Department of Transportation traffic counts, from 2008 show 38,000 average daily trips (ADT) at WV 26 and 29,400 near Bakerton Rd. The applicant has confirmed this in their application by stating “...commuting to and from the Washington DC/Metropolitan area, thus significantly taxing the major roadway systems, especially the Rt. 340 Corridor...”

Applicant: Again, current zoning allows high density residential and the traffic that will be generated from the current zoning should not be negatively impacted with the proposed zoning change.

Currently this section of US 340 is undergoing a comprehensive and systematic study to begin to address the current and future transportation needs of the corridor. This study should be allowed to mature in the process before land use decisions are pre-determined. There are real implications to land use decisions, such as this rezoning, that affects the transportation network. In this analysis and specific section, it is not only the rezoning and the possible uses that could be built that could cause a negative impact upon the traffic conditions, but the potential for transportation improvements to be built on the parcel to improve the Corridor. Such transportation improvements are difficult if buildings are being constructed or are built. The West Virginia Department of Highways noted this concern to staff in another area of the County.

The current East US 340 Corridor Study may recommend necessary corridor improvements and land use (zoning districts) changes along the corridor. The corridor study is discussed here and in the recommendation below. There is significant land mass along US 340 that could

potentially be developed. There are a number of large parcels, totaling approximately 650 acres that are potentially developable. That acreage does not include the numerous lots that are 7 to 20 acres in size that could be assembled for development, adding presumably an additional 100 to 200 acres of conceivable development. For reference, a square mile is 640 acres of land. While a single more intense non-residential development may not have a significant negative impact on US 340, setting a precedent for allowing this type of development without a comprehensive corridor management plan in this area, sets the stage for an accumulation of minor negative effects that could result in a major problem.

Applicant: Applicant agrees that this re-zoning will have little impact. It is contradictory for the staff to indicate that they agree that there will be little impact and say that the impact "may" come later if some other parcel is submitted for re-zoning. The subject property should be considered on its own merits just as any future applications should.

The goal of this plan is not to predetermine what is going to occur along the corridor, so much as to plan how components of corridor mesh as a unit.

The Comprehensive Plan highlights the bottleneck along US 340 and affirms "Due to employment trends in the region, US 340 is the busiest highway used to access Jefferson County. On Fridays, commuter traffic has been known to back up from the Potomac River Bridge as far as Brunswick, Maryland as county residents return from their jobs in Maryland and Washington. Holiday travel can also create weekend backups at this bottleneck. Ways to correct this problem have been discussed. Several options to increase the capacity of this section of highway are to: widen the bridge/highway to four lanes, double deck the bridge/highway, or build an alternate by-pass highway. Given the major river crossings, coordination is necessary between the States of West Virginia, Maryland and Virginia, the impact on the National Park, and the design difficulties and high cost, it is unlikely that one of these solutions will be implemented in the foreseeable future. Therefore, another option is for future transportation planning efforts to study the benefits and feasibility of options that may decrease commuter traffic along this section of highway. These options may include park & ride facilities that are coordinated with public transportation, and encouraging telecommuting, etc (pgs 32-33)."

Applicant: Changing the zoning to RLC with the potential to develop the subject property as commercial will potentially create jobs here thereby negating the need to cross the bridge and potentially helping to eliminate the "bottleneck" between MD and WV as referenced.

The above referenced notation in the plan summarizes the problem in that area of US 340 and that a solution is not likely in the short term. The new Route 9 is not expected to solve the traffic concerns on Route 340, as the traffic on Rt. 9 has a different commuting pattern and direction than that of Route 340.

Applicant: Applicant agrees that the commuting pattern on the Route 9 Bypass is different from the commuting pattern on Route 340. That further supports our request for re-zoning since the commercial development in this area cannot serve the commercial need on Route 340. Currently in Jefferson County, the two places that make the most sense for commercial development due to the major roadways with appropriate infrastructure are the Route 9 Bypass and Route 340.

Again, while the proposed development alone may or may not have a significant negative effect on Route 340, the County needs to consider the potential accumulation of these effects.

Applicant: The staff is saying that they do not perceive the rezoning of the subject property as having any significant impact.

Without a detailed site plan for a specific use, the impact is hard to predict. The study underway is not anticipated to improve the bottle neck, but it could provide solutions that would allow for better flow along US 340. Page 30 of the Plan (titled Highway Problem Areas) identifies the Route 340 corridor as having problem areas, but does not identify the intersection at Bakerton Road as a problem area, as of 2003. However, that intersection is notable in the county as a hazardous area to cross. There is an accompanying table on page 31 of the plan which lightly details this issue, but it fails to mention the single lane sections.

Applicant: Please note that the WVDOH has not determined this area as a problem area and, if they do, appropriate action will be taken at that time. When the property is developed, the subject property will be subject to WVDOH regulations (including traffic studies, storm water management, etc) in order to get the appropriate entrance permits for the development.

These single lane sections are where the bottlenecks occur along portions of the Route 340 Corridor.

Applicant: These single lane sections are several miles from the subject property.

While noted above, the Comprehensive Plan expands upon the natural, environmental and historical resources along the US 340 Corridor and this analysis would be not be whole if this important component is not addressed. "In terms of environmental resources, Jefferson County suffers from an embarrassment of riches. Located in the shadow of the Blue Ridge at the confluence of two major rives, Jefferson County is also one of the most agriculturally productive counties in the State of West Virginia. If we are not careful, we could squander these resources. Effective planning is essential to preserving these resources for use and enjoyment of future generations (pg 48)." Additionally the plan notes "Caves, scenic vistas, wildlife corridors and cliff areas are just several examples of additional forms of natural resources that contribute to the environmental and cultural mix that is Jefferson County.

Applicant: The subject property, due to its small size and being surrounded by roads, has no caves, wildlife corridors or cliff areas. In addition, very little of the property is visible as you come down the 340 corridor and can only be seen as you pass parallel to the site.

The topography, geology, hydrology, and biological diversity of the environment is one of the hallmarks that makes Jefferson County the beautiful environment that it is. Unfortunately, not every form of natural resource can be discussed in detail within the context of a Comprehensive Plan. The protection of scenic vistas has been the subject of public comment during this process. During the life of the 1994 Plan, which stated that scenic vistas should be protected through the purchase of easements, the Circuit Court voided the issuance of a Improvement Location Permit (ILP) for a telecommunications tower near Alstadt's Hill, based on non-conformance with the Comprehensive Plan, although no easements were in place. The County should identify the protection of scenic vistas as an issue to address, this is best done through the adoption of standards within the ordinances, so that all parties are aware of their rights and responsibilities in this regard (pg 52)."

Expanding upon the natural resources of the community to historic resources, the Comprehensive Plan presents the following topic at depth, but is of importance to this rezoning request in the total evaluation. "Jefferson County is an area rich in historical and archaeological interest. It has arguably been referred to as the most historic rural county in America. As part of our country's first western frontier, it was settled by Europeans before 1720 and was inhabited by Native Americans for several thousand years before.

Surveyed by a young George Washington and host to seven Washington family homes and three Revolutionary War generals' residences, Jefferson County's rich early history in the areas of transportation, farming, the military and industry are still evident in the structures and other resources that survive. As one of the major areas of military maneuver and the site of the John

Brown Insurrection, the County's place at one of the crossroads of the Civil War forever links it to many of the important events that occurred during our Nation's greatest test of endurance.

Given its size and population, Jefferson County has been fortunate in the amount of historic preservation projects that have been implemented around the County. The effort to preserve the fire engine house of the Harpers Ferry Armory (a.k.a. "John Brown's Fort) in the late 1890s is among some of the earlier concerted efforts at preserving a historic building in the United States. From Harpers Ferry National Historical Park to the historic districts of Shepherdstown and Middleway, Jefferson Countians can be proud of the number of historic resources that have been preserved here.

Over the years, a "windshield survey" of historic and vernacular buildings was created. This inventory was an initial effort, and is outdated, incomplete and should not be used as a working document nor a model for a new inventory.

History tourism is a significant element of Jefferson County's economy. Harpers Ferry, the Appalachian Trail, Shepherdstown, Antietam and the C&O Canal all serve to draw visitors to the County and surrounding area. The Jefferson County Landmarks Commission was reestablished in 1980 to be a central clearinghouse for preservation activities in the County, from reviewing nominations to the National Registers of Historic Places, to restoring and interpreting the Peter Burr Farm, to providing input regarding developments.

Applicant: The Jefferson County Historic Landmarks Commission supported our application for a Conditional Use Permit in 2002 for both the renovation of the house and the construction of the mini storage facility. They recognized the importance of commercial development.

While there have been many preservation "success" stories in Jefferson County, the issue has not been without controversy in recent years. Disagreements over such projects as the proposed demolition of the circa 1920 Jefferson County Jail have highlighted such issues as the responsibility of governments as stewards of historic structures, the use of appropriate government bodies in advisory roles, identification of preservation priorities, and long term preservation planning.

Applicant: There are no historic structures that need to be preserved on this site.

Regardless of the successes of the past, as an increasing number of tracts are developed for residential, commercial or industrial uses, existing unprotected historic resources become endangered. Existing processes should be evaluated for their ability to address this growing issue (pgs 55-56)."

Expanded discussion is found on page 66 of the plan which states that "History, culture and scenic beauty combine to make Jefferson County an attractive area for travel and tourism. The area's proximity to the major population centers of Baltimore and Washington enhances this

potential. Local attractions include Harpers Ferry, Shepherdstown, the Contemporary American Theater Festival, Charles Town Races and Slots, Summit Point Raceway, the Mountain Heritage Arts and Crafts Festival, the Washington Heritage Trail, white water rafting, etc. Two existing organizations are primarily responsible for encouraging the expansion of the tourism industry and an increase in visitors - the Jefferson County Chamber of Commerce and the Jefferson County Convention and Visitors Bureau. The JCDA can be most useful in assisting with the location and expansion of destination oriented tourist facilities.”

Historic and natural features are given a significant priority in the 2004 Comprehensive Plan. This section of the Plan underscores the importance of heritage tourism to the economy and notes the cultural and scenic features that drive locally based tourism’s economic engine. The text substantially supports the need to protect the “scenic vistas” both in this plan and in the 1994 Comprehensive Plan. Most of the site is visible from various areas of the National Park. Considering the property’s location in relation to the national historic buildings and park, the views may be considered more important than the development proposed.

Staff suggests that any development of the site, with or without rezoning, identify key locations where components of the viewshed may be considered more important and would require easements to protect the view. While being redundant, it’s important to note that recreational tourism, heritage tourism, scenic tourism, and eco-tourism are part of Jefferson County’s pro-business and pro-economic development avenues. Potentially impacting that significant, valuable and irreplaceable part of the county and the affected economic generators, without a plan, in this rezoning is unsystematic. This section of the Plan underscores the importance of heritage tourism to the economy and notes the cultural and scenic features that drive locally based tourism’s economic engine. Staff notes that care should be taken when reviewing rezoning that might jeopardize the efforts to nurture the tourism economy or reduce interest in visitation to tourist offerings. The subject property is integral element of a historic battlefield as shown on Image 4.

As mentioned above, an important consideration of this rezoning request is whether “...there have been major changes of an economic, physical or social nature within the area involved, which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.” There have been major changes to the US Route 340 Corridor area that were not projected when the Comprehensive Plan was written. Since 2004 there have substantial acquisitions by the National Park Service surrounding this property that were not anticipated in 2004. This is a significant consideration in that the subject parcel may have once been potentially part of a larger area that could have developed. Now those areas are protected and this subject parcel is isolated from other

parcels. The potential for high intensity development on adjoining large lot parcels in that area is not a reality.

Applicant: The simple purchase of property by the National Park Service does not constitute major changes of an economic, physical or social nature within the area involved. Again, ownership does not determine zoning. Additionally, if NPS's ownership of the commercial land along Route 340 will keep this property from being developed commercially as it was originally anticipated, it is important to identify other property along this corridor that can be developed commercially. Economic development is key to the continued growth of this county and its citizens.

While the applicant has taken great strides and should be strongly commended in restoring the existing home to offices, the remaining acreage is open for use. Considering that mini-storage units were once proposed on the site, there is a need for caution as to what could be placed on that property regardless of what has occurred. It is important to remember that the proposed zoning allows a variety of uses. The rezoning appears to be speculative based on the applicant's lack of committal on any of the future uses that would or would not be a component of this site.

The Residential-Light Industrial-Commercial zoning district, which the applicant is requesting, is "...commonly referred to as the "mixed use" zone, permits uses of a light industrial and commercial nature, as well as a spectrum of residential and institutional uses ranging from single-family dwelling units to multi-family apartments and group homes. Residential uses must conform to the standards set forth in the Residential Growth District, but industrial and commercial uses are required to conform to a set of specific performance criteria, which include numerical measurements of several factors for uses that may have nuisance effects on adjacent uses.

There are two issues regarding this district that should be studied as part of planned amendments to the Zoning Ordinance. First, most ordinances that have "mixed use" zones require certain minimum percentages of land usage in residential, commercial and dedicated open space. Jefferson County's Ordinance doesn't. Land in this district can be developed entirely for commercial or residential use or any combination thereof.

Applicant: Current zoning allows the subject property to be only residential. Changing the zoning to RLC allows the potential for commercial development. Commercial development is much less taxing on the citizens of Jefferson County and the increased tax base will contribute to enhancing the county.

A second, less pressing issue is whether the property that is in this district, but part of a larger tract under common ownership should be required to submit a concept plan for the

development of the entire tract as part of the application for development of the initial phase of the project. By policy statement, the Planning Commission does ask for a concept plan, but it is nonbinding and advisory only. Requiring the approval of a concept plan (subject to revision if the circumstances needs change) would allow the Planning Commission to view how the development as a whole would affect the area and how the initial phase would coordinate with the proposed build out concept (pg 71)." The plan outlines further, that as a recommendation for future changes to the Zoning Ordinance, a concept plan be submitted when a plan or rezoning is requested for this district.

Applicant: This is something that will be addressed at the development stage and not at rezoning.

The plan does detail some of the potential benefits of the Residential-Light Industrial-Commercial District and a number of concerns with the district. While this district is defined as mixed used, it does not require any mixing of uses, it merely allows for the possibility. The district allows two vague uses as permitted by right, "Commercial Uses" or "Uses of light industrial." "Uses of light industrial" is essentially defined by uses that are not defined as heavy industrial and commercial uses. There is wide latitude for the ability to interpret what qualifies as light industrial use. These two terms allow for some interpretation of what they mean and what is permitted. As such, there are a variety of uses that could be proposed on the subject property, each of which could have very different impacts.

The Comprehensive Plan outlines a worthy thought that a concept plan should be presented when a rezoning is requested. This would provide some level of expectation of what may occur in the future. The requirements for this type of submittal should be reasonable in order to provide a balance for the applicant's resources and the public understanding of the proposal. Since the Residential-Light Industrial-Commercial District allows such a wide variety of uses, it's not an unreasonable notion.

Applicant: Applicant has provided all documentation that is required to be submitted. It is unfair that the Staff would presume to request additional information that is not required in a Staff report.

Finally, the Comprehensive Plan accurately and clearly describes the circumstances and elements of the area that this rezoning could affect. "The US 340 corridor from the Shenandoah River bridge to the Charles Town bypass serves many purposes. It is the major transportation spine in the eastern part of the County. It is from this road that one views the panorama of the rest of the County from Alstadt's Hill. It serves as a collector for several secondary State highways which serve significant numbers of houses and businesses, and it serves as the eastern gateway to West Virginia. Traffic is ever increasing on this road, as are development pressures.

This segment of US 340 is the most identifiable and visible artery in the County. Without effective study and management, this corridor could deteriorate into a strip of housing developments indistinguishable in character, and commercial development rivaling "strips" in nearby larger cities.

US 340 is the main transportation spine through the County. As such, the purpose of this study is not to turn US 340 into an undeveloped parkway. Rather, it is stated here that the purpose of this study is to identify ways to ensure that the residential and commercial development that occurs along this corridor is designed and constructed in such a way where the development does not cause visual blight and major traffic problems along the eastern entrance corridor to the State. Buffers, landscaping requirements, traffic and access design, sign regulation and aesthetic highway improvements are all examples of issues that could be discussed as part of this study (pg 72)." Again, while this rezoning is for 9.676 acres of property, the expansion and potential for traffic and visual blight is possible without careful consideration of the Corridor as a whole. It is imperative that the activity on this Corridor be reviewed very closely due it being the "most identifiable and visible artery in the County."

It should be noted that in the past, the applicant has stated that in the failed 2008 Zoning Ordinance this property was to be General Commercial. While that is correct, it's only a component of the overall situation occurring at that time. First, the proposed 2008 Zoning Map does not show additional purchases by the National Park Service that have occurred since that time. The 2008 map does show other Federal lands in the area. The proposed map was out of date by the time it was adopted. Changes to the land in that area were happening faster than the plan could keep up with as it was being finalized. Changes occurring at that time could have changed the zoning proposed in that area, including this property.

The activity in this area has change quickly in a short time. Second, the economic climate under which the 2008 Zoning Ordinance and Map was created has dissipated and may have had an impact on the zoning designation for the property. As noted previously, it is well established that there is much more commercial space currently available than can be absorbed by the market. Third, not all properties along the US 340 Corridor would have been up zoned by the failed 2008 Zoning Ordinance. In fact, two large parcels would have been down zoned from the current Residential Growth to Agriculture. It is difficult to balance the idea that large parcels were downgraded and smaller parcels were up zoned. It may be possible to speculate that the Corridor under the propose zoning was intended to retain some rural characteristics or the area was not looked at carefully. As such, the 2008 proposed Zoning Map may be flawed and any assumptions derived from it are defective. Finally, in the referendum of the 2008 Zoning Ordinance and Zoning Map, the community of Jefferson County overwhelmingly rejected that proposal. Making decisions on an ordinance and map that was rejected by the people is not in keeping with the intentions of the citizens of Jefferson County.

Applicant: Applicant disagrees with Staff regarding the commercial space available along the Route 340 corridor. There is very little commercial space available in this area. As anyone who

is in real estate understands, LOCATION, LOCATION, LOCATION is essential for commercial business. That is why there is so very little available in this area and further supports the Applicant's request for a zoning change.

The community of Jefferson county rejected the Ordinance and Zoning Map but not because of the zoning on this parcel.

Jefferson County spent well over \$50,000 analyzing the rezoning of the county and it is unreasonable to say that it was flawed in the reclassification of the subject property into General Commercial.

Staff Recommendation

The applicant has provided documentation that they believe support the request for rezoning and has demonstrated what might appear to be consistency of the proposed rezoning with certain *limited* provisions contained in the Comprehensive Plan. The applicant has selected very limited sections to make their case and it is insufficient in its evaluation of the significant key components of the Comprehensive Plan.

Staff recommends denial of this application or that the applicant wait 12 months until the US 340 East Corridor study is complete. This will be explained further. While staff recognizes some conflict between various plan goals and objectives, we believe such conflicts are inherent in a document of this nature. As noted on page 12 of the Plan, "its recommendations are (by their nature and intent) general and, as such, sometimes conflicting. It will not be difficult to find two that individually justify and conflict with many land use proposals."

Applicant: It is unreasonable to expect Applicant to wait another 12 months for a study to be completed that has been considered since 2004. Realistically speaking, it will take a minimum of 12 months for the study, another 12 months to review and debate it with public hearings, and as much as another 12 months to consider all the input.

A number of policies, objectives and recommendations provided in the plan, when taken together, provide a compelling argument for denial of this rezoning application. They include:

- As noted above, State statute provides that "Before amending the zoning ordinance, the governing body with the advice of the planning commission must find that the amendment is consistent with the adopted comprehensive plan." [See *WVC 8A-7-9(c)*] This subsection of the State Code goes on to state that, "If the amendment is inconsistent, then the governing body with the advice of the planning commission, must find that there have been major changes of an economic, physical or social nature

within the area involved, which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.”

There have been major changes of an economic, physical or social nature within the area that were not anticipated when the current Comprehensive Plan was written in 2004. Since 2004 the area has experienced a significant shift toward acquisition of historic properties by the National Parks Service. While these properties have long been a place of historical significance, the land was not open to the public. With this fundamental change, property that is now flanked by lands that are in public holdings should be reviewed in a different fashion. No longer is the subject property adjacent to significant lands that could be developed, the property is in isolated pocket.

Applicant: The simple purchase of property by the National Park Service does not constitute major changes of an economic, physical or social nature within the area involved. Again, ownership does not determine zoning. Additionally, if NPS's ownership of the commercial land along Route 340 will keep this property from being developed commercially as it was originally anticipated, it is important to identify other property along this corridor that can be developed commercially. Economic development is key to the continued growth of this county and its citizens.

- While the plan may acknowledge growth along Route 340 that occurs over time, such development should extend from existing core areas and not be located in the middle of a rural area with limited services for this type of activity.

Applicant: Subject property is not located in the middle of a rural area. It is surrounded by many commercial establishments as listed earlier. In addition, the services aren't limited. All required infrastructure is in place and is located along a major corridor.

- Pages 32 and 33 of the Comprehensive Plan discuss the Harpers Ferry Water Gap. This discussion focuses specifically on the two-lane roadway condition through the Shenandoah-Potomac River Water Gap at Harpers Ferry. It documents the history of back-ups and suggests that alternative ways to correct the problem have been discussed. It notes however, that a solution is not likely in the short term (if ever) due to design difficulties, high cost and impacts on the National Park. For these reasons staff cannot recommend a rezoning that can only create additional pressures on limited highway capacity in this area. As noted in this report, the proposed change of zoning could result in higher traffic patterns than currently allowed in the existing zoning. The

applicant has already noted that the existing roadway systems are taxed in their capacity for travel movements.

Applicant: Changing the zoning to RLC with the potential to develop the subject property as commercial will potentially create jobs here thereby negating the need to cross the bridge and potentially helping to eliminate the "bottleneck" between MD and WV as referenced.

- Page 72 of the Comprehensive Plan identifies the Route 340 Corridor as an area that should be targeted for special study. It notes that the corridor serves as a collector for several secondary state highways which serve significant numbers of houses and businesses and it serves as the eastern gateway to West Virginia. Traffic is ever increasing on this route. This segment of US 340 is the most identifiable and visible artery in the County. Without effective study and management, this corridor could deteriorate into a strip of housing developments indistinguishable in character and commercial development rivaling "strips" in nearby larger cities. The Plan recommends study of the US 340 corridor, including land use, viewscales, economic development, traffic design and management in order to create an effective strategy for a long term plan of this important Corridor. The Plan notes that buffers, landscaping requirements, traffic and access design, sign regulation and aesthetic highway improvements are all examples of issues that could be discussed as part of the study. Staff agrees with the Comprehensive Plan recommendations, and believes such a study should precede any rezoning with the corridor.

Applicant: Current zoning allows the development of the property as housing. Changing to RLC allows more options with less impact on the County.

- Staff recommends that the applicant wait 12 months until June 30, 2012 to return to the County Commission at the second meeting in July to have this item heard by that body. This would allow for the US 340 East Gateway Corridor study to fully mature and provide at a minimum recommendations regarding land use (possible rezoning options) and traffic impacts. The study underway is addressing this corridor with meticulousness and will allow for land use decisions based on an overall plan, not an ad hoc basis. It is a real possibility that the corridor study may have an overlay zone, in this area, that allows the applicant more flexibility in uses. It may also allow the applicant to garner staffs support. Additionally, the requested land use change may further garner public support and allow the applicant a less contentious path. This recommendation is not unreasonable. At best, the applicant is able to market the property in a manner that the

end user can be assured less intense scrutiny and assure a smoother process or approval. At worst, the applicant is in the same position that they are in currently. The goal of the study is not to take away zoning entitlements.

Applicant: Applicant cannot wait for 1-3 years while this happens. Without the requested re-zoning, applicant intends to build out the property as currently zoned with as many as 100 residential units.

- There has been some concern regarding the applicant's intent of what this property will be developed as and how it will look. The applicant has been vague in this regard. While it would be nice to suppose that the intent is to be in keeping with historic structure used by the applicant, their vagueness and lack of commitment to providing a reasonable answer to those questions clearly indicated this rezoning is a speculative rezoning. The applicant has done a quality restoration of the historic house and it would be speculative to assume that those features would carry over to the area requesting to be rezoned. That's not a risk that should be taken lightly in consideration that this area is an entrance to the Jefferson County and the State. If the applicant were willing to provide some minimum details regarding architectural elements of the new structures, that may begin to address some of the concerns.
- The 2004 and 1994 Comprehensive Plans provide substantial discussion of the need for protection of "scenic vistas" (see page 52). This issue has also been raised over the years with plan updates. As such, it is a scenic vista with County, State and National significance. Rezoning the site for Residential-Light Industrial-Commercial use places scenic vistas at risk.

Applicant: The scenic vistas are no more at risk under the requested re-zoning to RLC than under the current residential growth zoning classification.

- The site is visible from various areas of the National Park. Considering the subject property's proximity to national historic lands, the views may be considered more than attractive natural features and scenic vistas. They are a part of a greater story in the nation's history worthy of interpretation. For both reasons, staff suggests that any development of the site, with or without rezoning, identify key locations where components of the viewshed may be considered most important and explore providing for purchase of easements on those portions.

Applicant: Applicant is always interested in talking to the county regarding the purchase of its property. As of this time, no one from the county or the NPS has made any offer to

purchase all or a portion of the property. This should not be considered when evaluating the re-zoning request.

- As noted previously, some of the Plan's goals appear to reflect conflicting values. However, staff believes some goals can be achieved in a number of ways, while others are location dependent. An example is the goal of encouraging and supporting commercial and industrial development and providing jobs in the County which can be accomplished in a number of ways and in a number of alternative locations within the County. Such a goal need not be implemented on the subject property. However, conservation of natural resources, cultural and historic resources (the Harpers Ferry Park and viewsheds) and preservation of scenic beauty can only occur where these features or resources are present. If better understood by use of a concept plan, both economic development and the historical, natural and scenic views might be balanced.

Applicant: LOCATION, LOCATION, LOCATION. A business' location is critical. You cannot put most business just anywhere. In order for them to be successful, they need to have good access, high visibility and infrastructure. All of which are available to the subject property.

- Finally the applicant always has the option to apply for a CUP. In the CUP the applicant could outline the permitted uses they would like and it would provide a way to reduce some concerns related to uses permitted in the Residential-Light Industrial-Commercial District. With this process the applicant may be able to achieve their objectives.

Applicant: It is unreasonable to expect any potential commercial business to spend the funds necessary to file a Conditional Use Permit if the zoning is not in place. Applicant filed for their original Conditional Use Permit in June, 2002 and did not get the signed approval until November, 2006. The approval received was only a partial and the Applicant spent a tremendous amount of money going through the process. In today's economic environment anyone interested in establishing a business in Jefferson County will not consider a property that is not zoned properly. They will take their business to either another property already properly zoned in Jefferson County or to Berkeley County where there is no zoning.

Image 2

Growth of Harpers Ferry NHP Since 2004

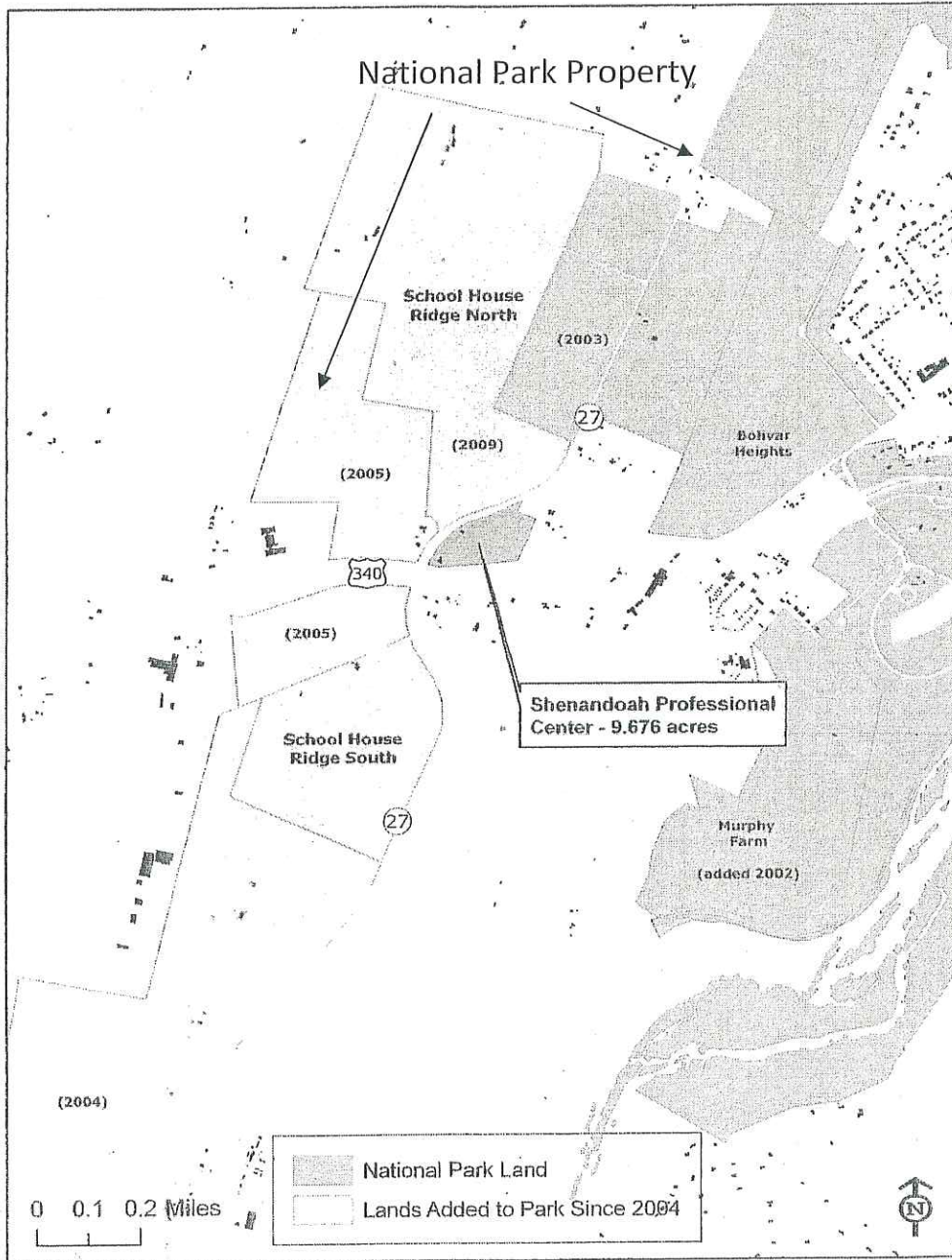
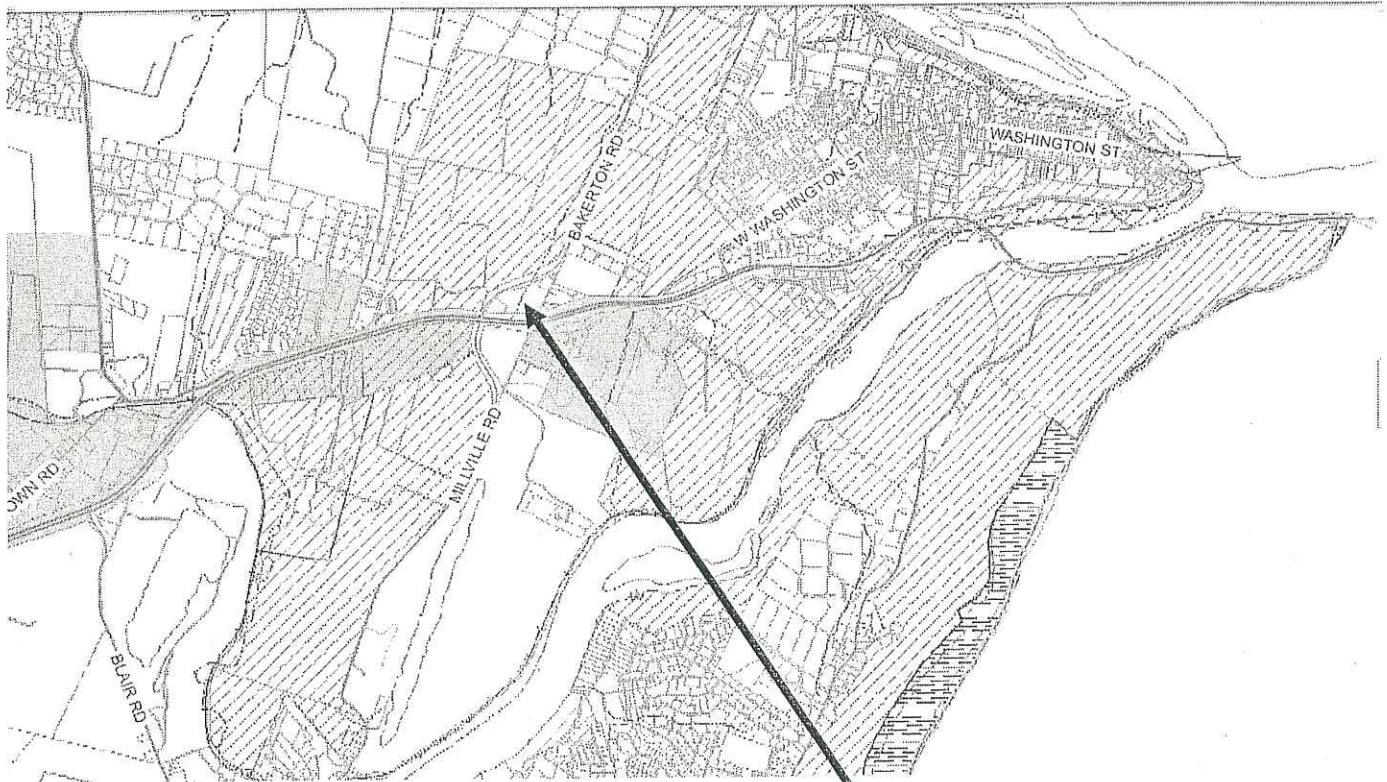



Image 3




Legend

 Urban Growth Boundary

 Parcels


 Tax District Boundary

 Public/Quasi-Public Land


 Appalachian Trail

Zoning District

 Incorporated Town

 Industrial-Commercial

 Residential-Growth

 Residential-Light Industrial-Commercial

 Rural

 Village

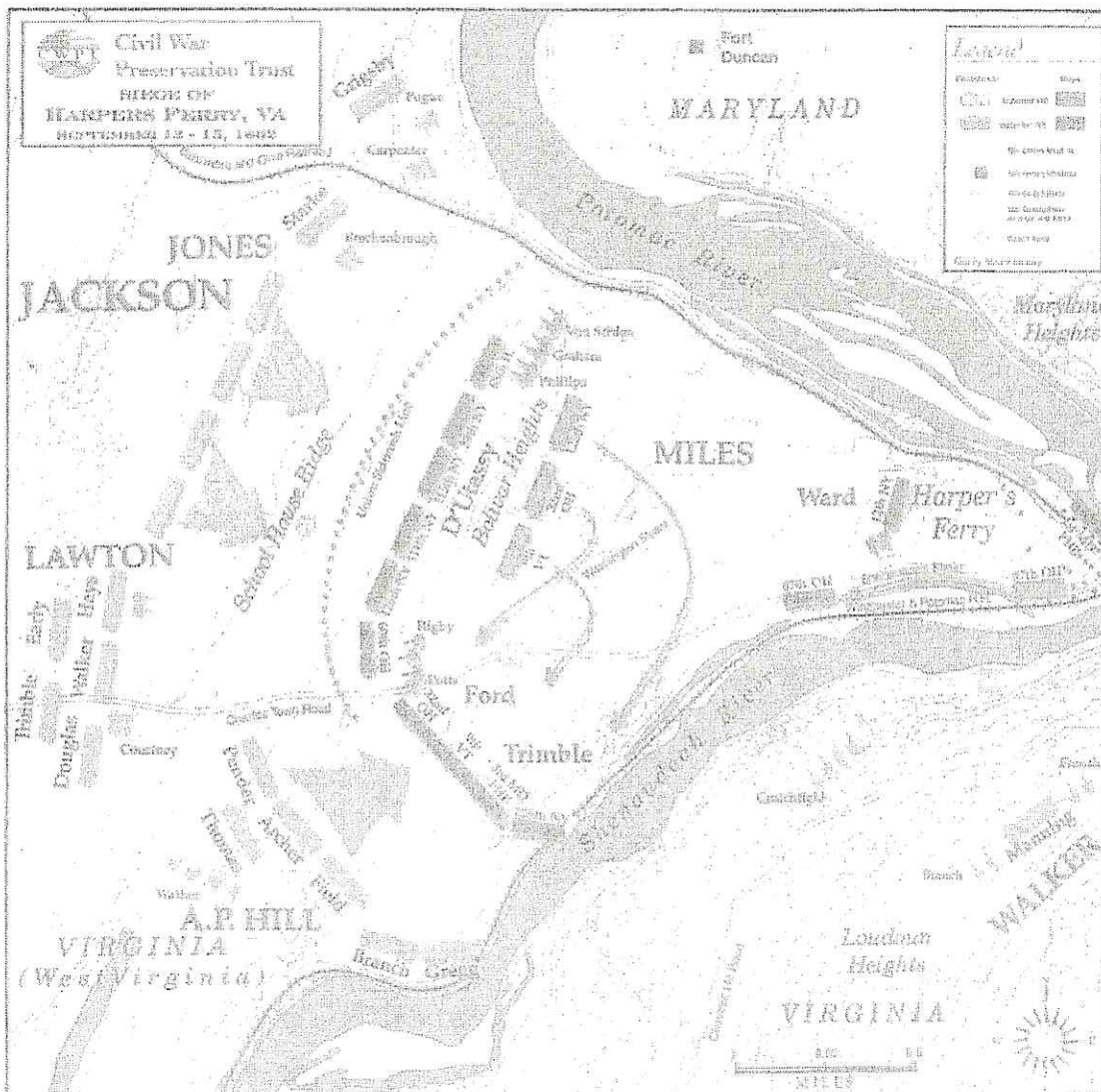
Subject Property

Image 4

School House Ridge and Bolivar Heights

Important resources that should be preserved for future generations

Below is a battle map showing the positions and flow of the opposing Union and Confederate forces of Jackson and Miles during the siege of Harpers Ferry. This area is where much of the actual battle was fought. It's best long term use would be to preserve it for historical interpretation by tour guides as part of the Harpers Ferry's historical tourism experience. Continued development on or near this battlefield not only defiles a national historical treasure, but it also ignores its great potential as an economic engine for attracting historical tourism dollars.



Source 1

“The Big Box Dilemma” Colliers International White Paper (Summer 2010)

Jefferson Utilities, Inc.

September 12, 2007

Ms. Jennifer Brant
Potomac Professional Services, LLC.
36 Bakerton Road
Harpers Ferry, WV 25425

Re: Water Service for Shenandoah Professional Center

Dear Ms. Brant:

I am writing in response to your letter of August 27, 2007. Jefferson Utilities will be pleased to provide domestic potable and fire fighting water supply to serve the 96 unit condominium development proposed by Shenandoah Professional Center LLC at the 36 Bakerton Road property.

The water line extension to your project will be designed and constructed in accordance with the standard Alternate Main Line Extension Agreement to be entered into between Jefferson Utilities, Inc. and Shenandoah Professional Center LLC.

We look forward to working with you to create a good project.

With best wishes,



Lee Snyder, President

Old Standard LLC
P.O. Box 341
Millwood, Va. 22646

Potomac Professional Services
Jennifer Brant
Assistant Project Mgr.
36 Bakerton Rd
Harpers Ferry, WV 25425

Dear Ms. Brant:

Old Standard LLC has capacity and can provide your project with sewer service for your required 27,000 gallons per day usage. There will be a capacity availability fee to be negotiated at a later date. In addition you will have to sign a main line extension agreement similar to the ones signed by Sheridan and Buglers Rest. Access to the plant will need to be engineered along Rt. 27 for gravity flows from our manhole between Buglers Rest and Old Standard.

Sincerely,

A handwritten signature in black ink, appearing to read 'Herb Jonkers', is written over the typed name and contact information.

Herb Jonkers
Manager
Sept. 26, 2007
703-627-0935



9 December 2002

Shenandoah Construction Management, LLC
Ms. Patricia M. Sanderson, and
Jefferson County Planning Commission

Re: 11 +/- acre lot @ Rte 340 and Bakerton Rd

To Those it May Concern,

The Jefferson County Historic Landmarks Commission at its 21 November 2002 Meeting, discussed the request for support by Shenandoah Construction Management in their effort to develop the above property and to restore the existing structure. We wish to stress that efforts should be made to provide adequate drainage to protect the old building, that it be buffered from the proposed mini-storage, and that the aesthetics of the site be considered in any construction.

The Landmarks Commission believes the plan as described is a good one, and voted 4 to 0 to support the request.

Sincerely,

Michael F. Mattingly

Michael F. Mattingly, Commissioner



DEPARTMENT OF THE ARMY
PITTSBURGH DISTRICT, CORPS OF ENGINEERS
WILLIAM S. MOORHEAD FEDERAL BUILDING
1000 LIBERTY AVENUE
PITTSBURGH, PA 15222-4186

REPLY TO
ATTENTION OF:

May 6, 2003

Operations and Readiness Division
Regulatory Branch
200300622

Mr. Daniel F. Llewellyn
Site Planning and Design
4603 Palmer Road
McGaheysville, Virginia 22840

Dear Mr. Llewellyn:

I refer to your letter, received in this office on April 23, 2003 requesting a jurisdictional determination for a ± 10 acre parcel located at the corner of Route 340 and Bakerton Road, near Harper's Ferry, Jefferson County, West Virginia.

On April 29, 2003, Messrs. Pozzuto and Swegman of this office performed a site visit on the parcel in question. It was determined that the USGS mapping of the unnamed tributary stream at this particular location is in error and that no wetlands or other jurisdictional Waters of the United States exists on the property.

Therefore, this office has no objection to the proposed project and a Department of the Army Permit is not required.

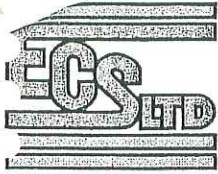
You may begin the work after you have received any required State and local permits.

If you have any questions, please contact Fred Pozzuto, Project Manager, at (412) 395-7275.

Sincerely,

A handwritten signature in cursive script, appearing to read "Albert H. Rogalla".

Albert H. Rogalla
Chief, Regulatory Branch



ENGINEERING CONSULTING SERVICES, LTD.
Geotechnical • Construction Materials • Environmental

3-01

April 23, 2003

Via Facsimile: 304-262-9513

Trish Sanderson
Shenandoah Construction Management, LLC
P.O. Box 1722
Martinsburg, West Virginia 25402

ECS Project No. 8068

Reference: Wetland Assessment
Shenandoah Professional Center (10+/- acres)
Corner of Route 340 & Bakerton Road
Tax Map 9, Parcel 37 (Harpers Ferry District)
Harpers Ferry, WV

Dear Trish:

Pursuant to our site visit today, I am providing the following letter of opinion concerning the likelihood of Waters of the U.S., and specifically wetlands, being located on the referenced property. My comments are based on a site reconnaissance, review of the Jefferson County Soil Survey, as well as topographic and National Wetland Inventory (NWI) Maps. The following is a summary of my observations and findings:

There is a perennial (i.e., solid blue line) creek identified on the most recent USGS 7.5 minute Charles Town quadrangle (1997). This channel does not, however, appear on the NWI map. Based on the USGS mapping, the creek crosses roughly through the middle of the property and continues across Bakerton Road, through another farm field, ultimately joining with Elks Run about 1.25 miles to the north. The channel is mapped as an intermittent feature on the soil survey, again crossing roughly through the middle of the property. During my visit I did not observe signs of a creek bed in this location or on other portions of the property. Further, there was no evidence of a creek emerging just below the property in the adjacent farm field. It is possible that the mapped location of the creek bed is in error. It is also possible that realignment of Route 340 could have altered the surface hydrology significantly enough to dry this channel up. However, again there was no evidence of an ancestral channel. The site does rest within a low depression relative to surrounding property; it receives a considerable amount of runoff from Route 340 to the south and Bakerton Road to the north. No evidence of incised channels or persistent saturation/inundation was apparent where culverts discharge water across the property.

166 Windy Hill Lane, Winchester, Virginia 22602 • (540) 667-3750 • FAX (540) 667-3730

Most of the soils mapped along the lower areas of the site appear to be well-drained, both surficially and internally. The property is underlain by three principal soil mapping units:

Frankstown shaly silt loam – Unit FbD3
Huntington silt loam; recent alluvium – Unit Ho
Braddock gravelly loam – Unit BrB

The Huntington series, locally mapped as unit Ho, occurs as narrow strips along drainageways. The soil survey notes that short term ponding can occur, however, the soil is generally suitable for cropping. According to Jared Beard, Soil Scientist for the Jefferson County NRCS, the Huntington soils can contain hydric inclusions. However, the particular unit mapped onsite is the upland sequence which is least likely to contain inclusions. None of the other soil types are listed as hydric. Although some light mottling was apparent in the shallow profile, there were no other morphological indicators of hydric conditions, probably due to deep plowing for row crops. In general the soils appear to be well-drained. No perched or ponded ground water was apparent onsite. Further, there were no indicators of recent flooding or saturation onsite such as drift lines, water marks, brush dams, etc.

Most of the site was covered with crop residue from a recent stand of corn. The edges of the site are overgrown with young trees, shrubs and thick brush. In my opinion there was not a predominance of hydrophytic vegetation that would indicate prolonged saturation.

To summarize, no evidence of the three requisite parameters for identifying wetlands (hydric soil, predominant hydrophytes or surface/subsurface hydrological indicators) was found during the reconnaissance. Further, there were no defined creek beds or similar surface water bodies mapped or observed on the premises. On the basis of this, it is my opinion that jurisdictional Waters of the US, as delineated and defined by the US Army Corps of Engineers, do not exist on the property under consideration.

It has been a pleasure serving you on this project. If you should have questions concerning this letter or require further assistance, please do not hesitate to contact me.

Respectfully Submitted
Engineering Consulting Services, Ltd



Garnett B. Williams, C.P.G.
Senior Environmental Geologist

**JEFFERSON COUNTY, WEST VIRGINIA
DEPARTMENT of PLANNING & ZONING**

**P.O. Box 338
104 East Washington Street
Charles Town, West Virginia 25414
Phone: 304-728-3228 / Fax: 304-728-8126**

February 28, 2008

APPLICANT NAME: Potomac Professional Services, LLC
ADDRESS: 36 Bakerton Road
Harpers Ferry, West Virginia 25425
PHONE: (304) 725-3712

RE: APPLICANT NUMBER: #1213
RE: SHENANDOAH PROFESSIONAL CENTER, LLC
REFERENCED PROPERTY: Harpers Ferry / Tax Map #9 / Parcel(s) #37 and #37.2
PROPOSED ZONING REVISION: GENERAL COMMERCIAL / ESTATE
REQUESTED ZONING REVISION: GENERAL COMMERCIAL

To Whom It May Concern:

Thank you for your interest in the proposed Zoning Map revisions. Due to enormous Public response, the review process was both complex and time-consuming. As each submission was individually addressed, this correspondence is specific to your request. Please be advised that after much consideration, it has been determined that your proposed zoning of the above-referenced property has been recommended for approval by the Jefferson County Planning Department. Accordingly, the County Commission has been notified of said recommendation, and will be responsible for the final decision regarding this matter.

Should you have questions, please do not hesitate to contact our office: (304) 728-3228.

Thank you,



Anthony D. Redman
Director of Planning and Zoning

ADR:clc

| |
|--|
| <p>Commission Office Use Only</p> <p>Date on Agenda: <u>6/30/11</u></p> <p>Appt Time or <u>New Business</u>:</p> |
|--|

AGENDA REQUEST FORM

Name: Nichelle Hosby

Department or Entity: County Commission

Estimation of amount of time needed for appointment: 10-15 minutes

Date Requested – 1st Choice: 6/30/2011

Date Requested – 2nd Choice: _____

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

Subject: Interviews and Appointments to the Summit Point Library Committee term ending June 30, 2016

Please provide the County Commission with a description of your request or presentation, including any background information: **There is a vacant position available on the Summit Point Library Committee for a (5) five year term that will end on June 30, 2016.**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **Motion to approve _____, to the Summit Point Library Committee for a five year term ending June 30, 2016.**

Attachments:

Summit Point Library

Members Currently serving 2010

| Name | Address | Phone | Expiring Term | |
|-----------------|---------|-------|---------------|--|
| Curt Mason | | | 6/30/2011 | |
| Carol Del Colle | | | 6/30/2014 | |
| Linia Overly | | | 6/30/2013 | |
| Catherine Burke | | | 6/30/2015 | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Vacancy

| Name | Address | Phone | Expiring Term | |
|------------|---------|-------|---------------|--|
| Curt Mason | | | 6/30/2011 | |

Interested Applicants

| Name | Address | Phone | | Attending |
|------------|---------|-------|--|-----------|
| Curt Mason | | | | Yes |
| | | | | |
| | | | | |

South Jefferson Public Library

49 Church Street

Post Office Box 17

Summit Point, West Virginia 25446

Phone: 304-725-6227

Email: jenkinsd@martin.lib.wv.us

Fax: 304-728-2586

April 25, 2011

The County Commission of Jefferson County
PO Box 250
Charles Town WV 25414
Att. Nichelle Adams Hosby

RE: South Jefferson Library Commission Appointment

Dear Commissioners,

This letter is to convey our unanimous recommendation for the reappointment of Curt Mason to a new term on our library board.

Curt has served tirelessly as our Vice President since his service on the board began and continues to be a very active and reliable board member. He brings leadership skills and creativity to the office he holds on the board. Curt has also been responsible for suggesting and spearheading the library's arts and music program, which has been very favorably received within the community. His dedication to the library and the community is greatly appreciated, and we would very much like him to continue.

Sincerely yours,



Carol Del-Colle, President

RECEIVED

APR 27 2011

Jefferson County Commission



JEFFERSON COUNTY COMMISSION

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

Phone: (304) 728-3284 - Fax: (304) 725-7916

Web: www.jeffersoncountywv.org

PRESIDENT
Patsy Noland

VICE PRESIDENT
Dale Manuel

COMMISSIONER
Frances Morgan

COMMISSIONER
Walt Pellish

COMMISSIONER
Lyn Widmyer

April 13, 2011

Curt Mason
3735 Summit Point Road
Charles Town, WV 25414

Dear Mr. Mason:

Please be advised that your term on the Summit Point Library Committee will expire on June 30, 2011. Until the County Commission has acted to appoint someone for another Five year term, you are asked to remain serving.

The County Commission is in the process of advertising for this position as standard procedure. Please contact us in writing at your earliest convenience to let us know if you are or are not interested in being considered for another term. We will be making the appointments on Thursday, June 30, 2011 or as soon thereafter as the Commission may decide.

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

For the Commission,

Nichelle Adams Hosby
Executive Assistant

3735 Summit Point Road
Charles Town WV 25414
20 April 2011

Jefferson County Commission
PO Box 250
Charles Town, WV 25414
Attn: Nichelle Adams Hosby

Dear Ms. Hosby,

Thank you for your letter of April 13, 2011, advising me that my term on the Summit Point Library Committee will expire soon. I am very interested in being considered for another term as a Committee member. During my current term as vice-president of the Committee, I have been active in the affairs of the library, attending almost all the board meetings, and leading the library's art and music program, which has been recognized as a real benefit to the community, as evidenced by the receipt of two grants from the Arts and Humanities Alliance within the past two years.

I hope the Commission will see its way clear to appoint me for another term beginning in June.

Thank you.



Curt Mason

Cc: Carol Del-Colle, President, South Jefferson Public Library.

RECEIVED

APR 20 2011

Jefferson County Commission

| |
|--|
| <p>Commission Office Use Only</p> <p>Date on Agenda: <u>6/30/11</u></p> <p>Appt Time or <u>New Business</u>:</p> |
|--|

AGENDA REQUEST FORM

Name: Nichelle Hosby

Department or Entity: County Commission

Estimation of amount of time needed for appointment: 10-15 minutes

Date Requested – 1st Choice: 6/30/2011

Date Requested – 2nd Choice: _____

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

Subject: Interviews and Appointments to the Jefferson County Parks and Recreation Commission 3 unexpired terms ending June 30, 2014

Please provide the County Commission with a description of your request or presentation, including any background information: **Three (3) vacant positions are available on the JCPR Commission that are for (3) - three year terms that will end on June 30, 2014.**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **Motion to approve _____, _____ and _____ to the Jefferson County Parks and Recreation Commission for a three year term ending June 30, 2014.**

Attachments:

Parks & Recreation Commission

Members currently serving

| Name | Phone | Expiration |
|----------------|-------|-----------------|
| Mike Jacobs | | 6/30/2011 |
| William Hoak | | 6/30/2011 |
| Daniel McVicar | | 6/30/2011 |
| Toni Milbourne | | 6/30/2012 |
| Lou Tiano | | 6/30/2012 |
| Bobby Shirley | | 6/30/2012 |
| George Nichols | | 6/30/2012 |
| Gene Taylor | | 6/30/2013 |
| Jimmy Pierson | | 6/30/2013 |
| Heather Morgan | | 6/30/2013 |
| Paul Marshall | | 6/30/2013 |
| Jennifer Myers | | Intrim Director |

Resigned or expired term member(s)

| Name | Phone | Expiration |
|----------------|----------|------------|
| Mike Jacobs | RESIGNED | 6/30/2011 |
| William Hoak | EXPIRING | 6/30/2011 |
| Daniel McVicar | EXPIRING | 6/30/2011 |

Interested Applicants

| Name | Phone | Attending |
|----------------|--------------|-----------|
| Daniel McVicar | 304-728-0675 | |
| Adam Shively | 240-405-5575 | |
| Joan O'Dell | 304-728-1133 | |

PARKS AND RECREATION COMMISSION

Mike Jacobs
1141 Steamboat Road
Shepherdstown, WV 25443
h: 876-6196
3 years 6/30/2011

William R. Hoak
761 Jefferson Orchard Road
Kearneysville, WV 25430
h: 725-3327
3 years 6/30/2011

Daniel W. McVicar
28 Sunlite Drive
Charles Town, WV 25414
728-0675
dwmcvicar@frontiernet.net
3 years 6/30/2011

Toni Milbourne
P.O. Box 586
Harpers Ferry, WV 25425
h: 535-6851 w: 725-2046
3 years 6/30/2012

Lou Tiano
1127 Willowdale Drive
Shepherdstown, WV 25443
h: 876-6836 cell: 268-3703
ltiano@frontiernet.net
3 years 6/30/2012

Bobby Shirley
567 Hidden Hallow Drive
Kearneysville, WV 25430
h: 724-5876
3 years 6/30/2012

1

PARKS AND RECREATION COMMISSION

George F. Nichols
187 Highland Way
Kearneysville, WV 25430
h: 725-7106
3 years 6/30/2012

Gene Taylor
1884 Hidden Hollow Drive
Kearneysville, WV 25430
genet_25414@yahoo.com
h:304-724-1784
c:240-432-6710
3 years 6/30/2013

Jimmy Pierson
49 Serenity Lane
Ranson, WV 25438
h.304-725-0552
c:304-616-8998
3 years 6/30/2013

Heather Morgan
29 Keys Ferry Rd, Suite 200
PO Box 426
Charles Town, WV 25414
h:304-725-2055
heather@jeffersoncountywvchamber.org
3 years 6/30/2013

Paul Marshall
409 Oakwood Drive
Shepherdstown, WV 25443
876-0551 cell-443-871-2574
pmarshall@ecologyservices.com
3 years 6/30/2013

Parks and Recreation Commission
235 Sam Michaels Lane
Shenandoah Junction, WV 25442
304-728-3207
728-9746 fax
JCPR@frontiernet.net §7-11-3

JOAN E. O'DELL
288 Highview Road
Harpers Ferry, West Virginia 25425
240-731-1349; 304-728-1133

May 6, 2011

Jefferson County Commission
Post Office Box 250
Charles Town, West Virginia 225414
nhosby@jeffersoncountywv.org

Re: Application for Appointment to the Jefferson County Parks and Recreation Commission for term ending June 30, 2011, and term beginning July 1, 2011.

Dear Commissioners:

I am interested in serving on the Jefferson County Parks and Recreation Commission for the term ending June 30, 2011, and the term beginning immediately thereafter (July 1, 2011).

I enclose my resume/statement of qualifications. I have served in positions with a County Government, including as County Attorney of Palm Beach, Florida – the largest County east of the Mississippi River, and with both rural and urban areas, and local and state problems - and with large acquisition and management programs for parks and recreational facilities.

My work with the U. S. Environmental Protection Agency was varied, and included supervision of the entire Grant Program for EPA, including grants to Counties.

Since moving to West Virginia in 1998, I have actively managed Lakeland Properties d/b/a Mountain Lake Lodge, including property maintenance, planning, Capital Improvements, running restaurants, etc. I have held certification under State law to operate restaurant facilities (ServSafe Management and Public Water System Operator Certificates.) I also am a licensed Real Estate Broker in WV.

I have served on the Board of the Jefferson County Convention and Visitors Bureau, and have a working knowledge of local, State and Federal law pertaining to safe water, clean air, operation of recreational facilities. and other health matters.

I believe that as a Parks and Recreation Commissioner, I can make a substantial contribution to Jefferson County, based upon my long-term experience in local, state and federal governments at medium to top levels.

My interest in land management and beautification, environmental protection, and water drainage and cleanliness is not stated on my resume. I am very interested in always improving the quality (and quantity) of parks and recreational facilities in the area where I live.

My dedication to serving those aspects of "Wild and Wonderful" West Virginia is long-standing.

I am available to meet with one or more of the County Commissioners (or staff) to answer any questions about my application or experience.

I am delivering 6 copies of this letter and my resume for distribution to each Commissioner with a file copy. Please call me at 240.731.1349 if you have any questions.

Sincerely,

Joan E. O'Dell

Enclosures: 5 copies of this letter and 6 copies of resume

Resume of Joan Elizabeth O'Dell -- Applicant for appointment as Commissioner of Jefferson County Parks and Recreation Commission. Date: May 6, 2011

Address: 288 Highview Road, Harpers Ferry WV 25425 240-731-1349

Resident of Jefferson County, WV since September 1998; Registered Voter

Owens home and other real property in Jefferson County, WV and pays real estate taxes in Jeff. County

Manages recreational properties in Jefferson County for over ten years

Licensed Real Estate Broker with current WV license

Taught in Jefferson County Public Schools as Substitute Teacher (Grades K-12)

Currently licensed to practice law in District of Columbia, with Real Estate Broker's License also in DC

Past Work Experience:

Trial Attorney for U. S. Securities and Exchange Commission, Washington, DC

Assistant State Attorney, Dade County (Miami), Florida (Prosecuting Attorney)

Assistant County Attorney, Dade County (Miami) Florida

County Attorney, Palm Beach County, Florida (Chief Attorney for County in all civil and governmental matters)

Regional General Counsel, U. S. Environmental Protection Agency, Atlanta, Ga . (Chief attorney for EPA in 8 state southeast region in all civil and criminal matters)

Associate General Counsel, Division of Grants, Contracts and General Administration, U. S. Environmental Protection Agency, Washington, D. C.

Private Practice of Law (not licensed in WV) and real estate sales and property management

In most of the governmental positions, I had a prominent role in, management, budgeting, environmental issues and planning .

Current Work Experience:

Licensed Real Estate Broker, West Virginia – sales and property management

Manager, Lakeland Properties LLC, d/b/a Mountain Lake Club – recreational facility with 55 acre lake, beach, tennis, boating, fishing, food service.

Nichelle Hosby

From: Tim Boyde [tboyde@jeffersoncountywv.org]
Sent: Tuesday, May 24, 2011 9:24 AM
To: 'Nichelle Hosby'
Subject: FW: Reappointment

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

From: Dale Manuel [<mailto:dmanuel@frontiernet.net>]
Sent: Monday, May 23, 2011 7:31 PM
To: 'Sandy McDonald'; 'Tim Boyde'
Subject: FW: Reappointment

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

From: Mcvicar, Daniel (NIH/NCI) [E] [<mailto:McvicarD@mail.nih.gov>]
Sent: Monday, May 23, 2011 5:20 PM
To: Dale Manuel
Subject: Reappointment

Hi Dale,

I could not an email address for Sandy. Could you forward this for me?
Thanks

Dan

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

Dear Commissioners,

This letter is to notify you of my interest in appointment for a third term as a member of the Jefferson County Parks and Recreation Commission (JCPRC). I have been a very active member of JCPRC since my appointment in 2005, and I hope to continue to contribute to the department for 3 more years. As a JCPRC commissioner, I have been involved in many aspects of the operation and modernization of the department. In my capacity as chair of the Facilities committee, I oversee the acquisition, construction, and maintenance of JCPRC resources throughout the county. Among other things, in the last three years this has involved formalization of the department's policies through the development and adoption employee guidelines and development of a formal detailed facility use agreement to better protect the department. In addition, as the original author, I maintain the department's bylaws and assure compliance in regards to updates and/or changes. Perhaps most notably, I have been the lead commissioner in the acquisition of the new park at Hite Road. Having, initially identified the site several years ago, I have been intimately involved in the development of the formal Master Plan, and I am now overseeing the development of the Site Plan that will result in the production of construction documents for the park. As soon as those documents are in hand, the commission expects to

move forward with the initial phase of development.

In summary, I feel that my time on the commission has been beneficial to both the commission and the people of Jefferson County. I believe my relationship with large segments of the county recreation community have increased awareness of JCPRC efforts and programs. I look forward to the opportunity to continue to serve the county as JCPRC expands its facilities and delivers increased recreational opportunities to the citizens of Jefferson County.

Sincerely,

Daniel W. McVicar

Dan McVicar
JCPRC Facilities Subcommittee
(304) 728-0675 (h)
(301) 401-2723 @
(301) 846-5163 (w)



JEFFERSON COUNTY COMMISSION
124 East Washington Street, P.O. Box 250, Charles Town, WV 25414
Phone: (304) 728-3284 - Fax: (304) 725-7916
Web: www.jeffersoncountywv.org

PRESIDENT
Patsy Noland

VICE PRESIDENT
Dale Manuel

COMMISSIONER
Frances Morgan

COMMISSIONER
Walt Pellish

COMMISSIONER
Lyn Widmyer

April 13, 2011

David W. McVicar
28 Sunlite Drive
Charles Town, WV 25414

Dear Mr. McVicar:

Please be advised that your term on the Jefferson County Park and Recreation Commission will expire on June 30, 2011. Until the County Commission has acted to appoint someone for another Three year term, you are asked to remain serving.

The County Commission is in the process of advertising for this position as standard procedure. Please contact us in writing at your earliest convenience to let us know if you are or are not interested in being considered for another term. We will be making the appointments on Thursday, June 30, 2011 or as soon thereafter as the Commission may decide.

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

For the Commission,

Nichelle Adams Hosby
Executive Assistant



JEFFERSON COUNTY COMMISSION

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

Phone: (304) 728-3284 - Fax: (304) 725-7916

Web: www.jeffersoncountywv.org

PRESIDENT

Patsy Noland

VICE PRESIDENT

Dale Manuel

COMMISSIONER

Frances Morgan

COMMISSIONER

Walt Pellish

COMMISSIONER

Lyn Widmyer

April 13, 2011

William Hoak
761 Jefferson Orchard Road
Kearneysville, WV 25430

Dear Mr. Hoak:

Please be advised that your term on the Jefferson County Park and Recreation Commission will expire on June 30, 2011. Until the County Commission has acted to appoint someone for another Three year term, you are asked to remain serving.

The County Commission is in the process of advertising for this position as standard procedure. Please contact us in writing at your earliest convenience to let us know if you are or are not interested in being considered for another term. We will be making the appointments on Thursday, June 30, 2011 or as soon thereafter as the Commission may decide.

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

For the Commission,

Nichelle Adams Hosby
Executive Assistant

Jefferson County Commissioners,

It is with excitement that I request the opportunity to serve on the Parks and Recreation Committee for Jefferson County. As a resident of the county since 2002, I see a definite need for forward thinking, enthusiastic, leadership in this area. After teaching middle school for 4 years, I entered Real Estate and sold for new home builder, NVR. I was then promoted to a position of Vice President of Sales for Portrait Homes and created my own company in 2007-2008, 4 State Real Estate LLC, with the hopes of taking advantage of the Maryland and Virginia transplants in WV and PA. My business has been very successful and I am currently looking for ways to better connect to my local communities and give back time and energy to something I see as very important. I have been married for 8 years to my wife, Lesa and we have two sons, ages 5 and 6. For me, Parks and Recreation is a huge part of who we are as a family and I would love to see Jefferson County Parks and Recreation grow with the energy, salesmanship, and enthusiasm I possess.

As Jefferson County Parks and Recreation, we should have an opportunity to be the "mother ship" for all the fragmented athletic leagues around the county. We should be the driver of enrollment and Jefferson County Parks and Recreation should lead the charge in program enrollment, county wide activities, and community involvement. Currently, Jefferson County Parks and Recreation is housed in an amazing location and facility that is underutilized. Program and Activity sign-ups to my knowledge, are nowhere near where they should be in order to grow this facility into what it was meant to be. People in the county want to see Parks and Recreation grow. I hear it everyday, but we are stuck in a position of, what seems to be, stagnation.

I come to Parks and Recreation with a vision to first, assist in creating a youth sports driver. We currently have multiple county areas acting independently of each other with regard to T-Ball, Baseball, Basketball, Soccer, and Football. Jefferson County Parks and Recreation could bring some cohesion to these activities without enflaming the relationships between the other governing bodies. There is a way to work together, and it would be my goal to assist in finding that road.

Second, with the increase in enrollment in Youth Sports comes a revived summer camp program offering more one week opportunities for the more skill minded youths and families. Looking at the Frederick County, MD YMCA, there are a variety of income producing camp programs that we are not offering here that would easily see growth with a more involved and energized Youth Sports Program overall. A strong Summer Camp program will serve to further ignite sign ups into the seasonal leagues throughout the year.

Third, By using these income producing avenues, we should see the ability to grow the Sam Michael headquarters into what it should be. Things that have been talked about including a band-shell for outdoor concert venues throughout the summer, an indoor and/or outdoor pool facility or water park, campground area, and more trails surrounding the grounds are just a few of the possibilities with a more well-funded Parks and Recreation program overall.

Please consider me for one of the open seats on the Parks and Recreation Commission. If you have any questions, concerns, or would like to set up a more formal interview, please call me at 240-405-5575 (cell) or email at 4StateRealEstate@gmail.com. I appreciate your time and consideration.

Respectfully,



Adam Shively

Jonathan "Adam" Shively

100 Monument Ct. Shepherdstown, WV 25443

Home Phone: 304-870-0022 Cell Phone: 240-405-5575 E-mail: 4StateRealEstate@gmail.com

OBJECTIVE

To get your home or property marketed and sold as quickly as possible at a price and terms that are acceptable to you!

WORK HISTORY

Keller Williams--4 State Real Estate LLC, April 2007-Present

Real Estate Consultant/Owner Keller Williams

- Managed all sales and marketing activities for land development projects, luxury lot and home sales, and commercial projects in the tri-state area
- Maintained sales budgets while meeting and exceeding sales goals in all categories
- Balanced activities as a general real estate agent, procuring leads, listings, and buyer agency activities
- Led Keller Williams Real Estate Agents through Associate Leadership Council
- Balanced duties of Real Estate Agent, Community Sales Director, and Recruitment coordinator
- Sold over \$9.5 Million in Real Estate in 2009 and \$11.5 Million in 2010

Portrait Homes Mid-Atlantic Division, March 2006-April 2007 (Reduction in force due to market condition)

Vice President of Sales

- Recruited and Hired 10 Person Sales force for start-up division
- Created and managed training agenda for newly hired sales representatives
- Completed Annual Plan 2007 and maintained all sales related budgets
- Participated in Land Acquisition activities for start-up division
- Researched and Created Advertising \$4 Million Advertising Budget for Mid-Atlantic Division
- Maintained Advertising budget and cut large scale advertising to meet budget restrictions of start-up division
- Rallied Sales Representatives to create a grass-roots advertising campaign for community sales
- Responsibly forced to lay off sales team due to market condition

Ryan Homes Washington Tri-State Division, 2002-2006

Sales and Marketing Representative

- Marketed and sold average of twenty million dollars in sales volume each year
- Managed numerous sites with customer service ratings in the 90% range over two year period
- Planned and implemented numerous divisional trainings for new sales and marketing associates
- Trained and assisted in the promotions of 8 different Sales Consultants over 4 year period
- Maintained community marketing budget of \$24,000 monthly

Montgomery County Public Schools, 1998-2002

World Studies Teacher/Varsity Basketball/Lacrosse Coach

- Met the needs of various learning styles and a diverse clientele while in charge of 120 students
- Developed and monitored a teacher mentoring program for 40 at-risk youth
- Managed operations of basketball program at Varsity High School level
- Managed operations of lacrosse program at Varsity High School level
- Volunteered and Recruited students for weekend projects in the Germantown, MD area

EDUCATION

Frostburg State University

- BS in Social Science and Certification in Secondary Social Science Education
- Overall GPA: 3.60, Major GPA: 3.54, Cum Laude

Real Estate Licenses

- West Virginia, Pennsylvania, Maryland, and Virginia

RELATED ACTIVITIES AND RECOGNITIONS

- 2010 Keller Williams Regional Top Producer
- 2009 Keller Williams Regional Top Producer
- Topped \$11.5 Million in 2010 Sales
- Topped \$9.5 Million in 2009 Sales
- Produced over \$8Million in Sales in 2008
- SRES Real Estate Designation (Senior Real Estate Specialist)
- Residential Land Specialist Designation
- Martin Friedland "Begin with Excellence" Seminars with Portrait Homes
- Regional Sales Representative of the Year 2005 selected out of over 240 Sales Representatives
- Trained and Mentored more than 18 New Homes Sales Associates
- Regional Trainer designation with Ryan Homes Tri-State division
- Planned and implemented numerous new Ryan Homes Training classes for new associates

COMPUTER EXPERIENCE

- Word, Works, Word Perfect, Outlook, Excel, PowerPoint, Publisher, Lotus Notes, PC based applications

PERSONALITY CHARACTERISTICS

- | | |
|-------------------------|-------------------|
| ➤ Organized | ➤ Confident |
| ➤ Forward Thinking | ➤ Creative |
| ➤ Looks for the Win-Win | ➤ Focused |
| ➤ Encouraging | ➤ Entrepreneurial |
| ➤ Positive | ➤ Action Oriented |
| ➤ Outgoing | ➤ Responsive |
| ➤ Motivating | ➤ Decisive |
| ➤ Motivated | ➤ Prepared |

REFERENCES

Larry Gorman, President of Operations/Managing Partner
CP Homes (A Division of the Long Development Companies)
240-367-8230

Nancy Grams McBride, Broker
Keller Williams Rice Realty
304-876-3570

Jim Gall, Client and Owner
Stonegate Solutions LLC
304-671-2152

Rob Stevens, Mortgage Banker
Shenandoah Mortgage
304-283-4342

FINAL GLANCE

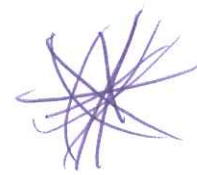
As your agent, I am receptive to criticism, push for envelope in terms of creativity and marketing opportunities, and am open to exploring all opportunities. As a father and husband, I am caring, thoughtful, responsive, and value my role as provider. Allow me to assist you today.

Commission Office Use Only

Date on Agenda: 6/30/11

Appt Time or New Business: _____

7C



AGENDA REQUEST FORM

Name: Nichelle Hosby

Department or Entity: County Commission

Estimation of amount of time needed for appointment: 5 -10 minutes

Date Requested – 1st Choice: 6/30/2011

Date Requested – 2nd Choice: _____

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

Subject: Interviews and Appointments to the Jefferson County Board of Health term ending June 30, 2016

Please provide the County Commission with a description of your request or presentation, including any background information: **There is a term expiring on the Jefferson County Board of Health that will need to be filled. This is a (5) five year term that will end on June 30, 2016.**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **Motion to approve _____, to the Jefferson County Board of Health for a five year term ending on June 30, 2016.**

Attachments:

Jefferson County Board of Health

Members Currently serving as of June 2010

| Name | Expiration |
|---------------------------------|------------|
| Joseph Osterman | 6/30/2011 |
| Robert Johnson | 6/30/2012 |
| Willis Nowell, Jr. | 6/30/2013 |
| Rosamond A. Rutledge-Burns | 6/30/2014 |
| Mark Shields | 6/30/2015 |
| Frances Morgan Commissioners | 12/31/2011 |

Expiring Term

| Name | Expiration |
|-----------------|------------|
| Joseph Osterman | 6/30/2011 |

Interested Applicants

| Name | Expiration |
|-----------------|------------|
| Joseph Osterman | |
| | |
| | |
| | |

11 April 2011

Mr. Tim Boyde
County Administrator
Jefferson County Commission
P.O. Box 250
124 E. Washington Street
Charles Town, WV 25414

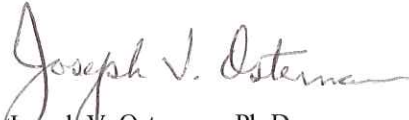
Dear Sir:

I am writing to request reappointment to the Jefferson County Board of Health. I was originally appointed to the Board of Health two years ago to complete the appointment of a member who had resigned from the Board.

I believe that I have participated successfully on the Board over the past two years and have served as Vice-Chairman of the group for both years. My current appointment expires on 30 June 2011, and I am now asking for the opportunity to serve a complete term as a member of the Board of Health. I have discussed my request for reappointment with Commissioner Morgan, who regularly attends meetings of the Board of Health. She stated that she strongly supports my request for reappointment.

My professional qualifications pertinent to the functions of the Board of Health include a Ph.D. in medical sciences and graduate training in financial management. I have experience teaching medical students at the University of Maryland School of Medicine; have managed large and diverse medical programs within the Army and Navy focused on infectious diseases and public health; and I have functioned as the Senior Vice President of a medical non-profit foundation. My personal business portfolio at the foundation was composed of programs addressing prostate cancer, breast cancer, ovarian cancer, traumatic brain injury, and nursing telehealth, supported with funds exceeding 50 million dollars per year.

I am now fully retired and have substantial time that I can utilize to address issues coming before the Board of Health. I would like an opportunity to continue to serve the citizens of Jefferson County.


Joseph V. Osterman, Ph.D.

98 Locust Knoll Drive
Charles Town, WV 25414
E-mail – josterman@citlink.net
Phone - 304-725-1874

RECEIVED

APR 12 2011

Jefferson County Commission



JEFFERSON COUNTY COMMISSION

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

Phone: (304) 728-3284 - Fax: (304) 725-7916

Web: www.jeffersoncountywv.org

PRESIDENT
Patsy Noland

VICE PRESIDENT
Dale Manuel

COMMISSIONER
Frances Morgan

COMMISSIONER
Walt Pellish

COMMISSIONER
Lyn Widmyer

April 13, 2011

Joseph V. Osterman
98 Locust Knoll Drive
Charles Town, WV 25414

Dear Mr. Osterman:

Please be advised that your term on the Board of Health will expire on June 30, 2011. Until the County Commission has acted to appoint someone for another Five year term ending June 30, 2016 term, you are asked to remain serving.

The County Commission is in the process of advertising for this position as standard procedure. Please contact us in writing at your earliest convenience to let us know if you are or are not interested in being considered for another term. We will be making the appointments on Thursday, June 30, 2011 or as soon thereafter as the Commission may decide.

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

For the Commission,

Nichelle Adams Hosby
Executive Assistant

We have received your letter of request for reappointment
on April 12, 2011

COUNTY ADMINISTRATOR
Tim Boyde

DEPUTY COUNTY ADMINISTRATOR
Sandy Slusher McDonald

| |
|---|
| <p>Commission Office Use Only</p> <p>Date on Agenda: <u>6/30/11</u></p> <p>Appt Time or New Business: _____</p> |
|---|

AGENDA REQUEST FORM

Name: Nichelle Hosby

Department or Entity: County Commission

Estimation of amount of time needed for appointment: 5 -10 minutes

Date Requested – 1st Choice: 6/30/2011

Date Requested – 2nd Choice: _____

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

Subject: Interviews and Appointments to the Eastern Panhandle Regional Planning and Development Council term ending June 30, 2012

Please provide the County Commission with a description of your request or presentation, including any background information: **There is a term expiring on the Eastern Panhandle Regional Planning and Development Council that will need to filled. The Current position is being held by the Director of the Development Authority. This is a (1) One year term that will end on June 30, 2012.**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **Motion to approve _____, to the Eastern Panhandle Regional Planning and Development Council for a One year term ending June 30, 2012.**

Attachments:

EASTERN PANHANDLE REGIONAL PLANNING AND DEVELOPMENT COUNCIL
Region 9

Thomas Bayuzik, Development Authority Director
P.O. Box 237
Charles Town, WV 25414
728-3255
1 year term 6/30/2011



JEFFERSON COUNTY COMMISSION

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

Phone: (304) 728-3284 - Fax: (304) 725-7916

Web: www.jeffersoncountywv.org

PRESIDENT

Patsy Noland

VICE PRESIDENT

Dale Manuel

COMMISSIONER

Frances Morgan

COMMISSIONER

Walt Pellish

COMMISSIONER

Lyn Widmyer

April 13, 2011

Thomas Bayuzik, Jr.

P.O. Box 237

Charles Town, WV 25414

Dear Mr. Bayuzik, Jr.:

Please be advised that your term on the Eastern Panhandle Regional Planning and Development Council will expire on June 30, 2011. Until the County Commission has acted to appoint someone for another One year term, you are asked to remain serving.

The County Commission is in the process of advertising for this position as standard procedure. Please contact us in writing at your earliest convenience to let us know if you are or are not interested in being considered for another term. We will be making the appointments on Thursday, June 30, 2011 or as soon thereafter as the Commission may decide.

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

For the Commission,

Nichelle Adams Hosby

Executive Assistant

COUNTY ADMINISTRATOR

Tim Boyde

DEPUTY COUNTY ADMINISTRATOR

Sandy Slusher McDonald

| |
|---|
| <p>Commission Office Use Only</p> <p>Date on Agenda: <u>6/30/11</u></p> <p>Appt Time or New Business: _____</p> |
|---|

AGENDA REQUEST FORM

Name: Nichelle Hosby

Department or Entity: County Commission

Estimation of amount of time needed for appointment: 5 -10 minutes

Date Requested – 1st Choice: 6/30/2011

Date Requested – 2nd Choice: _____

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

Subject: **Interviews and Appointments to the Jefferson County Property Safety Enforcement Agency term ending December 31, 2012**

Please provide the County Commission with a description of your request or presentation, including any background information: **There is a vacant position available on the Jefferson County Property Safety Enforcement Agency for a (1 1/2) One and a half year term that will end on December 31, 2012.**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **Motion to approve _____, to the Jefferson County Property Safety Ordinance Enforcement Agency for a one and a half (1 ½) year term ending December 31, 2012.**

Attachments:

Jefferson County Property Safety Ordinance Enforcement Agency

Members Currently Serving

| Name | Address | Expiration |
|-----------------------|-----------------------------------|------------|
| County Health Officer | Kearneysville WV 25430 | N/A |
| Roger Goodwin | Chief County Engineer | N/A |
| Robert Shirley | Sheriff - Non Voting member | N/A |
| Ben Money | Fire Chief, Citizens Fire Company | 6/19/2011 |
| Fred Blackmer | Harpers Ferry | 2/8/2013 |
| Melinda Keuroglan | Harpers Ferry | 2/8/2013 |

Expiring member(s)

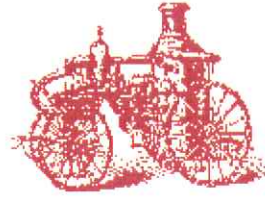
| Name | Address | Expiration |
|-----------|-----------------------------------|------------|
| Ben Money | Fire Chief, Citizens Fire Company | 6/19/2011 |

Interested Applicants

| Name | Address | Attending |
|-----------|-----------------------------------|-----------|
| Ben Money | Fire Chief, Citizens Fire Company | 6/19/2011 |
| | | |
| | | |
| | | |

Jefferson County Fire & Rescue Association

Friendship Fire Co 1
Citizens Fire Co 2
Shepherdstown Fire Co 3
Independent Fire Co 4



Organized 1959

Blue Ridge Mtn. Vol. Fire Co 5
Middleway Fire Co 6
Bakerton Fire Department Co 7

To: Jefferson County Commission

**From: Ronald L. Fletcher,
President**

Date: May 12, 2011

Reference: Jefferson Co. Property Safety Ordinance Enforcement Agency

To Whom It May Concern:

This letter is in reference to the reappointment of Benjamin Money to the aforementioned board. I would like to reappoint Ben Money to this board. For 3 years, Benjamin Money has served as a Fire Chief for Citizens Fire Company in Jefferson County, WV, which he presently continues to serve.

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

Sincerely Yours,

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

Ronald L. Fletcher,
President



JEFFERSON COUNTY COMMISSION

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

Phone: (304) 728-3284 - Fax: (304) 725-7916

Web: www.jeffersoncountywv.org

PRESIDENT
Patsy Noland

VICE PRESIDENT
Dale Manuel

COMMISSIONER
Frances Morgan

COMMISSIONER
Walt Pellish

COMMISSIONER
Lyn Widmyer

April 13, 2011

Ronald Fletcher
Jefferson County Fire and Rescue Association
P.O. Box 925
Charles Town, WV 25414

RE: Appointment of Fire Chief to the Jefferson County Property Safety
Ordinance Enforcement Agency

Dear Mr. Fletcher:

This letter is to inform you that Ben Money's term on the
aforementioned Board will expire on June 19, 2011.

If you could please submit a name or letter of reappointment for this
Board, it will be greatly appreciated. Please keep in mind that it must be
a Fire Chief. This appointment is for a one and a half year. The term will
expire on December 19, 2012.

Any questions, please do not hesitate to contact our office at 304-728-
3284.

For the Commission,

Nichelle Adams Hosby
Executive Assistant

| | |
|----------------------------|----------|
| Commission Office Use Only | |
| Date on Agenda: | 6/30/11 |
| Appt Time or New Business: | 10:15 am |

AGENDA REQUEST FORM

Name: Joseph Sacchet, Director

Department or Entity: Berkeley Jefferson Day Report Center

Estimation of amount of time needed for appointment: 10 – 15 minutes

Date Requested – 1st Choice: 06-30-11

Date Requested – 2nd Choice: _____

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

Subject: **FY 2012/Cash Match**

Please provide the County Commission with a description of your request or presentation, including any background information: **Regarding the WV Community Corrections Grant Program, request the Jefferson County Commission provide a total cash match of \$36,940.00 for fiscal year 2011/2012 for the Berkeley/Jefferson Day Report Center.**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **Move to approve a cash match of \$36,940.00 for fiscal year 2011/2012 for the Berkeley/Jefferson Day Report Center.**

Attachments: **Budget Summary Sheets**



406 South Raleigh Street
Martinsburg WV 25401

Phone: 304-267-5000 ext
3961
Fax: 304-596-2047

Berkeley/Jefferson Day Report Center

**Jefferson County Commission
Commission President Patsy Noland
PO Box 250
124 E Washington Street
Charles Town, WV 25414**

6/21/11

Re: FY 2012/Cash Match

Dear Commissioner Noland,

The purpose of this letter is to request from the Jefferson County Commission the total cash match of \$36,940.00 for fiscal year 2011/2012 for the Berkeley/Jefferson Day Report Center. I have attached a copy of the Budget Summary Sheet that provides a breakdown of the budget categories and the local match funds. This year our request is being made early due to our limited cash flow that parallels this time each year. It is our intention to become more financially solvent once we start providing routine drug screening for the Department of Health and Human Resources, Bureau for Children and Families in Berkeley and Jefferson Counties.

The satellite site in Charles Town will be opening once used furniture can be located and the Licensed Professional Counselor hired. Efforts continue to be taken to accomplish this. I will be happy to appear before the Commission as early as possible to provide an overview/update of the program in an effort to expedite this request.

Thank you for your continued support of the Day Report Center. Should you have any questions please contact me directly.

Sincerely,

**Joseph P. Sacchet
Director/BJDRC**

CC:

**Tim Boyd, County Administrator
Pamela Games-Neely, President Community Criminal Justice Board**

Attachments

| | |
|--|--|
| West Virginia Community Corrections Grant Program Application | General Administrative Information Page 1 |
|--|--|

| | |
|---|---|
| Applicant Agency: Berkeley County Council (formerly Commission) Address: 400 W. Stephen Street Martinsburg, WV 25401 Phone: (304) 264-1923 Fax Number: (304) 267-5049 | Type of Agency: <input type="checkbox"/> State <input checked="" type="checkbox"/> County Type of Application: <input checked="" type="checkbox"/> For State Funds <input type="checkbox"/> No State Funds |
|---|---|

| | |
|---|--|
| Project Director: Joseph P. Sacchet PD Title: Director, Day Report Center Address: 400 W. Stephen Street Martinsburg, WV 25401 Phone: (304) 267-5000 Fax: (304) 267-5049 Email: jsacchet@berkeleycountycomm.org | Fiscal Officer: Deborah Hammond FO Title: County Administrator Address: 400 W. Stephen Street Martinsburg, WV 25401 Phone: (304) 264-1923 Fax: (304) 267-5049 Email: dhammond@berkeleycountycomm.org |
|---|--|

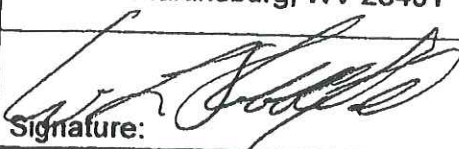
State Funds Requested: \$172,386.00 **Amount Awarded:**
Local Funds Committed: \$73,880.00
Project Period: July 1, 2010 – June 30, 2011 (for DCJS use only)

Number of years previously funded: 3 **Estimated Number to be Served:** 40
Geographic Area(s) Served: Berkeley and Jefferson Counties
Total Population: 156,604 (2009 US Census)
Project Title: Berkeley/Jefferson County Day Report Center (BJDRC)

Project Description:

The BJDRC is an alternative sentencing program that blends high level of control with intensive delivery of services to offenders sentenced/referred by circuit courts, magistrate courts, drug courts, mental health courts, prosecuting attorneys, probation officers, and the Department of Health and Human Resources.

Certification: To the best of my knowledge, the information contained in this application is true and correct. The submission thereof has been duly authorized by the governing body and the applicant will comply with the attached special conditions and assurances, if funding is provided.

| | |
|--|---|
| Authorized Official: William Stubblefield Address: 400 W. Stephen Street Martinsburg, WV 25401 | AO Title: President, Berkeley Co. Council Phone: (304) 254-1923 Fax: (304) 267-5049 E-Mail: wstubblefield@berkeleycountycomm.org |
| Signature:  | Date: 7/21/11 |

| | |
|--|----------------------------------|
| West Virginia Community Corrections Grant Program Application | Budget Summary Page 2 |
|--|----------------------------------|

| | |
|------------------------------------|-------------------------|
| Applicant: Berkeley County Council | FEIN Number: 55-6000296 |
|------------------------------------|-------------------------|

| Budget Category | WV Community Corrections Requested Funds (A) | Local (Match) Funds (B) | Total Budget (A + B) |
|-----------------------|--|-------------------------|----------------------|
| Personnel/Contractual | \$134,666.00 | \$57,714.00 | \$192,380.00 |
| Travel/Training | \$7,000.00 | \$3,000.00 | \$10,000.00 |
| Equipment | \$0.00 | \$0.00 | \$0.00 |
| Other | \$30,720.00 | \$13,166.00 | \$43,886.00 |
| Totals | \$172,386.00 | \$73,880.00 | \$246,266.00 |

**All funds must be rounded to the nearest whole dollar amount*

Funding Strategy

| Funding Source(s) | Amount | Status |
|-----------------------------|---------------------|------------|
| Berkeley County Council | \$36,940.00 | C |
| Jefferson County Commission | \$36,940.00 | C |
| State of West Virginia | \$172,386.00 | P |
| | | |
| | | |
| | | |
| | | |
| Total | \$246,266.00 | C+P |

Funding Source - Separately list each source of funds that will be used in the program.

Amount - Enter the amount received or anticipated for each

Status - Indicate the status of each funding source as follows:

- P – Projected grant, loan or donation
- A – Application submitted and under review
- C – Funds Committed
- R – Funds received, appropriated or on hand

Commission Office Use Only
 Date on Agenda: 6/30/11
 Appt Time or New Business: 10:45

AGENDA REQUEST FORM

Name: Tim Boyde

Department or Entity: County Administrator

Estimation of amount of time needed for appointment: 10 – 15 minutes

Date Requested – 1st Choice: 06-30-11

Date Requested – 2nd Choice: _____

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

Subject: **Renewal of the Mutual Aid Agreement between the City of Martinsburg and Jefferson County.**

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

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **Move to approve the Mutual Aid Agreement between the City of Martinsburg and Jefferson County and to authorize the President of the Commission and the Director of the Jefferson County Emergency Services Agency to execute same.**

Attachments: **Letter from the City of Martinsburg
Mutual Aid Agreement between City of Martinsburg and Jefferson County**

CITY OF MARTINSBURG FIRE DEPARTMENT

PAUL E. BRAGG
FIRE CHIEF



PHONE NUMBERS
FIRE & EMERGENCY
911

OFFICIAL BUSINESS
FIRE INSPECTIONS
304-264-2111
FAX 304-264-2115

200 NORTH RALEIGH STREET
MARTINSBURG, WEST VIRGINIA 25401

16 June 2011


Patsy Noland, President
The Commission of Jefferson County
P.O. Box 250
Charles Town, West Virginia 25414

Dear Commissioner Noland:

It is time to renew the Mutual Aid Agreement between the City of Martinsburg and Jefferson County. Enclosed is the Agreement adopted by the City Council on June 9, 2011 with an effective date of July 1, 2011.

If you desire any changes to the Agreement, please feel free to contact me at (304) 264-2111. Once the Commission has signed the Agreement, make yourself a copy, and return the signed original to me.

Sincerely,


Paul E. Bragg, Fire Chief
Martinsburg Fire Department

cc: Mark S. Baldwin, City Manager

RECEIVED

JUN 17 2011

Jefferson County Commission

MUTUAL AID AGREEMENT

FIRE, EMERGENCY MEDICAL SERVICES, SPECIALIZED RESCUES, AND DISASTERS

BETWEEN THE CITY OF MARTINSBURG

AND JEFFERSON COUNTY, WEST VIRGINIA

This AGREEMENT made and entered into this 1st day of July, 2011, by and between the CITY OF MARTINSBURG, WEST VIRGINIA AND JEFFERSON COUNTY, WEST VIRGINIA.

WITNESSETH:

WHEREAS, each of the parties hereto has an interest in the control of fires, emergency medical services, specialized rescues, disasters and/or other emergency support; and,

WHEREAS, in the event of a major fire, mass casualty event, specialized rescue, disaster or other emergency, either party may need the assistance of the other party to this Agreement, to provide supplemental fire suppression, emergency medical services equipment and personnel, specialized rescue personnel, and/or other emergency support; and,

WHEREAS, the CITY OF MARTINSBURG, and JEFFERSON COUNTY are desirous of providing more adequate protection within their respective territories in the event of a major fire, mass casualty event, specialized rescue, disaster and/or other emergency.

NOW THEREFORE, in consideration of the respective covenants and promises herein, the parties agree as follows:

1. DEFINITIONS: as used herein:

- (a) "Requesting Party" shall mean that party requesting aid; and,
- (b) "Responding Party" shall mean that party affording or responding to a call for aid.

2. AUTHORITY TO REQUEST AID:

- (a) Each party authorizes their respective fire chiefs, agency directors, or in their absence the senior officer or other member in charge to request and afford mutual aid from and to the other party upon request.

- (b) Each party agrees that the request for mutual aid shall comply with the following guidelines:
- (1) The Requesting Party must have personnel on scene at the emergency incident at the time of the request; or,
 - (2) The Requesting Party must have all their resources involved on another emergency incident at the time of the request; or,
 - (3) The Requesting Party must be requesting a special piece of equipment or expertise the Requesting Party does not have; or,
 - (4) The Requesting Party is responding to an emergency that from information received during the initial dispatch it is believed that the incident will overwhelm the resources of the Requesting Party.

3. LIABILITY:

- (a) Each party agrees that the Requesting Party shall assume liability for and hold the Responding Party harmless from all liabilities which arise out of command decisions and judgments.
- (b) Each party agrees to assume responsibility for liabilities arising out of the actions of its' own personnel and to hold the other party harmless as to the actions relating to performance.

4. INSURANCE:

- (a) Each party agrees to maintain adequate insurance coverage for its' own personnel and equipment.

5. COMPENSATION:

- (a) Each party agrees that it will not seek from the other party compensation for services rendered under this Agreement.
- (b) Each party shall at all times be responsible to its' own personnel for payment of wages and other compensation and for carrying worker's compensation upon said personnel.
- (c) Each party shall be responsible for its' own equipment and shall bear the risk of loss or damage.
- (d) However, if fire suppression chemicals are utilized by the Responding Party, the Requesting Party shall compensate the other party for the replacement cost of such chemicals.
- (e) Each party agrees that this agreement does not prevent either party from billing third parties for services when such billing is appropriate.

6. TRAINING:

- (a) Each party agrees that personnel of the Responding Party answering a request for mutual aid under this Agreement will meet all training requirements of the West Virginia State Fire Commission, the West Virginia Office of Emergency Medical Services, and/or any other state or federal requirements that may apply.

7. INCIDENT MANAGEMENT:

- (a) Each party agrees that the Requesting Party shall assume management of the emergency incident; unless, they specifically request the Responding Party to assume management responsibility. The Responding Party has the right to accept or reject this request.
- (b) Each party agrees that the management system to be used during the emergency incident shall be based on the National Incident Management System (NIMS), which is endorsed by the Department of Homeland Security.
- (c) Each party agrees that personnel of the Responding Party answering a request for mutual aid shall be trained in the use of the National Incident Management System (NIMS).
- (d) Each party agrees that personnel from the Responding Party shall work directly under a supervisor from their own department; but, that the supervisor shall be operating within the National Incident Management System (NIMS).

8. SAFETY:

- (a) Each party agrees that SAFETY is the number one priority at any incident.
- (b) Each party agrees that if members of the Responding Party feel an unsafe act is taking place or is about to take place they can withdraw from participation in the operation.

9. OBLIGATION TO RESPOND:

- (a) Each party agrees that provisions of this agreement shall not be construed to impose an obligation to respond to a request for mutual aid. At any time the Responding Party may, for any reason, deem it advisable not to respond and may so inform the Requesting Party.
- (b) Each party agrees that the Responding Party shall determine the amount of apparatus and personnel to send to a request for aid.

10) TERMINATION:

- (a) This agreement shall remain in full force and effect until the first day of July of each year. At which time, if desirable by both parties, the Agreement with any agreed upon changes can be renewed by the two parties.
- (b) A party desiring to terminate this Agreement prior to the first day of July shall serve in written notice upon the other party of its' intention to terminate this Agreement. Such notice shall be served not less than thirty calendar days prior to the termination date set forth in said written notice.

The Jefferson County Commission shall act as an agent for all Jefferson County Volunteer Fire Departments and Jefferson County Emergency Medical Services.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement the day and year first above written.

ATTEST: Wenna Hong
CITY RECORDER

DATE: 6/9/11

BY: George Karos
MAYOR, GEORGE KAROS
CITY OF MARTINSBURG

BY: Chris Paul E. Bragg
FIRE CHIEF, PAUL E. BRAGG
CITY OF MARTINSBURG
FIRE DEPARTMENT

ATTEST: _____
COUNTY ADMINISTRATOR

DATE: _____

BY: _____
COUNTY COMMISSION
PRESIDENT, PATSY NOLAND
JEFFERSON COUNTY

BY: _____
JEFFERSON COUNTY
EMERGENCY SERVICES
DIRECTOR,
DOUG PITTINGER

Commission Office Use Only
Date on Agenda:
Appt Time or New Business:

AGENDA REQUEST FORM

Name: Patsy Noland

Department or Entity: County Commission

Estimation of amount of time needed for appointment: 20 minutes (May require executive session)

Date Requested – 1st Choice: 6/23/2011

Date Requested – 2nd Choice: 6/30/2011

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

Subject: Discuss the possible acquisition of property to address the needs of the Prosecuting Attorney, the Courts and the county commission and whether the acquisition of an available office building will address the immediate and future needs of the county.

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

Request an open discussion with the Prosecuting Attorney and the Jefferson County Magistrates regarding space issues and whether the acquisition of an available office building will address the immediate space needs of the county.

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

I move that the county commission accept written public comments for a period of two weeks to give the public an opportunity to comment on the acquisition of the property.

Attachments: None

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

AGENDA REQUEST FORM

Name: Dale Manuel

Department or Entity: Co. Commission

Estimation of amount of time needed for appointment: 10-15 min

Date Requested – 1st Choice: 6/30/11

Date Requested – 2nd Choice: _____

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

Subject: I move that the unencumbered valance remaining at the end of the current budget year (ending June 30, 2011) be allocated in the following manner:

- The first 1.6 million dollars be allocated to meet encumbrances existing in next year's budget**
- 75 percent of the remaining balance be placed in the Capital Fund**
- The final 25 percent be placed in the County Commission Fund**

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

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **I move that the unencumbered valance remaining at the end of the current budget year (ending June 30, 2011) be allocated in the following manner:**

- The first 1.6 million dollars be allocated to meet encumbrances existing in next year's budget**
- 75 percent of the remaining balance be placed in the Capital Fund**
- The final 25 percent be placed in the County Commission Fund**

Commission Office Use Only

Date on Agenda: 6/30/11

Appt Time or New Business: 11:15

Unfinished

business

AGENDA REQUEST FORM

Name: Lyn Widmyer

Department or Entity: _____

Estimation of amount of time needed for appointment: 30 minutes

Date Requested – 1st Choice: June 30 June 30
~~July 7th, 2011~~

Date Requested – 2nd Choice: _____

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

Subject: **Adoption of County Commission Policy to require public improvement projects be in the approved and adopted Capital Improvement Plan prior to funding.**

Please provide the County Commission with a description of your request or presentation, including any background information: **On March 17, I introduced the attached draft policy to assure all expenditures for capital improvements in excess of \$100,000 are consistent with an adopted 6-year Capital Improvement Plan. It was my understanding the Commission would discuss this prior to spending more money on buildings. However, buildings are still being proposed for purchase without a capital improvement plan or a space needs study. Therefore, this policy needs to be considered now rather than later.**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **I move that all expenditures for capital improvements in excess of \$100,000 be consistent with an adopted Capital Improvement Plan.**

Attachments: yes

**Proposed County Commission Policy relating to funding of Capital Improvement Projects
(Introduced by Cmr. Widmyer, March 2011)**

CAPITAL IMPROVEMENT PLAN POLICIES

The annual Capital Improvement Plan (CIP) identifies public improvement projects planned by County Government to occur over a six year period. Each project in the CIP shall include the following:

- Detailed description of the project
- Justification
- Expenditure schedule
- Funding sources

The Jefferson County Commission will adopt a six-year CIP, update it annually, and make all capital improvements in accordance with the CIP.

All projects having the following characteristics must be included in the CIP prior to funding:

The project will have an individual project cost totaling \$100,000 or more.

The project will add to the government's public infrastructure.

The project will result in a major repair of a fixed asset that significantly adds to or preserves the life of the original asset.

The project is for acquisition of land for future projects (landbanking)

Municipal projects will be considered if the project is not exclusively for municipal residents or if the project is a cooperative effort by municipal, County and/or state agencies.

| |
|--|
| <p>Commission Office Use Only</p> <p>Date on Agenda: <u>6/30/11</u></p> <p>Appt Time or New Business: <u>10:00</u></p> |
|--|

AGENDA REQUEST FORM

Name: F. Mark Schiavone

Department or Entity: DCPM

Estimation of amount of time needed for appointment: 5 min

Date Requested – 1st Choice: 30 June 2011

Date Requested – 2nd Choice: 7 July 2011

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

Subject: Approval of the FY 2012 Impact Fee Fundable Projects List

Please provide the County Commission with a description of your request or presentation, including any background information: These projects were identified as being fundable by Impact Fees in the CY 2010 Annual Report on Impact Fees. In addition, the JCESA subsequently narrowed the list of potential projects down to 3 specific projects. These lists must be approved prior to the official release of impact fees to fund any specific project.

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): Move to approve the FY 2012 list of impact fee fundable projects.

Attachments: (1) Memo from DCPM including projects for Schools, Law Enforcement, and Parks & Recreation (2) Memo from JCESA with a list of fee fundable projects.

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

F. Mark Schiavone
 Director
 Impact Fee Coordinator

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

MEMORANDUM

TO: County Commission
 FROM: F. Mark Schiavone *ms*
 DATE: Thursday, June 23, 2011

Impact Fee Fundable Projects for Fiscal Year 2012

The following projects have been listed on the 2010 Annual Report on Impact Fees and were identified by the Impact Fee Coordinator as being eligible for funding in whole or in part using Impact Fee monies. Note that in some categories the amount approved exceeds the available funds. This in no way commits the County Commission to provide additional monies beyond those maintained in the appropriate impact fee long-term holding accounts. In these cases it is up to the requesting entity to request funds only for projects for which sufficient funds exist, thus not all projects listed will be funded by impact fees in FY 2012.

These projects have been identified by the Impact Fee Coordinator as being eligible for impact fee funding because: (1) they represent items currently in a capital inventory – e.g. they do not represent improvements in the existing level of service, and (2) each project has been justified by the requesting entity as being necessary, either in whole or in part, because of new growth.

Table 1. BOE Fee Fundable Projects

| Line | Project | Current Request | Funding Potential | Category |
|---------------|--|------------------|-------------------|--------------|
| 1 | Blue Ridge Primary | 500,000 | 500,000 | Construction |
| 2 | Harpers Ferry Middle Addition | 1,500,000 | 1,500,000 | Construction |
| 3 | New Bus and Food Service Facility | 4,500,000 | 4,500,000 | Construction |
| 5 | County-wide Expansion of School Facilities | 1,000,000 | 1,000,000 | Construction |
| Totals | | 7,500,000 | 7,500,000 | |

Table 2. Law Enforcement Fee Fundable Projects

| Line | Project | Current Request | Funding Potential | Category |
|---------------|--|-----------------|-------------------|--------------------------------|
| 1 | Purchase of Police Cruisers x (18) /1 | 150,000 | 70,000 | Acquisition of Major Equipment |
| 2 | Weapons training qualifications range | 10,000 | 10,000 | Acquisition of Major Equipment |
| 4 | Mobile Data Terminal for police vehicle - communications | 19,800 | 19,800 | Acquisition of Major Equipment |
| Totals | | 179,800 | 99,800 | |

Note 1: Request is for 18 cruisers with 3 acquired in FY 2012. There are insufficient funds to purchase more than 2 cruisers.

Table 3. Park & Recreation Fee Fundable Projects

| <u>Line</u> | <u>Project</u> | <u>Current Request</u> | <u>Funding Potential</u> | <u>Category</u> |
|-------------|---------------------------|----------------------------|------------------------------|-----------------|
| 4 | Moulton Park Improvements | 45,000 | 45,000 | Renovation |
| 12 | Hite Road Park /1 | 250,000 | 237,000 | Construction |
| | Totals | 295,000 | 282,000 | |

Note 1. Request exceeds funds anticipated by beginning of FY 2012.

Table 4. Jefferson County Fire and EMS Projects

(see attached memorandum from the Jefferson County Emergency Services Agency



JEFFERSON COUNTY EMERGENCY SERVICES AGENCY

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

March 24, 2011

Mr. Mark Schiavone
Impact Fee Coordinator
Jefferson County Commission
Post Office Box 250
Charles Town, WV 25414



Re: JCESA Approved Impact Fee Funding Requests

Dear Mr. Schiavone:

The JCESA Impact Fee Committee met on March 11, 2011 to review requests for impact fee funding and to make recommendations to the JCESA Board with respect to those requests. The Committee's report is attached. The Committee's recommendations were unanimously adopted by the Board at its March 15, 2011 regular meeting.

We respectfully request that you present these recommendations to the County Commission for their approval. I can be reached at (304) 839-1262 should you have any questions, or you can contact President Pete Kelley at (304) 725-8683.

Sincerely,

Paul Rosa
Secretary

cc: JCESA President Pete Kelley



JEFFERSON COUNTY EMERGENCY SERVICES AGENCY

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

March 11, 2011

Impact Fee Committee Report

The Impact Fee Committee convened pursuant to notice at 7:00 p.m. on March 11, 2011 at the JCESA Operations Center. Committee members Paul Rosa and Mike Mood were present, and Chairman Todd Wilt participated by telephone. Paul Rosa presided at the request of Chairman Wilt.

Copies of the list of “fee fundable” projects and the evaluation criteria were provided to those in attendance. The Committee then proceeded to evaluate each request according to the criteria and to make recommendations with respect to each such request.

The request by the Jefferson County Fire & Rescue Association for \$65,000 to fund a site plan for a training center was held in abeyance pending a legal opinion as to whether they were an entity eligible to receive impact fee funding. President Pete Kelley will be requesting the opinion from the county Prosecuting Attorney’s office.

The Committee reviewed the remaining requests and unanimously agreed to make the following conditional funding recommendations:

- Citizens and Shepherdstown fire companies both requested emergency backup generators with cost estimates ranging between \$55,000 and \$100,000. Last minute bid estimates presented at the meeting were received that ranged from \$53,000 to \$89,000. In light of the fact that it was recently learned that under county purchasing guidelines capital purchases over \$15,000 require legal advertisement and competitive bidding, an exact award amount is not being specified at this time, but both generator requests are recommended for funding because they contribute to the strategic objective of having all stations in the county on emergency backup power. Instead, county capital projects manager Kirk Davis will be asked to work with the two fire companies to develop specifications for backup power that will power the entire complex plus a minimum 10% growth factor. He will then develop the specifications for the legal advertisements and evaluate the bids and make recommendations to JCESA as to whether the two projects should be bid separately or together and advise us as to which bids should be selected.
- Friendship Fire Company and JCESA had both requested Autopulse units with requests ranging from \$30,000 to \$50,000 per unit. Based on written estimates

It's About Saving Lives...



JEFFERSON COUNTY EMERGENCY SERVICES AGENCY

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

received by the Committee from Zoll, the actual cost is approximately \$11,000 and, with accessories, about \$15,000-\$16,000 per unit. The Committee recommends funding one unit for Friendship and one unit for JCESA, subject to price negotiation between Director Pittinger and the West Virginia Zoll representative.

- The Committee had previously made a \$100,000 earmark for Middleway VFD for their new building provided they obtained adequate funding to complete the project. The Committee agreed to extend this commitment into the next fiscal year on the same terms and conditions. Mike Mood abstained to avoid any appearance of conflict of interest.

The Committee also made the observation that multiple requests are being received for similar items such as thermal imagers, cascade units for air cylinders, etc. with widely varying specifications and pricing. The Committee believes that we should move toward standardization of such items in order to advance the objectives of the Five Year Plan. Thus, as we move toward paid Firefighter/EMS service, employees can move from station to station and know how to operate standardized equipment.

There being no further business, the meeting adjourned at 7:40 p.m.

Respectfully submitted,

Todd Wilt
Chairman

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

Name: _____

Department or Entity: County Commission

Estimation of amount of time needed for appointment: 5 min

Date Requested – 1st Choice: 6/30/11

Date Requested – 2nd Choice: _____

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

Subject: Request approval of the Resolution changing the Scope of Work in the Governor’s Community Participation Grant for Camp Frame

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

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **move to approve the Resolution changing the Scope of Work for the Governor’s Community Participation Grant Program for Camp Frame**

Attachments:

Sandy McDonald

From: "Locke Wysong" <lockewysong1wv@yahoo.com>
To: "Sandy Slusher-Smith" <sandy@jeffersoncountywv.org>
Sent: Friday, June 17, 2011 7:29 AM
Subject: Camp Frame
Sandy.

Can you please have the Scope of Work for our CPP include capital improvements in repairing the swimming pool and upgrading the dining hall, as well as installation of new medal doors in the living quarters/cabins.

Thanks
Locke

GOVERNOR'S COMMUNITY PARTICIPATION GRANT PROGRAM

REQUEST FOR PROJECT AMENDMENT SCOPE/ACTIVITY CHANGE (FORM 2)

Grantee: _____ Amendment No.: _____ Date: _____

Project Title: _____ Project No.: _____

| Activity Number | Activity | Original Amount | Amended Amount |
|-----------------|--------------|-----------------|----------------|
| A. | Construction | \$ | \$ |
| B. | Other: | | |
| C. | Other: | | |
| D. | Other: | | |
| Total | | \$ | \$ |

Original Scope: (Attach additional page if necessary.)

Reasons for Proposed Changes:

Formal resolution must be attached to this Request for Project Amendment

Contact: _____

WVDO Approval:

Telephone: _____

Grantee: _____

Signature: _____

Signature: _____

Must be signed by Chief Elected Official
(PLEASE USE BLUE INK)

Date: _____

Date: _____

INSTRUCTIONS

REQUEST FOR PROJECT AMENDMENT SCOPE/ACTIVITY CHANGE (FORM 2)

1. **Grantee:** Enter grantee name.
 2. **Amendment Number:** Enter program amendment number. If this is your first program amendment, enter 1; for the second, enter 2; etc.
 3. **Date:** Enter date request submitted.
 4. **Project Number:** Enter project number.
 5. **Contact Person:** Enter name and phone number of person to contact if there are questions concerning this amendment.
 6. **Activity Number:** List the activity letter identifier for each activity to correspond with the activities defined in your Information Sheet. List only those activities to be changed.
 7. **Reason:** Please provide a specific description for the proposed changes(s).
 8. **Grantee:** The amendment must be signed and dated by the mayor or county commissioner.
 9. **Resolution:** A formal resolution must be attached to this request for project amendment.
 10. **Approval:** Only amendments signed and dated by the appropriate state official are valid.
 11. **DO NOT PROCEED WITH REQUESTED ACTIVITIES UNTIL YOU HAVE RECEIVED APPROVAL FROM THE WEST VIRGINIA DEVELOPMENT OFFICE.**
-

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

Name: **Barb Miller**_____

Department or Entity: **Homeland Security**_____

Estimation of amount of time needed for appointment: **5 min**_____

Date Requested – 1st Choice: **6/30/11**_____

Date Requested – 2nd Choice: _____

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

Subject: Request approval of the Memorandum of Understanding between the Department of Homeland Security, Mount Weather Emergency Operations Center and Jefferson County Fire & Rescue Association

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

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **move to approve the Memorandum of Understanding between the Department of Homeland Security, Mount Weather Emergency Operations Center and Jefferson County Fire & Rescue Association**

Attachments:

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE DEPARTMENT OF HOMELAND SECURITY,
MT. WEATHER EMERGENCY OPERATIONS CENTER
AND**

**JEFFERSON COUNTY FIRE & RESCUE ASSOCIATION JEFFERSON
COUNTY, WEST VIRGINIA REGARDING MUTUAL AID ASSISTANCE**

1. **PARTIES.** The parties to this Agreement are the Department of Homeland Security (DHS), Mt. Weather Emergency Operations Center (MWEOC) and the **Jefferson County Fire and Rescue Association (JCFRA) of Jefferson County, West Virginia.**
2. **AUTHORITY.** This Agreement is authorized under the provisions of 42 U.S.C. § 1856a.
3. **PURPOSE.** The purpose of this Agreement is to set forth terms by which **JCFRA** and MWEOC will provide mutual aid assistance to one another in order to render emergency assistance in extinguishing fires and in preserving life and property from fire or response during a local, state or federal emergency which requires emergency services.
4. **RESPONSIBILITIES:**

DHS/MWEOC.

a. Upon request by any of the **JCFRA companies**, MWEOC Emergency Services Branch, as available, will respond, to locations within the requesting **JCFRA company's** jurisdiction, with trained/certified personnel for HAZMAT, CBRN, Fire and Rescue emergencies and provide portable Biological Laboratory Equipment to identify agents. The analysis will be preliminary and used for medical purposes only and **WILL NOT BE USED FOR FORENSICS.** HAZMAT materials/samples will be analyzed in the local jurisdiction and will not be brought back to MWEOC,

b. MWEOC shall receive from each **JCFRA company** a list of members who may respond to the MWEOC facility and shall be responsible for clearing the team members for pre-approved access to the MWEOC facility. Upon approval, team members would have access to Area A, as required.

JCFRA.

a. Upon request by MWEOC to a **JCFRA company**, the requested **JCFRA company**, as available, will respond to MWEOC, with trained/certified personnel for incidents resulting from Hazardous Material (HAZMAT), Chemical-Biological-Radiological-Nuclear (CBRN), Fire, and/or Rescue emergencies affecting MWEOC personnel and/or property.

b. Upon request by MWEOC, the **JCFRA company**, as available, shall provide incident response and support for fire fighting, EMS/ALS support and training for the MWEOC Fire Department staff.

c. In advance of any emergency or response, each **JCFRA company** shall provide identifying information to MWEOC of its team members in order for proper checks to be made by MWEOC that will permit MWEOC to pre-approve access of the **JCFRA** team members to the MWEOC facility.

5. POINTS OF CONTACT.

Chief Steve Wilt
Friendship Fire Company
PO Box 126
Harpers Ferry, WV
(304) 535-2211

Chief Ben Money
Citizens Fire Company
245 Citizens Way
Charles Town, WV
(304) 725-2814

Chief Ross Morgan
Shepherdstown Fire Dept
Po Box F
Shepherdstown, WV
(304) 876-2311

Chief Ed Smith
Independent Fire Company
PO Box 925
Charles Town, WV 25414
(304) 725-2514

Chief Earl Cogle
Blue Ridge Volunteer Fire Company
181 Keyes Gap Rd
Harpers Ferry, WV
(304) 725-8118

Chief Mike Mood
Middleway Volunteer Fire Company
PO Box 1
Summit Point, WV 25446
(304) 668-3203

Chief Jamie Johnson
Bakerton Fire Dept
891 Carter Ave
Harpers Ferry, WV
(304) 876-0007

Frank Davis, Fire Chief
Department of Homeland Security
Mount Weather Emergency Operations Center
P.O. Box 129
Mount Weather, Virginia 22611
(540) 542-2668

6. OTHER PROVISIONS.

a. Nothing in this Agreement is intended to conflict with current law or regulation or the directives of the DHS or the JCFRA. If a term of this agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect.

b. Personnel dispatched to aid a party pursuant to this Agreement shall remain employees of the aiding unit. All employee benefits, wage and disability payments, pensions, workman's compensation claims, damage to or destruction of equipment and clothing and medical expenses of the party rendering aid shall be the sole and exclusive responsibility of the respective party for its employees. No party hereto shall have any obligation to provide or extend insurance coverage for any of the items enumerated herein to the other party or its personnel.

c. Any equipment used by a party in carrying out this Agreement shall, at the time of action hereunder, be owned by or under the operational control of that party, and all personnel acting for a party hereunder shall, at the time of such action, be an employee or volunteer of that party.

d. Each party agrees to waive all claims against the other party, save those resulting from gross negligence or willful misconduct by a party hereto or its personnel, for any loss, damage, personal injury or death occurring in consequence of the performance of this Mutual Aid Agreement.

e. The Chief and other Senior Officials of each party to this Agreement are invited and encouraged to frequently visit the other's activities for familiarization tours consistent with local security, or other requirements and, as feasible, to jointly conduct pre-fire planning inspections and drills.

f. In an effort to provide mutual assistance, JCFRA and the MWEOC enter into this agreement. When assistance is needed, either party may initiate the request. The requesting party will specify the location where aid is needed. The responding party will determine the amount and type of equipment to be dispatched and the number of personnel to allocate.

g. The responding team will report directly to the on-scene incident commander in charge.

h. Cross training will be offered by all parties and will be conducted at both facilities so that all responders can acclimate themselves to different environments and procedures.

i. The Fire Chief of a **JCFRA company** and the Fire Chief of MWEOC are authorized to meet and draft any necessary operational procedures needed to effectively implement this agreement. Such procedures and any resulting agreements will become effective upon ratification by the appropriate personnel of each party.

j. The rendering of assistance under the terms of this agreement is not mandatory on either party.

k. Due to the sensitive nature of this agreement, all **JCFRA companies** and MWEOC personnel are responsible for Operations Security and Communications Security procedures. All questions from the media or private citizens are to be referred to the FEMA/DHS Office of Public Affairs.

7. **EFFECTIVE DATE.** The terms of this agreement will become effective on the date of signing by the last party.

8. **MODIFICATION.** This agreement may be modified upon the mutual written consent of the parties.

9. **TERMINATION.** The terms of this agreement, as modified with the consent of all parties, will remain in effect until terminated by any of the parties. The agreement may be extended by mutual written agreement of the parties. Either party upon 30 days written notice to all other parties may terminate this agreement.

APPROVED BY:

Lyn Widmyer, Jefferson County Commission President
Jefferson County, West Virginia

Date: _____

Damon Penn, Executive Administrator
Mount Weather Emergency Operations Center
Mount Weather, Virginia

Date: _____

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

AGENDA REQUEST FORM

Name: _____

Department or Entity: County Commission

Estimation of amount of time needed for appointment: 5 min

Date Requested – 1st Choice: 6/30/11

Date Requested – 2nd Choice: _____

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

Subject: Approval of the Contract for Lease between the Jefferson County Commission and the State of West Virginia on behalf of Bardane Public Health Center at Bardane

Please provide the County Commission with a description of your request or presentation, including any background information: **Contract for the monthly rental fee between The Commission and the State for the use of the Bardane Public Health Center**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **move to approve the Contract for Lease between the Jefferson County Commission and the State of West Virginia on behalf of the Bardane Public Health Center**

Attachments:



JEFFERSON COUNTY COMMISSION

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

Phone: (304) 728-3284 - Fax: (304) 725-7916

Web: www.jeffersoncountywv.org

PRESIDENT
Patsy Noland

VICE PRESIDENT
Dale Manuel

COMMISSIONER
Frances Morgan

COMMISSIONER
Walt Pellish

COMMISSIONER
Lyn Widmyer

To: **Stephanie Grove**

From: **Sandy McDonald**

Date: **June 7, 2011**

Re: **Department of Health and Human Resources Addendum 1**

Please find attached the Addendum 1 received from the Department of Health and Resources.

When you get a chance, please review the Addendum 1 and provide any comments or changes. I will be placing this item on the Commission agenda on June 23, 2011 for approval. I have attached the current approved Contract of Lease for your convenience.

Please let me know if you have any questions or if you need additional information.

Thanks!

COUNTY ADMINISTRATOR
Tim Boyde

DEPUTY COUNTY ADMINISTRATOR
Sandy Slusher McDonald



STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
REAL ESTATE DIVISION
1409 Greenbrier Street
Charleston, West Virginia 25311

Earl Ray Tomblin
Governor

Robert W. Ferguson, Jr.
Cabinet Secretary

May 24, 2011

Charles D. Lawrence, Jr.
Executive Director

County Commission of Jefferson County
Administrator's Office Attn: Sandy
P. O. Box 250
Charles Town, WV 25414

RE: **HHR-152-814**

Dear Lessor:

The attached addendum has been prepared in response to the **Department of Health and Human Resources** request for an amendment to the above-referenced contract of lease and in accordance with provisions of Chapter 5A, Article 3 of the West Virginia code, as amended.

After you have reviewed, approved and executed the attached, please return both documents to:

State of West Virginia
Department of Administration
Real Estate Division
1409 Greenbrier Street
Charleston, West Virginia 25311

The Executive Director of the Real Estate Division will execute the agreement on behalf of the State of West Virginia. After the addendum is approved by the State Attorney General, copies will be distributed to you, as Lessor; the State Auditor's Office; and the agency named as Tenant in the lease.

A signed monthly invoice should be submitted to the Tenant no later than the 12th day of each month for the current month's rent in order to provide adequate time for the agency to process your rent check. If you prefer, you may submit multiple invoices at one time. Please process invoices the same as in the past for renewals, or for a new lease mail invoices to:

Department of Health and Human Resources
Building 3, Room 201
Charleston, WV 25305

Since the new rent cannot be paid until the addendum is fully processed, we request your prompt attention to these matters. If you have any questions or comments, please contact the Real Estate Division at the address shown or by telephone at 558-3062.

Sincerely,

Misty Moore

cc: Greg Nicholson

Telephone: (304) 558-3062

E.E.O./AFFIRMATIVE ACTION EMPLOYER

Fax: (304) 558-8082

ADDENDUM I

THIS ADDENDUM, made **May 16, 2011**, is hereby made an integral part of Contract of Lease No. **HHR-152-811**, which Contract of Lease was made **December 7, 2010**, by and between **County Commission of Jefferson County**, as Lessor, and the STATE OF WEST VIRGINIA, by the Department of Administration, Real Estate Division, as Lessee, for and on behalf of the **Department of Health and Human Resources**, as Tenant.

WHEREAS, the Lessor has leased unto the Lessee, for use by the Tenant, the following described Premises:

Approximately 2,878 square feet of space, consisting of 15 rooms in that building known as the Bardane Public Health Center at Bardane, Jefferson County, West Virginia, together with adequate parking facilities (hereinafter referred to as the "Premises").

WHEREAS, both parties hereto agree to extend the term of said Contract of Lease for one additional three-year period beginning **September 1, 2011**, and ending at midnight on **August 31, 2014**, at the current annual per square foot rate of **\$6.50**.

WHEREAS, both parties hereto agree that the above-stated changes shall be effective **September 1, 2011**.

NOW, THEREFORE, THIS ADDENDUM WITNESSETH:

It is agreed by and between the parties hereto that certain sections of the subject Contract of Lease are amended as follows:

(A) Page 1, Item 1, entitled "TERM AND NOTICES", first paragraph shall be amended to read as follows:

The term of this Contract of Lease, subject to the provisions hereof, shall begin on **September 1, 2011**, and end at midnight on **August 31, 2014**. The Contract of Lease shall be considered renewed for each ensuing fiscal year during the term of the Contract of Lease unless it is canceled by the Lessee before the end of the then current fiscal year.

(B) Other Terms and Conditions:

The subject Contract of Lease shall now be identified as **HHR-152-814** to reflect the new expiration date. All other terms and conditions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused their names to be affixed to this Addendum.

WITNESS: **County Commission of Jefferson County, Lessor**

By _____

By _____
Francis B. Morgan, Commission President

STATE OF WEST VIRGINIA, LESSEE

By _____

By _____
Carolyn L. Thomas, Operations Manager of the
Department of Administration, Real Estate
Division, for and on behalf of the Department of
Health and Human Resources

Acknowledged by Department of Health and Human
Resources, as Tenant

By  5/19/11
Greg Nicholson, Chief of Operations

Approved as to form this _____ day of _____, 2011. Darrell V. McGraw, Jr. Attorney General

By _____ Deputy Attorney General

ACCESS\Add\Renewal\HHR-152 mm



CONTRACT OF LEASE

DEC 10 2010

THIS CONTRACT OF LEASE, made December 7, 2010, by and between County Commission of Jefferson County, hereinafter referred to as "Lessor," and the STATE OF WEST VIRGINIA, by the Department of Administration, Real Estate Division, hereinafter referred to as "Lessee".

WHEREAS, pursuant to West Virginia Code, §5A-10-5, as amended, a Chief Executive Officer of the Department of Health and Human Resources, certifies that the space herein leased is necessary for the proper function of this department, and that satisfactory space is not available in other buildings now owned or leased by the State; and,

WHEREAS, the Department of Administration, Real Estate Division by executing this Contract of Lease, hereby leases the premises for use by the Department of Health and Human Resources, hereinafter referred to as "Tenant".

NOW THEREFORE, THIS CONTRACT OF LEASE WITNESSETH:

That for and in consideration of the full and complete performance of the covenants, terms, and conditions hereinafter set forth, the Lessor hereby leases unto the Lessee, for use by the Tenant, the following described Premises:

Approximately 2,878 square feet of space, consisting of 15 rooms in that building known as the Bardane Public Health Center at Bardane, Jefferson County, West Virginia, together with adequate parking facilities. (hereinafter referred to as the "Premises").

The parties hereto covenant and bind themselves as follows:

(1) TERM AND NOTICES

The term of this Contract of Lease, subject to the provisions hereof, shall begin on September 1, 2010, and end at midnight on August 31, 2011. This Contract of Lease shall be considered renewed for each ensuing fiscal year during the term of the Contract of Lease unless it is canceled by the Lessee before the end of the then current fiscal year.

Notices may be given by personal service upon the party(s) entitled to such notice, or by certified mail, duly stamped and directed to the last-known address of the party to be notified, and deposited in the post office. The proper mailing of such notice and not the receipt thereof shall constitute the giving of such notice by either party to the other. Notices shall be directed as follows:

To the Lessee

State of West Virginia
Department of Administration
Real Estate Division
1409 Greenbrier Street
Charleston, WV 25311

To the Lessor

County Commission of Jefferson County
Administrator's Office Attn: Sandy
P. O. Box 250
Charles Town, WV 25414

(2) RENT

The Lessee covenants that the Tenant shall pay unto the Lessor as rent for the premises, the sum of ONE THOUSAND, FIVE HUNDRED FIFTY-NINE DOLLARS (\$1,559.00) PER MONTH (\$6.50 annual per square foot rate) payable upon receipt of invoice from Lessor to the Tenant and payable on the first day of every month for the preceding month during the term of this Contract of Lease.

(3) UTILITIES AND OTHER RELATED SERVICES

The Lessor agrees to provide, at no additional cost to the Tenant, all utilities and janitorial services required by the Tenant for its proper use of the leased Premises.

(4) MAINTENANCE

Lessor binds itself to maintain the premises, including the structure of the premises, both interior and exterior; and the fixtures and equipment, which includes, but is not limited to changing of the lighting tubes and HVAC filters, but excludes fixtures and equipment as may be owned by Tenant; and the interior and exterior painting in a good and tenantable condition equal to that of the premises as at the time possession thereof is delivered to the Tenant. If Lessor fails to maintain the interior and exterior structure of the premises, and the electrical and plumbing fixtures and equipment owned by Lessor in a good tenantable condition of repair, the Tenant shall request the Lessor, in writing, to correct any deficiency which may have occurred since possession of the premises by the Tenant, provided, however, such deficiency was not caused by the neglect or acts of the Tenant. Upon refusal or neglect of Lessor to comply with Tenant's request for the repair or reinstatement of previously-existing conditions, Tenant may, thirty (30) days after receipt of such request by the Lessor, cause the repairs to be made and deduct the costs and expense thereof from the rents which may become due and payable thereafter to the Lessor until the Tenant is fully reimbursed therefore.

(5) TAXES AND ASSESSMENTS

The lessor will pay taxes and assessments levied on the subject premises during the term of this Contract of Lease.

(6) FIRE AND HEALTH HAZARDS

The Lessor will remove and correct any fire or health hazards not caused by the neglect or acts of the Tenant, its agents, employees or servants which any public authority may order corrected or removed during the term of this Contract of Lease. Upon refusal or neglect of Lessor to comply with any such order, the Tenant may comply therewith and deduct the costs from monthly rentals payable thereafter to the Lessor until the Tenant is fully reimbursed therefor.

(7) SUITABILITY OF PREMISES

Lessor warrants the premises to be suitable for use as a State facility and for the conduct of Tenant's business, and that there shall be no liability on the part of the State of West Virginia, its officers, agents or employees for any loss or damage to the leased premises, whether caused by overloading the floors with equipment or otherwise installing fixtures and equipment commonly used in office space, nor any liability on any individual by virtue of any of the provisions of this Contract of Lease.

(8) TRANSFER OR ASSIGNMENT OF LEASE

The Lessee agrees not to transfer or assign this Contract of Lease, or sublet the subject premises without the written consent of the Lessor except, however, the Lessee may, at its option, reassign this Contract of Lease and the space leased herein to another State agency other than the tenant named herein, with all other terms and conditions remaining the same throughout the remainder of the term of the Contract of Lease.

(9) NEGLIGENCE OF PREMISES

The Lessee covenants that the Tenant shall not commit waste on the premises herein leased, and that the premises will be returned to the Lessor at the termination or cancellation of this Contract of Lease in substantially the same condition as at the commencement thereof, damages from natural elements, wear and tear excepted.

(10) DEFAULT BY LESSEE

In the event Lessee and/or Tenant defaults in any of the covenants contained herein, the Lessor shall notify the Lessee, in writing, of such default and if such default is not corrected within sixty days after receipt of notification, the Lessor may notify Lessee that the Contract of Lease is terminated, and reenter the premises herein leased.

(11) DAMAGE TO PREMISES BY FIRE, ETC.

It is agreed by and between the parties hereto that in the event the premises are destroyed or damaged by fire, natural elements, or other cause to such an extent that continued occupancy by the Tenant would be impractical, the Lessee shall give immediate notice thereof to the Lessor, in writing, and this Contract of Lease shall terminate. If only a part of the premises shall be rendered untenable, leaving the remainder suitable for use, the rental shall be proportionately abated until the premises have been repaired. The Lessor shall have five (5) days from receipt of such notice to decide whether or not to repair the premises. Any repairs undertaken must be completed within a reasonable length of time after Lessor's decision. Should Lessor decide not to repair the premises, this Contract of Lease shall terminate, and Lessee shall deliver possession of the premises to the Lessor and thereupon be relieved of any and all liability hereunder or concerning the premises except for any unpaid rent through the final day of occupancy.

(12) PROVISIONS FOR IMMEDIATE TERMINATION

It is further agreed by and between the parties hereto that this Contract of Lease shall be considered canceled, without further obligation on the part of the Lessee, if the State Legislature or the Federal Government should subsequently fail to appropriate sufficient funds therefor, or should otherwise act to impair this Contract of Lease or cause it to be canceled (5A-10-5(2), West Virginia Code), or in the event it shall become unlawful to maintain a State facility on leased premises. In any event aforementioned, the Lessee may immediately redeliver possession of the premises to the Lessor and thereupon be relieved from any and all obligations hereunder or concerning the premises except for rent accruing prior to such date of redelivery.

(13) QUIET ENJOYMENT OF PREMISES

The Lessor covenants that at the date of this Contract of Lease, Lessor was seized of said premises as the sole owner(s) thereof, in fee simple, free of all liens, encumbrances and any outstanding interests whatsoever and that upon payment of the rentals as hereinbefore set forth, it will warrant and defend the title of Lessee against any and all claims whatsoever, not arising hereunder, during the term of this Contract of Lease; that the Tenant shall, at all times during the term of this Contract of Lease, peaceably and quietly have, hold, and enjoy the said leased premises.

(14) CANCELLATION OF LEASE

It is further agreed by and between the parties hereto that the Department of Administration, Real Estate Division, as Lessee, shall have the right to cancel this Contract of Lease, without further obligation on the part of the Lessee, upon giving thirty (30) days' written notice to the Lessor, such notice being given at least thirty days prior to the last day of the succeeding month [see West Virginia Code § 5A-10-5(1)].

(15) REMOVAL OF MACHINERY AND EQUIPMENT

It is understood and agreed that all machinery and equipment installed by the Tenant, or placed upon the leased premises incident to Tenant's business, whether annexed to the freehold or not, shall remain the personal property of the Tenant, and Tenant shall have the privilege and right to remove same at any time during the term of this Contract of Lease provided the premises are restored to as good condition as existed prior to installation of said machinery and equipment, reasonable wear and tear excepted.

(16) STRUCTURAL OR OTHER CHANGES TO PREMISES

In the event the Tenant requires structural or other changes in said premises to improve the use and efficiency of same, and if said changes are approved by the Secretary of the Department of Administration, Real Estate Division, and if said changes are completed by Lessor at its cost and expense, the Lessee agrees to reappraise and renegotiate this Contract of Lease to arrive at a fair rental value, if warranted.

(17) HEADINGS

The headings to the various paragraphs of this Contract of Lease have been inserted for reference only and shall not in any manner be construed as modifying or amending in any way the express terms and provisions hereof.

(18) SEVERABILITY

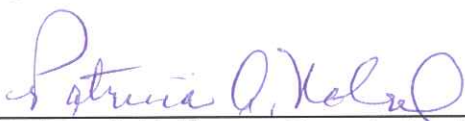
Any provisions of this Contract of Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Contract of Lease.

(19) ACCESSIBILITY REQUIREMENTS

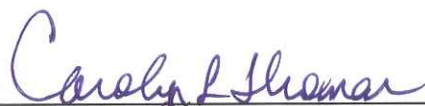
The Lessor hereby agrees that any renovations made within the space herein leased shall comply with the accessibility standards established and set forth by the Americans with Disabilities Act of 1990, whether requested by the Lessee or required by law.

IN WITNESS WHEREOF, the parties hereto have caused their names to be affixed to this contract of Contract of Lease.

County Commission of Jefferson County, Lessor

By 
Francis B. Morgan, Commission President

STATE OF WEST VIRGINIA, Lessee

By  Operations
**Carolyn L. Thomas, Business and Portfolio
Manager of the Department of
Administration, Real Estate Division for and
on behalf of the Department of Health and
Human Resources**

**Acknowledge by Department of Health and Human
Resources, as Tenant**

By  12/12/10
Greg Nicholson, Chief of Operations

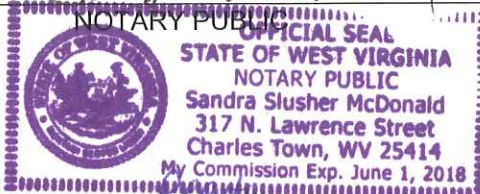
STATE OF WEST VIRGINIA
COUNTY OF Jefferson, TO-WIT:

I, Sandra Slusher McDonald, a notary public in and for said county and state aforesaid, do hereby certify that Francis B. Morgan, who as **Commission President** signed the foregoing Contract of Lease for County Commission of Jefferson County a, has this day, in my said county, before me, acknowledged the said Contract of Lease to be the act and deed of the said.

Given under my hand this 13th day of March, 2010.

My commission will expire 6-1-2018.

Sandra Slusher McDonald



STATE OF WEST VIRGINIA
COUNTY OF Jefferson, TO-WIT:

I, Gail Magaha, certify that I am Clerk of the County Commission of Jefferson County, the County Commission named as Lessor in the foregoing Contract of Lease; that Patricia A. Noland, who signed said Contract of Lease on behalf of the lessor, was then President of said County Commission; that said Contract of Lease was duly signed for and in behalf of said Commission by authority of its governing body, and within the scope of its powers.

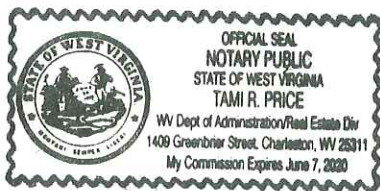
By Gail Magaha
Deputy County Clerk

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA TO-WIT:

I, Tami R. Price, a notary public in and for said county and state aforesaid, do hereby certify that **Carolyn L. Thomas**, who, as **Operations Manager for the Department of Administration, Real Estate Division**, signed the foregoing Contract of Lease for the State of West Virginia, has this day, in my said county, before me, acknowledged the said Contract of Lease to be the act and deed of the said.

Given under my hand this 7th day of February, 2010.

My commission will expire June 7, 2020.



Tami R. Price
NOTARY PUBLIC

Approved as to form this 9 day of Feb., 2010. Darrell V. McGraw, Jr., Attorney General

By Dwayne Wayfield Assistant Attorney General
Access\Lea\County\HHR152\rr

APPROVED FOR
ONE FISCAL YEAR

Public Service Commission
Of West Virginia

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



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

RECEIVED

June 14, 2011

JUN 16 2011

Jefferson County Commission

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

SUBJECT: Disbursement of Wireless E-911 Subscriber Fees

Dear County Commissioner:

A check in the amount of \$168,327.17 representing a disbursement of Wireless E-911 subscriber fees **will be mailed directly from the West Virginia State Auditor's Office**. This amount is your County's share of the fees remitted to the Public Service Commission for the months of March, April, and May 2011. The next disbursement will be in three months.

I can be reached at our toll-free number, 1-800-344-511, Extension 364, or direct at 304-340-0364, should you have any questions about the disbursement calculation or about the fees in general.

Sincerely,

A handwritten signature in cursive script that reads "Herb Brooks".

Herb Brooks
Budget and Finance Manager

HB:kp



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Public Transit

1900 Kanawha Boulevard East • Building Five • Room 906
Charleston, West Virginia 25305-0432 • (304) 558-0428
FAX: (304) 558-0174 • TDD: (800) 742-6991

June 13, 2011

RE: July 12, 2011 Public and Stakeholder Meeting to Update the Region IX Public Transit-Human Services Transportation Plan

Dear Friend of Transportation:

The West Virginia Department of Transportation, Division of Public Transit, is coordinating the federally mandated update of the Region IX SAFETEA-LU Coordinated Public Transit-Human Services Transportation Plan. To initiate this update, **you are invited to attend a public and stakeholder workshop on Tuesday, July 12, 2011 from 1:00 PM to 3:00 PM at the WVU Health Sciences Center-Eastern Division Library, 2500 Foundation Way, Martinsburg, WV 25401.** Light Refreshments will be provided.

To provide a little history on SAFETEA-LU and the coordinated plan, in August of 2005, Congress passed the Safe, Accountable, Flexible and Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU), reauthorizing the surface transportation act. As part of this reauthorization, grantees under the Elderly and Disabled Transportation Program (5310), Job Access and Reverse Commute (JARC – 5316), and New Freedom Initiative (NFI – 5317), are required to meet certain requirements in order to receive funding (beginning in Fiscal year 2007 and beyond).

One of the SAFETEA-LU requirements is that projects planning to apply for funding from the programs listed above must be part of a “locally developed coordinated public transit-human services transportation plan.” This plan must be developed through a process that includes representatives from public, private, and non-profit transportation services, human services providers and the general public. The Region IX plan developed in 2006 met this requirement; however, these plans must be updated every four or five years. Participation in the update will be considered in future applications for funding.

You are receiving this invitation because you represent a local, county, or state government agency, non-profit organization, for-profit business, or advocacy group which provides services to, or advocates for individuals who have public or specialized (elderly, persons with disabilities and/or low income) transportation needs.

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JUN 17 2011

Jefferson County Commission

**REGION IX COORDINATED PUBLIC TRANSIT-HUMAN SERVICES PLAN UPDATE
WORKSHOP AGENDA**

Tuesday, July 12, 2011

1:00 AM to 3:00 PM

*WVU Health Sciences Center-Eastern Division Library
2500 Foundation Way, Martinsburg, WV 25401*

- **Registration, Introductions, and Welcome**
- **Purpose and Overview**
 - Highlights of existing transportation and coordination activities*
 - Region IX 2007 Coordinated Public Transportation and Human Services Transportation Plan*
 - SAFETEA-LU Programs and Funding Requirements*
- **Defining Coordinated Transportation and Understanding It's Benefits**
 - *What is Coordinated Transportation?*
 - *Success Stories – Nationally and Statewide?*
- **Discuss Coordinated Transportation Goals and Priorities for the Region**
 - What are we trying to achieve through coordinating transportation resources?*
 - What are we trying to preserve through coordinating transportation resources?*
 - What are we trying to avoid through coordinating transportation resources?*
 - What are we trying to eliminate through coordinating transportation resources?*
- **Discuss Mobility and Coordination Strategies for the Region**
 - What are the unmet needs, gaps, and duplications in the existing transportation services and who do they impact the most?*
 - How can the local organizations overcome the needs, gaps, and duplications?*
- **Rating Implementation of Suggested Strategies**
 - Is there a foundation for the strategy? Does support already exist?*
 - Is the strategy financially feasible?*
 - Will the strategy create the foundation for future actions?*
 - Is progress possible within the next 6 months, 1 year, 4 years?*
- **Next Steps**

A Workshop to Update the Regional Public Transit-Human Services Transportation Plan

Recognizing that coordinating transportation services is essential for our Seniors, Citizens with Disabilities, Individuals and Families living below the Poverty Level, and the General Public to access employment, education, health services, and community programs,

West Virginia Division of Public Transit,
Cordially Invites You to Attend the Workshop.

Come and provide your input and insights to discuss unmet transportation needs, gaps in transportation services, and recommended strategies to improve transportation and mobility options in and around Berkeley, Jefferson, and Morgan counties.

All are invited so bring your customers too! Applicants for Section 5310 (Elderly Persons and Persons with Disabilities), 5316 (Job Access/Reverse Commute), and 5317 (New Freedom Initiative) must participate in the planning effort.

Charles Glover from RLS & Associates, Inc. will facilitate the meeting

Tuesday, July 12, 2011

1:00 to 3:30 p.m.

at

WVU Health Sciences Center-Eastern Division Library

2500 Foundation Way

Martinsburg, WV 25401

RSVP to Zach Kincade at 1-800-684-1458 * Light refreshments served

PROVIDER SURVEY:

What transportation Service do you provide?

Go to: https://www.surveymonkey.com/s/Stakeholder_Survey to complete a brief survey.

PUBLIC SURVEY:

What do you & your customers think of transportation services in your area?

Go to: <http://www.transportation.wv.gov/publictransit/Pages/default.aspx> to complete a brief survey.

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Shenandoah Sales and Service, Inc.

By its agent, David C. Tabb

Petitioner

Vs) No. 11-0701

Assessor of Jefferson County, Angie Banks,
June Bowers, Rusty Williams, the Jefferson
County Commission, sitting as Board of Review
and Equalization, Patsy Noland, President,
Dale Manuel, Vice President, Walt Pellish,
Commissioner, Lyn Widmyer, Commissioner,
Frances Morgan, Commissioner, and Stephanie
Grove, Jefferson County Prosecuting Attorney

Respondents

SUPPLEMENTAL GROUND OF ERROR

Now comes your Petitioner pursuant to the order of this Court dated April 25, 2011 and says unto the Court he will be requesting the Court to consider (1) one additional issue in his perfected Petition for Appeal that was NOT included in his NOTICE OF APPEAL filed on April 21, 2011 to wit: THAT THE CIRCUIT COURT OF JEFFERSON COUNTY, WV, THE HONORABLE DAVID SANDERS PRESIDING WAS WITHOUT AUTHORITY OR JURISDICTION TO ENTER THE ORDER OF MARCH 23, 2011 DISMISSING PETITIONER'S PETITION FOR APPEAL FROM THE ORDER OF THE JEFFERSON COUNTY COMMISSION, FILED WITH THE CIRCUIT COURT ON MARCH 18, 2011.

In making this assertion Petitioner relies on the following facts to wit:

- 1) On March 18, 2011 your Petitioner timely filed his Petition for Appeal in the Circuit Court of Jefferson County along with a Motion to Disqualify the Honorable David Sanders, Judge of the Circuit Court of Jefferson County pursuant to Trial Court Rule 17.01.
- 2) Without complying with the requirements of Trial Court Rule 17.01 Judge Sanders dismissed Petitioner's for Appeal without notice to your Petitioner or a hearing as set forth in Exhibits C and D of the Notice of Appeal.
- 3) The issue of Disqualification remained before this Court from the date of March 18, 2011 when the Motion for Disqualification was filed until the order of April 11th 2011 was entered by the Court denying Petitioners motion.
- 4) During that time correspondence was sent or received from this Court to and from Judge Sanders as well as to and from your Petitioner.


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JUN 21 2011
Jefferson County Commission

- 5) Petitioner says Judge Sanders admitted he failed to comply with Trial Code Rule 17.01 due to "inadvertence" (see letter of March 31, 2011 – attached Exhibit A)
- 6) Petitioner says on April 14, 2011 he filed a motion with Judge Sanders to retract his order of Dismissal entered while he was without jurisdiction over the matter or authority to proceed in the matter due to the filing of the motion to disqualify and no action having been taken by this Court as of that date.
- 7) Petitioner's motion to retract the order of dismissal and the appeal of the original order of Dismissal entered while the motion to disqualify was pending are both based on the following language from *Myers v. Painter* 576 S.E.2d 277. (2002) to wit:

"The Supreme Court of Appeals is constitutionally empowered to enact administrative rules regarding the temporary assignment of circuit judges when another circuit judge is disqualified. We stated, in Syllabus Points 1 and 2 of *Stern Bros., Inc. v. McClure*, 160 W.Va. 567, 236 S.E.2d 222 (1977): 1. Under Article VIII, Section 8 of the Constitution of West Virginia (commonly known as the Judicial Reorganization Amendment), administrative rules promulgated by the Supreme Court of Appeals of West Virginia have the force and effect of statutory law and operate to supersede any law that is in conflict with them.[576 S.E.2d 284] 2. The administrative rule promulgated by the Supreme Court of Appeals of West Virginia, setting out a procedure for the temporary assignment of a circuit judge in the event of a disqualification of a particular circuit judge, operates to supersede the existing statutory provisions found in W.Va.Code, 51-2-9 and -10 and W.Va. Code, 56-9-2, insofar as such provisions relate to the selection of special judges and to the assignment of a case to another circuit judge when a particular circuit judge is disqualified. The Court adopted Trial Court Rule XVII [1993] to establish a formal system for the disqualification and temporary assignment of judges.5 The rule established that motions by a party to disqualify a judge must be in the form of a "written motion." Rule XVII(a). If the circuit judge agreed to disqualify himself or herself in response to the written motion, and the parties agreed upon a particular replacement judge, the rule required the judge to contact the administrative director of the Supreme Court of Appeals, who would then communicate with the chosen replacement judge. Contact by the parties or circuit judge with the replacement judge was prohibited, and any assignment of the case to another judge was to be done solely by the Chief Justice. Rule XVII(a)(2) stated, in pertinent part: If concurrence can be reached ... the judge shall forthwith contact the Administrative Director, who shall then contact the judge to whom assignment is requested. Contact with the judge to whom assignment is requested by either the recused judge or the parties is prohibited. If the judge to whom assignment is requested consents, all parties shall sign a written stipulation designating a new judge. The original judge shall forthwith transmit the motion" .. and stipulation to the Chief Justice, who shall ... in writing approve or disapprove the recusal and stipulation. Conversely, if the circuit judge refused a parties' written motion to recuse him-or her-self, or the parties disagreed as to the replacement judge to whom the case should be assigned, or the chosen replacement judge declined to accept the case, the case was required to be forwarded to the Chief Justice for assignment. Again, the recused judge was prohibited from acting until the Chief Justice reviewed the case. Rule XVII(a)(3) stated, in pertinent part: If concurrence cannot be reached, if the original judge does not agree to recuse himself or herself, or if the designated judge does not consent, then the judge shall: (A)

Proceed no further in the matter; and (B) Transmit forthwith to the Chief Justice a copy of the motion ... asking that the Chief Justice rule on the motion[.]” 576 S.E.2d at 283-284

“ The Court further held...The circuit court in the instant habeas case concluded that the transfer of the case to Judge Steptoe was proper because the appellant's criminal case was merely reassigned within a multi-judge circuit, in accordance with Rule XVII(d). This reasoning, however, overlooks the circuit court's own finding of fact that “[t]he State and [appellant] jointly moved at hearing for Judge Wilkes' recusal,” and overlooks Rule XVII's requirement that once a motion was made for Judge Wilkes to recuse himself from the appellant's case, he was bound to follow the procedures contained in Rule XVII(a) and (b). However, this action would have been proper, had the recusal been sua sponte without any motion by a party. As we made clear in *Stern Brothers*, Judge Wilkes' appointment of Judge Steptoe, made in a manner contrary to the dictates of Rule XVII, was void and beyond Judge Wilkes' authority. While Judge Steptoe was not guilty of any impropriety, his appointment was contrary to the established rules designed to ensure that judicial decisions are both free from bias, and free from all appearance of bias. The circuit court was therefore incorrect in its finding that there was no error.” 576 S.E.2d at 284-285



Shenandoah Sales and Service, Inc.
By David C. Tabb
Vice President and agent

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Shenandoah Sales and Service, Inc.
David C. Tabb, Pro se Agent
107 Tabb Lane
Harpers Ferry, WV 25425

Petitioner,

Case No. 11-0701

Vs.

Assessor of Jefferson County, Angie Banks,
June Bowers, Rusty Williams, the Jefferson
County Commission, sitting as Board of Review
and Equalization, Patsy Noland, President,
Dale Manuel, Vice President, Walt Pellish,
Commissioner, Lyn Widmyer, Commissioner,
Frances Morgan, Commissioner, and Stephanie
Grove, Jefferson County Prosecuting Attorney

Respondent,

CERTIFICATE OF SERVICE

I, David C. Tabb, do hereby certify that on this 17 day of June 2011, that I have served a true copy of the foregoing *Supplemental Ground of Error* upon the following by

U. S. Mail addressed as follows:

THE JEFFERSON COUNTY COMMISSION SITTING AS BOARD OF REVIEW AND
EQUALIZATION,
Walt Pellish, Commissioner
124 E. Washington Street
Charles Town, WV 25414



David C. Tabb, Vice-President
Shenandoah Sales & Service, Inc.
107 Tabb Lane
Harpers Ferry, WV 25425

To: Jefferson County Commission - Meeting for Thursday June 23, 2011

Patricia Noland, President
Dale Manuel
Frances Morgan
Lyn Widmyer
Walt Pellish

I have no opportunity to attend the County Commission Meeting concerning your possible passage of a resolution for easing the requirements of coal permits scheduled this week.

Please accept my public comment and hopefully you will add it to your records concerning this imperative issue.

Coal retrieved from the lands, mines, mountain tops, etc., in West Virginia are a known export commodity. The remains continue to be permanent destruction & wanton endangerment of the beautiful land of West Virginia.

Employment by the coal companies may appear good, especially in these dire economic times, however to what benefit? Simply counting those with coal related employment does not level the playing field. Most have no benefits, most mine coal. Most remain poor. Most belong to a mouth piece known as a union and that union is politically driven by finances that do not benefit the employed. The resolution you are considering has nothing at all to do with jobs! Nothing.

Please consider the requirements of Federal compliance the Clean Water Act and the Surface Mining Control & Reclamation Act. It is imperative that you our elected commissioners thwart the coal companies that are allowed a mining operation to dump process wastewater directly into a lake, river or stream as "fill" – you must take notice and prepare the facts before passing any resolution to lessen critical & purposefully restrictive mine permits.

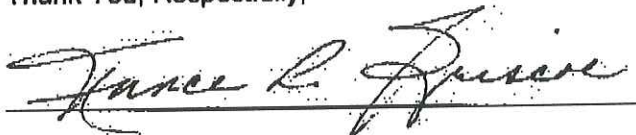
Please avoid falling prey to the DEP's arbitrary abuse of discretion by lessening mine permits.

Your actions must be smart, calculated and sincere – not just because another WV County passed a resolution without taking a breath and not because of a political favor.

TAKE A BREATH – QUESTION WHAT YOU ARE DOING – VOTE WISELY

I am just one person and I am leaning on you to think, research & learn before you make Jefferson County's decision and not just follow another, be it leader or looser.

Thank You, Respectfully,



Nance L. Briscoe
22 Cloverdale Place
Charles Town, WV 25414
304.728.2201
briscoen@frontiernet.net

Good Evening All,

I have attached my letter for public comment at your next Commission meeting - I am unavailable due to working in DC - I have also faxed my letter to your office.

Thank you very much,
Nance L. Briscoe
22 Cloverdale Place
Charles Town, West Virginia 25414
304.728.2201
briscoen@frontiernet.net

*There are two pages to this
fax, incl. this cover.*

*Thank You,
Nance L. Briscoe
304.724.6323 fax
304.728.2201 phone
202.460.5181 cell*



State of West Virginia

Office of the State Auditor
Glen B. Gainer III
State Auditor
www.wvsao.gov

Building 1, Room W-100
Charleston, West Virginia 25305
Telephone: (304) 558-2251
FAX: (304) 558-5200

200 West Main Street
Clarksburg, West Virginia 26301
Telephone: (304) 627-2415
FAX: (304) 627-2417

June 17, 2011

Dear County Commissioners:

The State Auditor's in-service training program for all County Commissioners will be held on August 7-9, 2011 at the Waterfront in Morgantown, West Virginia. *WV Code §7-7-2* requires that each County Commissioner and, at his or her option, one or more of his or her employees must participate in the program established by the State Auditor.

Each year, the State Auditor presents the Thelma J. Stone Memorial Achievement Award to a County Commission that has demonstrated excellence and professionalism in county government during the previous year. Enclosed is a copy of the charter for the Thelma J. Stone Memorial Achievement Award. **Nominations must be received by Monday, July 22, 2011.** If you would like to make a nomination for this award, please submit your letter of recommendation to:

Ora L. Ash, Director
Local Government Services
200 West Main Street
Clarksburg, WV 26301

Again, I encourage you to attend the State Auditor's in-service training program for County Commissioners this year and take advantage of the training being offered and the opportunity to exchange ideas with other commissioners with similar interests and problems. If you have any suggestions or questions concerning this training program, please feel free to contact Ora at 304-627-2415, Ext. 5114 or email: ora.ash@wvsao.gov.

Sincerely,

Glen B. Gainer III
State Auditor

GBGIII:kbd

CHARTER

STATE AUDITOR'S ANNUAL SPECIAL ACHIEVEMENT AWARD FOR COUNTY COMMISSIONS

I. TITLE

In 1981 the "State Tax Commissioner's annual Achievement Award for County Commissions" was established. The State Tax Commissioner renamed the Award in 1985 "The Thelma J. Stone Memorial Achievement Award", herein called "The Award", in honor of a tenured employee of the Department who had won the admiration and respect of all county officials. As of July 1, 1999, this procedure was transferred with the Chief Inspector Division to the office of State Auditor.

II. GENERAL

The Award shall be presented annually by the State Auditor to a County Commission of the State of West Virginia. Nominees shall be judged and the recipient chosen by a Selection Board appointed by the State Auditor.

III. SELECTION BOARD

The State Auditor shall appoint five (5) persons, who, when appointed, shall constitute the Selection Board for the Purpose of selecting a recipient for the Award. Those appointed shall include the State Auditor, the President of the West Virginia County Commissioners' Association and his/her designee, the Director of the Chief Inspector Division of the State Auditor's Office or his/her designee, the Director of the Property Tax Division of the State Tax Department or his/her designee, and one (1) other person appointed by the State Auditor.

IV. TERMS OF BOARD

The Selection Board will be appointed on or before June 1 of each year. The members of the Selection Board shall serve until such time as the recipient of the Award for the year designated is chosen and announced.

IV. BOARD MEETINGS

The Selection Board will meet at the call of the State Auditor for the purpose of selecting a recipient at or before the Annual In-Service Training Meeting for the County Commissioners sponsored by the State Auditor each year.

The deliberations of these meetings will be kept confidential by the Selection Board.

VI. AWARD CONSIDERATIONS

In choosing a recipient for the Achievement Award, the Selection Board shall consider the following criteria:

1. Compliance with laws governing actions and conduct of county commission.
2. Effective collective leadership exhibited by harmonious relations by members of the county commissions.
3. Innovation in office procedures.
4. Administration
5. Responsible fiscal conduct.
6. Cooperation with the various departments of county government.
7. Effective communications with taxpayers in the county.
8. Effective communications with state, federal and city governments.
9. Progressive personnel management policies.
10. Demonstrated achievement in county government through effective means.

VII. NOMINATIONS

Each county commission shall be considered nominated for the Award as of July 1 of each fiscal year. The time period for which the commissions shall be judged will be specified by the State Auditor.

VII. LETTERS OF RECOMMENDATION

The Selection Board shall accept letters of recommendation for a particular county commission from any county commission, commissioner or individual member of the public. The letters may be from a commission recommending themselves or other commissions.

Letters of special recommendation should address the criteria upon which the Award is based and may include attachments such as newspaper clippings and pictures.

Letters of recommendation should be sent to the State Auditor, c/o Chief Inspector Division, 1900 Kanawha Blvd. E., Bldg. 1, W-420, Charleston, WV 25305.

IX. SELECTION BY BOARD

The Selection Board shall select one recipient for the Award. Two additional Honorable Mention Awards may be awarded for particular special projects by a county commission worthy of praise by the Selection Board.

X. PRESENTATION OF AWARD

The State Auditor or his/her designee will present the Achievement Award at the annual In-service Training Meeting, if feasible.



COUNTY COMMISSIONERS' ASSOCIATION
OF WEST VIRGINIA

County Government Works

2309 Washington Street, East
Charleston, WV 25311
E-mail: info@ccawv.org
Phone: (304) 345-4639
Fax: (304) 346-3512

June 13, 2011

To: All County Commissioners & Assistants
From: Vivian Parsons & Jennifer Webb
Re: Annual Meeting Registration

Included in this package are forms for county attendee registration and guest registration for the County Commissioners' ***"Master the Magic,"*** Annual Meeting. Also included in this mailing is a tentative agenda. Please note registration deadline dates. Registration forms received after **July 29, 2011**, are considered late registrations and will be charged a higher fee. Cancellations, in writing, are accepted through **July 30, 2011**. After that date all no-shows will be charged the full registration amount. (See form).

Room reservations should be made by calling the **Waterfront Place Hotel @ 1-304-296-1700**. Check out their website at www.waterfrontplacehotel.com. Check-in is 3:00 p.m., check out is 12:00 p.m. The cut-off date for the reserved block of rooms is **July 10, 2011**. The room rate for the conference is \$119.00 per night. **Be sure to tell the reservations department that you are with the county commissioner's conference. A major credit card will be required upon reservation of rooms and at check-in. A 72 hour cancellation policy is in effect.**

Don't forget your county door prizes!!! As usual we are asking each county to bring a door prize, something representative of your county, to the meeting. We'll distribute the prizes at the ***"Walk the Red Carpet"*** Door prize Dinner/Dance on Monday evening. Don't forget to put your county's name on the package so that the winner of that prize will know where it came from! This has been such a fun and interesting process — the ideas are always great! ***Let the magic of the night carry you away! We will provide the men with top hats and the ladies with tiaras, you dream up the rest. Master the magic you are the star of the night!***

County Commissioners & Administrators should remember to bring your permanent name tags with you to the meeting. If you don't have one, give us a call and we'll get you one. If you have questions or need further information, please feel free to call. You may reach me at 345-4639. We are looking forward to a great meeting.

"Come and Master the Magic!"

Also enclosed is a "CCA Legislative Issues Nomination form". This form will aid the association in our legislative endeavors. Please return completed forms, with your registration. You may also bring them with you to the August meeting!

"Tentative Agenda"
County Commissioners' Annual Training & In-Service Seminar

"Master the Magic"

Waterfront Place Hotel, Morgantown, WV



Saturday, August 6, 2011

4:00 PM County Commissioners' Board of Director's Meeting
**(Board will need to include Saturday night
Aug. 6, 2011, in their room reservations)**

Sunday, August 7, 2011

10:00-11:00 AM Vendor Set-up time

11:00-5:30 PM Registration for Series Training Session And
State Auditor's In-Service Training

1:00 - 5:30 PM **"Master the Magic"**



Commissioners' Educational Training Series

"Presto-Chango"... you own the assets! - WV Risk Pool

"Ala-ka-zam" ... Extend your buying power with lease purchasing -
Country Roads Leasing

"Bibbity-bobbity-boo"...Simplify the Process - Design, Build, Finance,
and Maintain - Sustainable Education Facilities

Prescription Drug Cards **"Free"**... Now that's magic! - NACo

"Abra-cadab-ra" ...Slash OPEB Liabilities with the CCAWV Hybrid
Medical Plan - Upshur County Commission

It's not **"Hocus-Pocus,"** It's GIS....Geographic Information Systems -
Melissa Scott, CCAWV State GIS Steering Committee Representative

The **"Magic"** of Communication...District Directors' Discussions

6:30 PM **Welcome Reception "Magic of the Mountain State"**
Mountain State Brewing Company
On the Waterfront walking distance from Hotel

(See other Side)

County Commissioners' Association of West Virginia

Legislative Issue Nomination

submitted for CCA Legislative Committee consideration

Submitted by: _____ Date: _____
(County) (Commissioner)

Topic: _____

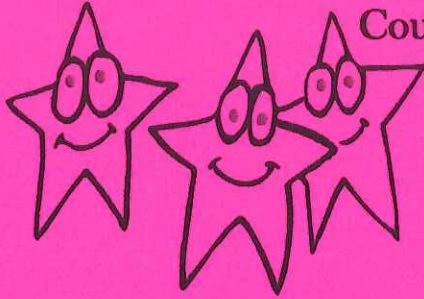
1. Is this primarily an authority/responsibility issue? _____ or a funding issue? _____
2. To your knowledge, has this issue been introduced before? (*yes or no*): _____
 - a. If yes, provide year and House and/or Senate bill numbers: _____
 - b. If yes, what happened, and why? (*e.g. passed House; died in Senate Finance*): _____

3. What this proposed legislation would do: _____

4. Reason(s) this initiative is needed: _____

5. Does this initiative have the support of your County Commission? (*yes or no*): _____
6. Does your county have the resources to "draft" a bill on this issue? (*yes or no*): _____
7. Does this initiative have the support of your Legislators? (*yes or no*): _____
 - a. If yes, please identify sponsor/co-sponsors: _____
8. WV Code citation(s) for this issue: _____

Signature of Submitting Commissioner



County Commissioners' Association of West Virginia

2309 Washington Street, East
Charleston, WV 25311
(304) 345-4639 Fax (304) 346-3512

Guest Registration Form

**WV State Auditor's Office Annual In-Service Training Seminar
for County Commissioners' & Assistants**

(as mandated by WV Code §7-7-2)

Waterfront Place Hotel, Morgantown, WV - August 7-9, 2011

*****Please Mail or Fax this completed form*****

County Attendee: _____ County: _____

Title: _____ Guest(s) Name: _____

In order to guarantee these events, we must know how many guests to expect. Please register your guests in advance. You may send a check with this registration or purchase tickets at the door.

| # Guest tickets Needed | Event | Ticket Price |
|------------------------|--|--------------|
| _____ | Sunday Welcome Reception "Magic of the Mountain State" Mountain State Brewing Company August 7, 2011 - 6:30 p.m. | \$25.00 each |
| _____ | Monday Luncheon - Thelma J. Stone Memorial Achievement Award Banquet August 8, 201 - 12:30 p.m. | \$20.00 each |
| _____ | Monday Night "Walk the Red Carpet" County Door Prize Dinner & Dance August 8, 2011 - 7:00 p.m. <i>(Door prizes will be distributed)</i> | \$45.00 each |

Directions to Waterfront Place Hotel

From South on I-79:

- Merge onto I-68 East toward CUMBERLAND
- Take the US-119 exit - EXIT NUMBER 1- toward UNIVERSITY AVE./ DOWNTOWN
- Turn LEFT off of the exit ramp
- Travel towards downtown Morgantown going through 3 stop lights
- The Waterfront Place Hotel is on the LEFT at the 4th stop light

From North on I-79:

- Merge onto I-68 East toward CUMBERLAND
- Take the US-119 exit - EXIT NUMBER 1- toward UNIVERSITY AVE./ DOWNTOWN
- Turn LEFT off of the exit ramp
- Travel towards downtown Morgantown going through 3 stop lights
- The Waterfront Place Hotel is on the LEFT at the 4th stop light

From West on I-68:

- Take the US-119 exit - EXIT NUMBER 1- toward UNIVERSITY AVE./ DOWNTOWN
- Turn LEFT off the exit ramp
- Travel towards downtown Morgantown going through 3 stop light
- The Waterfront Place Hotel is on the LEFT at the 4th stop light

Ethics Reporter

Since the Last Reporter

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

At its June 2 meeting, the West Virginia Ethics Commission approved opinions relating to the permissibility of a part-time prosecuting attorney using public resources without reimbursement for the benefit of his private law practice, the permissibility of a county hospital accepting unsolicited gifts from a board member, the permissibility of a county board of education employee continuing to work if their spouse is

selected as the new county superintendent, and the permissibility of a department in a state agency being characterized as a charitable enterprise so that it may solicit support from the public.

ADVISORY OPINION REPORT

Advisory Opinion 2011-08 concerned the permissibility of a part-time prosecuting attorney using public resources without reimbursing the county for the benefit of his private law practice.

In this case, a part-time prosecutor is seeking guidance on the continued validity of the Commission's opinion in A.O. 89-15 which ruled that part-time prosecutors could use public resources for the benefit of their private law offices because it served a greater public good to allow such an arrangement in 1989. The prosecutor has been asked by a circuit judge to move his

private office into the courthouse but the prosecutor continues to pay a number of operating expenses associated with the office from his personal accounts.

The Commission analyzed the provisions of 6B-2-5(b)(1) prohibiting the use of public office for private gain as well as the provisions of (3) providing an exemption to this standard based on unique circumstances.

In its opinion, the Ethics Commission determined that its multiple precedents allowing these arrangements for part-time prosecutors dating back to 1989 needed further review within a 2011 context.

To that end, the Commission expressly reversed its previous cases and ruled that the use of public resources by a part-time prosecuting attorney does violate the Ethics Act by creating an

improper private gain. The Commission noted that the prosecutorial system has evolved since 1989 when part-time officials were the norm and further that technological advances have made it far less necessary for counties to pay extensive overhead expenses for the private law offices of part-time prosecutors.

The Commission recognized that this ruling would place burdens on the state's existing seven part-time prosecutors and delayed the implementation of the opinion until the start of their next term in office so as to allow for an orderly transition. The Commission also ruled that appropriate reimbursements for co-mingled offices, services, equipment and staff must be established as well and that duties for employees should be carefully separated.

And, the Commission also ruled by clarifying that part-time assistant prosecuting attorneys have no ability to utilize

public resources for their private offices at all.

Advisory Opinion 2011-09 concerned the permissibility of a county hospital accepting unsolicited gifts from its board members. In this situation, the county hospital is considering the construction of a new building. Another board member has offered to donate the land for the new facility and to also provide free use of earthmoving equipment. The board members would receive tax benefits for this gift.

However, the hospital is also examining the feasibility of purchasing property for the project and has been negotiating for its purchase.

The Commission considered the language of 6B-2-5(b) prohibiting the use of public office for private gain, that of 6B-2-5(d)(1) prohibiting public officials from having an interest in a contract over which they have control or authority, along with the strictures found in Chapter 61-10-15 prohibiting county officials from having either direct or indirect

pecuniary interests in a contract over which they exercise voice, influence or control.

In its opinion, the Ethics Commission ruled that the proposed donations by hospital board members were permissible as long as they are true "gifts" without any conditions or cost to the hospital and they are properly disclosed to the public so that other potential competing gifts can be considered if they are offered.

The Commission also noted that the affected board members must recuse themselves from the decision-making and voting processes associated with the hospital building project and related construction contracts.

Advisory Opinion 2011-10 concerned the permissibility of a county board of education employee continuing in their position if their spouse is selected by the board as the new superintendent.

One spouse is employed as a school psychologist and holds a secondary position as

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director of student services. Her office is in the board central office. As a psychologist, the employee holds no supervisory rank and has no management or administrative responsibilities.

However, as director of student services, the individual does have responsibilities in these areas in some degree.

In this case, the Commission analyzed the language of 6B-2-5(b) prohibiting the use of public office for private gain, that of 6B-2-5(d)(1) prohibiting public officials from having an interest in a contract over which they have control or authority, along with the strictures found in Chapter 61-10-15 prohibiting county school superintendents from having either direct or indirect pecuniary interests in a contract over which they exercise voice, influence or control.

The Ethics Commission ruled in this case that the Ethics Act would not be violated if the spouse employed by the board

of education faced a situation where her husband became the superintendent because the (d)(1) interests in contract prohibitions contain a specific exclusion for employment situations. Additionally, the Commission admonished the potential superintendent to refrain from using his position for the benefit of his wife in her employment with the board.

However, with regard to the stricter 61-10-15 standards, the Commission determined that the statute does not contain a general exemption of "employment" from the prohibitions, but rather limits the exclusion only to certain categories of school employees.

In this instance, the Commission ruled that the first spouse could continue in her position as a school psychologist since that job has no system-wide policy, management or administrative responsibilities and is a permitted exemption under 61-10-15. But the Commission further ruled that the spouse

could not continue to hold the director of student services position if her husband becomes the superintendent because that position does have responsibilities that are not covered by the 61-10-15 exemptions and, as such, she would be directly reporting to her husband in some regard. The Commission did indicate that the school psychologist could maintain her office in the board's central office if the "director" position was vacated.

Advisory Opinion 2011-11 concerned the question of whether a specific department of a state agency can be considered as a charitable activity for purposes of being able to solicit financial support from the public.

The state department provides housing for veterans with mental health challenges and appears to be authorized in statute to receive funds from non-public sources. The department also has a legislative rule in place that permits it to create a separate fund for non-public monies but it is

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silent with regard to the solicitation of private funds.

Since the department is restricted in using public funds for recreational activities for the affected veterans, it desires to use privately solicited funds for this specific purpose.

The Commission analyzed the language of 6B-2-5(b) prohibiting the use of public office to produce a private gain and the accompanying exemption in (c) permitting the solicitation of gifts for charitable purposes that do not produce any gain for an individual solicitor. The Commission also analyzed its own legislative rules governing the solicitation of charitable gifts.

In its opinion, the Commission determined that the overall mission of the state agency in delivering services to veterans meets the criteria of being a "charitable purpose" that benefits the public good. As such, the

Commission also authorized the agency to solicit funds for its recreation programs as long as they were properly segregated and accounted for and all legislative rules covering solicitation were being complied with.

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MISCELLANEOUS

NONE PUBLISHED

ADVISORY OPINION NO. 2011-10

Issued On June 2, 2011 By The

WEST VIRGINIA ETHICS COMMISSION

2011 JUN -6 PM 2:09

SECRETARY OF STATE

OPINION SOUGHT

A **County Board of Education** (BOE) asks whether the spouse of a candidate for superintendent may continue to be employed by the BOE as a School Psychologist, and continue to serve as the Director of Student Services, if her spouse is selected as the new superintendent.

FACTS RELIED UPON BY THE COMMISSION

The BOE is in the process of hiring a new Superintendent, and has identified two candidates. The spouse of one candidate is currently employed by the BOE as a School Psychologist and holds a supplemental contract for \$4,500 per year as Director of Student Services. Her office is currently located in the central office, due to her position as Director of Student Services.

The job description for the Director of Student Services provides, in relevant part, that the incumbent "serves as coordinator of staff development programs for professional and service employees", "assumes other necessary and desirable responsibilities for the efficient operation of the school system", "supervises school psychologist interns" and "coordinates/leads design development and implementation of a countywide Strategic Plan". The Director of Student Services also represents the County BOE on various committees.

According to the Requester, the School Psychologist position "is defined to assist, support, participate and report." The Requester further states that the job description "does not exhibit responsibilities of an administrator or directorship, and provides no description of supervisory roles over our professional staff".

The Legislative Rule for performance evaluations of professional school personnel contains the following definitions:

4.10. Professional Support Personnel: For the purposes of this policy, professional support person is defined as the professional educator whose title includes but is not limited to the following: athletic trainer, counselor, education audiologist, school nurse, **school psychologist**, social service and attendance, and speech language pathologist.

4.11. Administrator: For the purposes of this policy, administrator is defined as the professional educator whose title includes but is not limited to the following: central office administrator, supervisor, **director**, coordinator, program specialist, principal, and/or vice principal.

126 C.S.R. § 142. (emphasis supplied)

CODE PROVISIONS RELIED UPON BY THE COMMISSION

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

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

W. Va. Code § 6B-2-5(d)(1) reads, in pertinent part:

In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected ... official ... or member of ... her immediate family ... may be a party to or have an interest in the profits or benefits of a contract which the official ... may have direct authority to enter into, or over which ... she may have control: *Provided*, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body....

W. Va. Code § 61-10-15(a) states, in pertinent part:

It is unlawful for ... any ... superintendent ... of public schools ... to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service ... if, as a ... superintendent, ... he or she may have any voice, influence or control: *Provided*, That nothing in this section prevents or makes unlawful the employment of the spouse of a ... superintendent ... as a principal or teacher or auxiliary or service employee in the public schools of any county....

ADVISORY OPINION

If the BOE's employee's husband is selected to serve as School Superintendent, he will be subject to the provisions established in the Ethics Act and to the prohibitions contained in W. Va. Code § 61-10-15.

Public Contracts

Both the Ethics Act and W. Va. Code § 61-10-15, a criminal misdemeanor statute, prohibit public servants from being a party to, or having a financial interest in, a public contract over which their public positions give them control. The relevant provision in the Ethics Act further states, however, that the prohibition is not intended to apply to "the employment of any person with any governmental body". W. Va. Code § 6B-2-5(d)(1). Thus, there is nothing in the Ethics Act which prohibits a BOE superintendent's spouse from being employed by the same BOE. Notwithstanding this conclusion, our inquiry does not end here.

West Virginia Code § 61-10-15

We must next analyze whether W. Va. Code § 61-10-15, which is more comprehensive, authorizes the continued employment of the spouse of the potential superintendent.

This statute prohibits a covered person, such as a BOE superintendent, from having a personal financial interest, directly or indirectly, in public contracts over which her public position gives her voice, influence or control. Unlike the Ethics Act, it does not specifically make an exception for the employment of any person by any governmental body. Instead, it is stricter than the Ethics Act and also contains strict anti-nepotism provisions which prohibit, with limited exceptions, the employment of immediate family members by county officials, including county school board officials. As for school board superintendents, their spouses may be employed in the following positions: principals or teachers, or auxiliary or service employees in the public schools of any county.

In Advisory Opinion 92-11, the Commission noted that the protection of this proviso is not afforded to various employment positions such as central office administrator. Central office administrator is defined in W. Va. Code § 18A-1-1(4) as "the superintendent, associate superintendent, assistant superintendent, and other professional educators, whether by these or other appropriate titles, who are charged with the administering and supervising of the whole or some assigned part of the total program of the county-wide school system." The Commission concluded that the position of Special Education Director met the definition of central office administrator, and therefore the BOE candidate could not serve on the BOE while his spouse was employed in that position by the same BOE. See *also* Advisory Opinion 94-18 (Special Education Director/Elementary Education Director/Staff Development Coordinator/Education Diagnostician fit the definition of Central Office Administrator).

By contrast, in Advisory Opinion 94-04, the Commission held that the position of Instrumental Music Coordinator, a part-time non-administrative position, did not meet the definition of Central Office Administrator, and therefore the BOE member could serve on the BOE while her spouse was employed in that position by the same BOE.

Thus, the Ethics Commission must examine the two positions to determine if either or both are positions that the statute permits a spouse to hold. Specifically, is the Director of Student Services a professional educator and/or one of those "other appropriate titles" charged with administering and supervising some part of the total program of the county-wide school system? Or, is the Director of Student Services the equivalent of a teacher, and therefore exempt? Similarly, is the School Psychologist a professional educator and/or one of those "other appropriate titles" charged with administering and supervising some part of the total program of the county-wide school system? Or, is the School Psychologist the equivalent of a teacher, and therefore exempt?

The nature of the position of Director of Student Services, as set forth in the job description, clearly establishes that the incumbent administers the whole or some assigned part of the total program of the countywide school system and supervises other professional personnel. See W. Va. Code § 18A-1-1(c)(4). As a result, the Commission finds that it is a prohibited position.

By contrast, the position of School Psychologist is a position where the incumbent works directly with students, parents and staff associated with an assigned school(s). The incumbent has no duties or responsibilities related to the countywide school system. W. Va. Code § 18A-1-1(c)(1) defines a "classroom teacher" as "the professional educator who has direct instructional or counseling relationship with pupils,

spending the majority of his or her time in this capacity." As a result, the Commission finds that it is a permissible position.

Finally, the Requester states that if the spouse is permitted to continue her employment as School Psychologist, it will remove her from the central office and into a school. Apparently, this decision is due, at least in part, to the proviso in W. Va. Code § 61-10-15(a) which authorizes the employment of the spouse of a superintendent as a teacher "in the public schools of any county". In Advisory Opinion 2010-03, however, the Commission found that the final modifying phrase "in the public schools" was not intended to require otherwise permitted positions to be physically located in a public school. Other references throughout Chapters 18 and 18A of the West Virginia Code support the Commission's conclusion that, for purposes of applying the provisions of W. Va. Code § 61-10-15, the phrase "in the public schools" refers to the county-wide school system, and not a physical location.

Therefore, should the BOE select the employee's spouse to be its next Superintendent, the employee may retain her position as School Psychologist, and may continue to be physically located at the BOE's central office. The BOE should not, however, renew her supplemental contract as Director of Student Services.

Private Gain

Pursuant to W. Va. Code § 6B-2-5(b), public officials may not use their office or its resulting prestige for personal private gain or for the private gain of another. Therefore if the BOE selects its employee's husband as superintendent, he may not use his position as superintendent of the BOE to obtain, increase or promote the interests of his spouse as a BOE employee.

CONCLUSION

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.* and W. Va. Code § 61-10-15, and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.

Pursuant to W. Va. Code § 6B-2-3, any person acting in good faith reliance on an advisory opinion issued by the Ethics Commission is immune from the sanctions of section fifteen, article ten, chapter sixty-one of the code, and shall have an absolute defense to any criminal prosecution for actions taken in good faith reliance upon such opinion.


R. Kemp Morton, Chairperson

ADVISORY OPINION NO. 2011-08

Issued On June 2, 2011 By The

WEST VIRGINIA ETHICS COMMISSION

2011 JUN -6 PM 2: 09

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

OPINION SOUGHT

A **Part-Time Prosecuting Attorney** asks whether it is permissible to use public resources, including office space, staff, and equipment, without reimbursement to the county, in furtherance of his private law practice?

FACTS RELIED UPON BY THE COMMISSION

Shortly after the passage of the Ethics Act in 1989, the Commission held that part-time elected prosecuting attorneys may use their public office and resources in furtherance of their private law practices. See Advisory Opinion 89-15. At the time, there were approximately 41 part-time elected county prosecuting attorneys throughout the State, and counties were struggling to find attorneys willing to give up their private law practice for full-time public employment.¹

Since then, the Legislature and county commissions throughout the State have moved towards having full-time elected county prosecutors. The result has been a decline in the use of part-time prosecutors. According to the Requester, only seven (7) counties now have an elected part-time prosecutor.

The Requester is an elected part-time prosecutor. In addition to his public duties, he maintains a private law practice which he operates out of his courthouse office. According to the Requester, the Circuit Court Judge requested he move his private office to the Courthouse.

Although he uses the public office space, the Requester pays privately for staff and public resources used on behalf of his private law practice. Specifically, the Requester pays for an extra phone line, internet service, and his cell phone, even though he also uses it for his prosecutorial duties. Also, he pays his legal secretary a monthly salary, in addition to the salary she receives from the County Commission as a public employee of the prosecutor's office. The Requester states that he tracks all of his private office expenses.

¹ The Commission re-affirmed this holding in Advisory Opinions 89-27 and 91-61.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

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

(1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in *de minimis* private gain does not constitute use of public office for private gain under this subsection. . .

...

(3) The Legislature, in enacting this subsection, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. . . . While the office or employment held or to be held by those persons may have its own inherent prestige, it would be unfair to those individuals and against the best interests of the citizens of this state to deny those persons the right to hold public office or to be publicly employed on the grounds that they would, in addition to the emoluments of their office or employment, be in a position to benefit financially from the personal prestige which otherwise inheres to them. . .

ADVISORY OPINION

The permissibility of part-time prosecutors conducting their private law practices out of their public office is not a matter of first impression for the Commission. Indeed, the Commission has addressed the matter on three separate occasions, and held on each occasion that it was permissible. See Advisory Opinions 89-15, 89-27 and 91-61. Typically, these prior Advisory Opinions would be dispositive of the Requester's question. In this matter, however, the Commission is unable to simply rely upon its prior holdings.

Given the length of time that has passed since this issue was first addressed, the decreasing use of part-time prosecuting attorneys, and the growing citizen concerns and inquiries about the practice; the Commission finds that the issue warrants re-examination.

A. Prior Advisory Opinions

A few months after the passage of the Ethics Act in 1989, the Commission was asked to opine whether part-time prosecutors could continue to maintain private law practices out of their public office. At the time, part-time county prosecutors were the norm in the state, and engagement in private law practice was a longstanding and generally accepted practice.

Given the general acceptance and the potential disruption to counties should prosecutors be ordered to immediately cease and desist, the Commission held:

[T]he Commission believes it appropriate to grant an exemption to part-time Prosecuting Attorneys to remain in effect until this Commission has had time to consider and establish by Rule the categories of exempt public officials and public employees. Additionally, the Commission will determine by Legislative Rule which, if any, general private practice expenses the part-time prosecuting attorneys or assistant prosecuting attorneys must reimburse to the counties or pay themselves on a pro rata basis.

Advisory Opinion 89-15.

In reaching this conclusion, the Commission focused on W.Va. Code § 6B-2-5(b), which allows exemptions for certain categories of public officials who "bring to their respective public offices unique personal prestige which inures to the benefit of the State." See W.Va. Code § 6B-2-5(b)(3).

In a companion Advisory Opinion issued the same day, the Commission was asked more narrowly whether part-time prosecutors could continue to use their courthouse office for their private law practice. In Advisory Opinion 89-27, the Commission noted the following:

Many prosecutors and assistants have offices in the County Courthouse. There are many situations where the county owns part of the furniture and the prosecutors own part. In addition, many of the secretaries employed by the prosecutor are paid in part by the county and by the private practice.

Many prosecutors have tried to maintain separate offices but due to the constant calls, interruptions, problems, and concerns raised that must be dealt with this is completely unworkable.

The Commission re-affirmed its holding in Advisory Opinion 89-15, and allowed part-time prosecuting attorneys to operate their private law offices out of their public office without reimbursement to the County Commission.

The Commission re-visited this issue two years later in Advisory Opinion 91-61, and again re-affirmed its initial conclusion and holding.

The Commission rules that the unreimbursed private use of public office space by part-time prosecuting attorneys, which is intended and legitimately extended as part of the emoluments of the office, does not constitute either private gain or a gift for purposes of the Ethics Act.

The Commission's ruling would apply as well to office furniture, equipment and office personnel, which are necessary to and provided for official use of the prosecutor, when not otherwise needed for official business. It would, of course, be inappropriate to obtain and supply at official expense any furniture, equipment or office personnel required only to accommodate the requirements of the prosecutor's private practice.

In so concluding, the Commission noted that:

It is generally conceded that this practice is tailored to accommodate the needs of smaller counties to offer inducement to lawyers to accept the lower salaries paid for part-time prosecutors. This use of public office space during time when it would otherwise not be needed for official business is seen as a way to reduce the cost of county government. It seems also designed to allow a more efficient use of the prosecutor's time.

Advisory Opinion 91-61.

Since 1991, the Commission has not opined about the permissibility or boundaries of its initial ruling.² Additionally, the Commission has not established any Legislative Rule or guideline with respect to the application of the Ethics Act to a part-time prosecutor's use of public office space and resources.

B. Use of Public Office for Private Gain

Having re-examined our historical holdings, the Commission finds that portions of our prior Advisory Opinions need to be revised and/or expressly overruled.

In particular, the Commission hereby finds that the use of public equipment and resources, including staff, are not lawful emoluments of the office of prosecuting attorney. Rather, a part-time prosecutor's use of public resources in his/her private capacity constitutes a prohibited private gain to the prosecutor. W.Va. Code § 6B-2-

² In Advisory Opinion 92-03, the Commission was asked whether a part-time prosecutor could rent his own personal office equipment to the county for use in his public office. Although the Commission referenced and re-affirmed Advisory Opinions 89-15, 89-27 and 91-61, it found that the proposed equipment rental violated both the private gain (W.Va. Code § 6B-2-5(b)) and interests in public contract (W.Va. Code § 6B-2-5(d)(1)) provisions of the Ethics Act.

5(b). To the extent Advisory Opinions 89-15, 89-27 and 91-61 hold otherwise, those holdings are expressly overruled.

In making this finding, the Commission notes that the rationale for allowing a prosecutor to use public resources in his/her private capacity as an inducement for public office and/or a benefit to the State is no longer viable. Advancements in technology allowing access away from the office, the availability of low-cost equipment and legal resources, the Legislative intent to eliminate or minimize the use of part-time prosecuting attorneys, the increase in the number of lawyers seeking the position, and the increase in the rate of pay for an elected prosecutor reflect a significant change from the situation presented when the Commission first considered this issue.³

The Commission recognizes that some smaller counties may still need a part-time prosecuting attorney. Additionally, in the case of the Requester, some counties may require the part-time prosecuting attorney to conduct their private practice out of the courthouse.

However, the Commission is not aware of any statute mandating this dual-use of public office space. Rather, the general Legislative intent has been a move away from part-time prosecuting attorneys. See W.Va. Code §§ 7-7-4(e)(10) and 7-7-4A. Indeed, allowing a part-time prosecutor to operate a private practice out of his/her public office gives an appearance of a mis-use of public funds and preferential treatment by the County Commission.

While the Commission believes that part-time prosecuting attorneys should operate their private law practice in a different location outside of their public office, it is mindful that requiring an immediate cessation is impractical and unreasonable in the middle of a prosecuting attorney's term. Therefore, in light of the Legislative intent to cease the use of part-time prosecuting attorneys, the Commission strongly recommends that, when the new term of office begins, County Commissions and part-time prosecuting attorneys cease the use of public office space for the prosecuting attorney's private practice.

Although the continued use of public office space in furtherance of private practice is discouraged, the Commission is not expressly prohibiting its use by a current part-time prosecuting attorney, provided that, sufficient measures are in place to separate the public office from the private practice. In that regard, the Requester's reimbursement policy provides a good framework for compliance.

Specifically, the Commission recommends that the prosecuting attorney, at his/her own cost, establish separate phone lines, fax number, and business cards for his/her private practice. Additionally, as the Requester herein has done, the prosecuting attorney should keep an accounting of all private practice expenses and either reimburse the County Commission or pay vendors directly for the service.

³ In addition, the Commission has received citizen inquiries about the legality of prosecutors operating their private offices out of the county courthouse.

Further, with respect to staff, those individuals who serve and assist prosecutors in their public duties may assist and work for the prosecutor in their private capacity, provided that, it is voluntary, their public employment is not conditioned on the Prosecutor's private practice work, and they are paid privately by the Prosecuting Attorney for their private work.

Accordingly, in light of the foregoing, the Commission hereby holds that part-time prosecuting attorneys may not use public resources, including specifically, staff, equipment, and phone lines, without reimbursement to the County Commission and/or direct payment to the vendor for their *pro rata* private use.

C. Office Space

With respect to the office space itself, the Commission is not requiring reimbursement to the County Commission so long as the space is used as part of his/her public duties and not solely for the use and benefit of the private law practice. Given the dual-use nature of the office, it would be difficult to attribute a percentage for the prosecutor's use in furtherance of his/her private practice. However, as the Commission expressed in Advisory Opinion 91-61, "[i]t would, of course, be inappropriate to obtain and supply at official [public] expense any furniture, equipment or office personnel required only to accommodate the requirements of the prosecutor's private practice."

D. Assistant Prosecutors

Upon review of our prior opinions, some could be interpreted to allow part-time **assistant** prosecuting attorneys to operate a private law practice out of the prosecutor's office. The Commission wishes to make clear that the use of public office space and resources, including staff, are, for purposes of the Ethics Act, not lawful emoluments of the position of an assistant prosecuting attorney. Rather, an assistant prosecutor's use of public resources and staff in his/her private capacity constitutes a prohibited private gain to the assistant prosecutor (W.Va. Code § 6B-2-5(b)) as well as a possible violation of W.Va. Code § 6B-2-5(o) ("a public official or public employee may not solicit private business from a subordinate public official or public employee whom her or she has the authority to direct, supervise or control.").

Accordingly, to the extent that any prior advisory opinion implies that a part-time assistant prosecuting attorney may use public offices space and resources in furtherance of his/her private practice, that aspect of the prior advisory opinion is expressly overruled. The Commission hereby holds that assistant prosecuting attorneys (part-time and full-time) are expressly prohibited from using public office space and resources, including staff, in furtherance of their private law practice and/or private gain. W.Va. Code § 6B-2-5(b).

CONCLUSION

This advisory opinion, as well as the prior opinions discussed herein, only apply to **part-time**, not full-time, elected prosecuting attorneys.

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


R. Kemp Morton, Chairperson

ADVISORY OPINION NO. 2011-09

Issued On June 2, 2011 By The

WEST VIRGINIA ETHICS COMMISSION

2011 JUN -6 PM 2:09

SECRETARY OF STATE

OPINION SOUGHT

A **County Hospital** asks whether it may accept unsolicited offers of property and/or services from its Board Members.

FACTS RELIED UPON BY THE COMMISSION

The Requester is a County Hospital. It seeks to build a new hospital. A Board Member made an unsolicited offer to donate property for this purpose. If the Hospital accepts the donation of property, the Board Member is eligible to claim a tax deduction.

The Hospital retained an engineering firm to prepare a site study on the various sites it was considering for the new hospital. Various sites were evaluated, including the property offered by the Board Member. The report states that there are no known environmental hazards on the property. It was reported in the local paper that the Board Member has offered to give her property to the hospital. This property has not been listed for sale nor are there any liens on it. At this time, the hospital is negotiating to purchase another piece of property. If it is unable to reach an agreement to purchase that piece of property, then it inquires whether it may accept the property offered by the Board Member.

Another Board Member owns an equipment company. This Board Member has offered to allow his equipment to be used, at no charge, for site preparation work. It is unknown whether he may claim a charitable deduction for the donation of these services.

Both Board Members made these offers on their own accord; they were not solicited.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

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

A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in *de minimis* private gain does not constitute use of public office for private gain....

W. Va. Code § 6B-2-5(d)(1) provides in part that ... no elected or appointed public official ... or business with which he or she is associated may be a party to or have an interest in ... a contract which such official or employee may have direct authority to enter into, or over which

he or she may have control....

W. Va. Code § 61-10-15 states in part that ... (a) It is unlawful for any member of a county commission ...to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control....

ADVISORY OPINION

Both the Ethics Act, W. Va. Code § 6B-2-5(d)(1), and a separate criminal misdemeanor statute, W.Va. Code § 61-10-15, prohibit county officials from having an interest in public contracts. These prohibitions were designed by the Legislature to steer public servants away from inherently questionable situations. These prohibitions are intended to prevent not only actual impropriety, but also situations which give the appearance of impropriety.

The Commission finds that the donation of property or services does not constitute a contract subject to the limitations in the Ethics Act and W.Va. Code § 61-10-15.¹ The Commission cautions that the donation must in fact be a gift; the property or services may **not** be provided at cost. See Alexander v. Ritchie, 53 S.E.2d 735 (W.Va. 1949) finding that the donation of services at cost constituted a violation of W.Va. Code § 61-10-15 which resulted in the removal of the school board member. Moreover, there may be not other financial conditions tied to the transaction. For example, a board member may not donate property with the condition that the public agency bears responsibility for correcting any known environmental hazards or satisfying any liens on the property; provided, that, a governing body may accept property in those circumstances if an independent evaluation concludes that the overriding benefit is to the public agency and, prior to accepting the property, it seeks and receives permission from the Ethics Commission.

Next, the Commission must consider whether the donation of property or services constitutes a violation of the private gain prohibition in the Ethics Act. W.Va. Code § 6B-2-5(b). In regard to donating property, there are benefits to the donor. Donors may take a charitable tax deduction. Even if the donor elects not to take a charitable deduction; still, other benefits exist. For example, if a property owner is unable to sell property, if they are able to give it away, they are relieved of the burden of paying property taxes and insurance.

Despite the potential benefits of donating property, the Commission finds that it does not constitute the use of public office for private gain if the governing body takes the following steps: (1) notifies the public through a public advertisement that a board member has offered to donate property; (2) in the advertisement state that the board is providing other property


¹ This finding modifies A.O. 95-09 to the extent that the Commission implied in its holding that the donation of property constitutes a public contract. This opinion modifies A.O. 95-09 by clarifying that the donation of property or services does not constitute a public contract for purposes of the limitations in the Ethics Act or W.Va. Code § 61-10-15. This finding applies only to the **donation** of property; not the **leasing** of property, even if it is only for a de minimis amount. The leasing of property for a de minimis amount is subject to a different analysis.

owners this same opportunity; (3) includes a disclaimer in the advertisement that the governing body is not soliciting citizens for the offer of free property and no citizen should feel compelled to make such an offer. The board may, in its discretion, state that it is providing citizens this opportunity in accordance with guidance it sought and received from the West Virginia Ethics Commission to ensure transparency and fairness in the property acquisition process²; and, (4) evaluates and makes a final decision during a properly noticed public meeting.

During this process, the affected board member/potential donor must be recused from the decision-making process. For recusal to be proper under the Ethics Act, she must disclose her interest and excuse herself from participating in the discussion and decision-making process by physically removing herself from the room during the discussion and vote on the matter. Additionally, the minutes/record of the meeting must reflect the basis for the recusal and that she left the room during all consideration, discussion and vote on the item under consideration.

In regard to a board member donating services or the use of equipment, the Commission finds that it is not necessary to take the steps outlined above in regard to offering this opportunity to other citizens. Even if the donation of services, physical labor or use of equipment qualifies the donor for a tax break, the Commission finds there is less room for mischief for this type of donation, as opposed to the donation of property, real or personal.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.* and W. Va. Code § 61-10-15, and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.


R. Kemp Morton, III Chairperson

² The Commission takes this opportunity to remind governing bodies that, generally, they may not solicit for donations of property or services as public agencies may only solicit for charitable purposes. See A.O. 2007-15 (a County Solid Waste Authority may not solicit donations for the purpose of making site improvements) and Title 158, Series 7 of the Code of State Rules. The present situation is unique as the citizens are being placed on notice to avoid the appearance of impropriety.

ADVISORY OPINION NO. 2011-11

2011 JUN -6 PM 2:09

Issued On June 2, 2011 By The

WEST VIRGINIA ETHICS COMMISSION

SECRETARY OF STATE

OPINION SOUGHT

A **State Agency** asks whether its recreation department is a charitable purpose for which it may lawfully solicit support.

FACTS RELIED UPON BY THE COMMISSION

The Requester is a public agency that provides housing for veterans, most of whom have mental health conditions or substance abuse problems. The Agency is statutorily authorized to receive funds from "the federal government, ... from state appropriations, from resident contributions or from any other appropriate source, for the purpose of ... [the] improvement and renovation of physical facilities, personal care costs and medical, nursing and dental services."

A Legislative Rule authorizes the Agency Administrator or his/her designee, on behalf of the Agency "to accept or receive any donations, gifts or bequests offered or tendered to, or for the benefit of" the Agency. Further, "[a]ll such monies received or accepted shall be used for the specific purposes for which they were given or donated."

Another Legislative Rule creates a specific fund consisting "of donations and bequests to be expended for recreation for residents and special projects as directed by individual donor from miscellaneous organizations...." The Requester states that this restriction adversely affects funding for recreation since donors may not necessarily know specific needs to direct their donations accordingly.

The Agency considers recreational activities to be an important part of its resident care plan, and finds that it is good for veterans' morale to have a wide range of recreational activities. Further, the veterans' recreational needs have grown over the years. The Requester concludes: ". Without the ability to [solicit] ... support from outside sponsors, the [Agency's] Recreational Department remains very limited in what it can offer our veterans due to the constraints of relying solely on donations."

According to the Requester, "no state or federal funds are allocated for any recreational programming although the three recreational staff receives wages using state monies."

CODE PROVISIONS RELIED UPON BY THE COMMISSION

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

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

W.Va. Code § 6B-2-5(c) states, in relevant part:

A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: Provided, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position is subordinate to the soliciting official or employee....

Finally, the Commission's legislative rules governing solicitation of charitable gifts provide, in relevant part:

6.1. Public officials and public employees may solicit gifts for a charitable purpose when there is no resulting direct pecuniary benefit to the public official or public employee or an immediate family member.

6.2. The Ethics Commission may recognize programs or activities as involving a charitable purpose on a case-by-case basis.

* * *

6.5. A reasonable amount of public resources may be used for ... a fund raising campaign officially approved by either the executive, legislative or judicial branch of State Government or the governing body of any political subdivision.

* * *

6.7. State government agencies ... may solicit funds to support or underwrite agency programs which are statutorily created or authorized and are intended to help the poor and disadvantaged. If a state government agency ... seeks to solicit funds for use by the agency for any other purpose, then the state government agency ... must first seek permission from the Executive Director of the West Virginia Ethics Commission or the Ethics Commission through issuance of a formal advisory opinion. The Executive Director or Ethics Commission may only authorize such a solicitation if it serves a public purpose.

* * *

7.1. Public officials, public employees and agencies who regulate individuals or businesses may not orally solicit donations from:

a. Persons under the regulatory control of the agency. A person is under the regulatory control of the public official, employee or agency if the person has a matter pending before the agency or had a matter pending within the past 12 months....

b. A vendor which has a contract with the agency, is bidding on a contract or is in the process of soliciting business from the agency.

7.2. A written solicitation to the public or business community at large, even if the targeted group may encompass regulated persons or vendors, is permissible; Provided, That the written solicitation may not be directed solely to persons under the regulatory authority of, or vendors, of the public official, employee or agency.

7.3. Solicitations should be conducted, and acknowledgments made, in a fair and even-handed manner. Each solicitation should contain a statement setting forth that donations are purely voluntary.

7.4. Under no circumstances should anyone soliciting a contribution for a charitable purpose state that contributors will receive some special treatment from a government agency or its employees, or any other sort of quid pro quo as a consequence of making a donation.

158 C.S.R. § 7.

ADVISORY OPINION

The Ethics Act prohibits public servants from soliciting gifts unless the solicitation is for a charitable purpose. Neither the Act nor the Legislative Rule defines "charitable purpose". Instead, the Commission determines on a case by case basis what constitutes a charitable purpose. 158 C.S.R. § 7.6.2 and 6.7.

The Agency desires to solicit funds to underwrite the cost of its own recreation department. The Commission has previously held that "the overriding purpose of the solicitation must be to provide a benefit to the public as opposed to defraying the internal administrative costs of the [Agency]". Advisory Opinion 2005-02 (approving solicitation by a County Board of Health for a public health program that it administers).

In Advisory Opinion 2005-02, the Commission also established a general guideline recognizing "two main categories of programs or activities which constitute a charitable purpose: (1) Those which benefit the poor or disadvantaged; and, (2) Those which serve a public purpose or provide a significant public benefit."

Given the Agency's mission, the Commission hereby finds that the Agency provides a public service to the State. Providing a home for otherwise homeless veterans, who made the ultimate sacrifice, serves an overriding public purpose distinguishable from other governmental agencies. Accordingly, the Commission finds that the Agency's operations meets the "charitable purpose" exception of W.Va. Code § 6B-2-5(c).

In Advisory Opinion 93-08, the Commission held that a City recreation program designed for community youth constituted a charitable purpose for which the City could solicit. Similarly, in Advisory Opinion 96-19, the Commission found that the operation of recreation facilities constitutes a charitable purpose, and authorized the City to solicit support for the operation of the municipal swimming pool. The Commission noted that the revenue generated by pool admissions and activities was insufficient to offset the cost to operate the swimming pool, as is the case with the Requester's Agency.

The Commission agrees with the Requester that it boosts the morale of veterans to have access to recreational opportunities. Thus, the Commission finds that the Agency's recreation department also serves a "charitable purpose". As a result, the Agency may solicit for donations to underwrite the costs of the recreation department and its related programming, with certain conditions.

Specifically, the Commission notes that the Ethics Act prohibits a public servant from using public resources for the private gain of another. Although the proposed solicitation is permissible, the Agency must comply with other rules governing solicitations so that its actions comply with the Ethics Act. Indeed, the Agency's enabling legislation provides:

The money so collected shall be placed in special accounts according to the source of funds and limitation on the use of the funds. These accounts shall be administered by the director of the [agency]. These funds shall be deposited in the state treasury and paid out only on such vouchers as may be authorized and approved by the director of the [agency], in the same manner and under the same restrictions as are now provided by law for the disbursement of funds by that [agency]. These funds shall only be used as directed or restricted by the source of the funds.

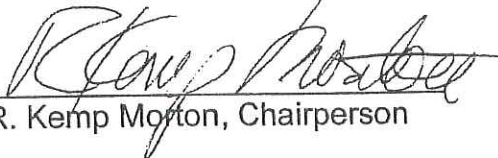
Therefore, the Agency's fundraising efforts must not only comply with the conditions herein imposed, but must also conform to its own statutory limitations. The Ethics Act sets the minimum standard of conduct. When the Legislature or an agency imposes a stricter standard, then public servants must comply with the stricter requirements.

Further, in soliciting businesses or companies, the Agency must not endorse a particular product or business. This action would constitute the prohibited use of office for private gain. Should the Agency seek to solicit individuals or entities subject to its regulatory authority, or from a vendor or potential vendor, it must conform its solicitation to the conditions set forth in the Legislative Rule. See 158 C.S.R. § 7.7.

Finally, the Requester must abide by the following conditions: a public servant may never solicit a contribution from which he or she may personally benefit; a public servant may never coerce a contribution from any source; supervisors must not solicit their subordinates for a contribution; and the Agency may not solicit resident veterans for contributions to the recreation department, neither shall the Agency use any resident veterans to solicit for its otherwise permissible fundraisers.

Conclusion

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


R. Kemp Morton, Chairperson

JEFFERSON COUNTY OFFICES

WILL BE CLOSED

MONDAY, JULY 4, 2011

IN ORDER TO OBSERVE

THE FOURTH OF JULY.