

**AGENDA**  
**JEFFERSON COUNTY COMMISSION**  
**THURSDAY, JULY 19, 2012**  
**9:30 A.M.**

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

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**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. Jim Cummings  
Jefferson County Public Service District Update - Discussion
2. 10:00 a.m. Angie Banks, Assessor  
- Exonerations - Discussion/Action
3. 10:15 a.m. Keryn Newman, Representing citizen Sharon Wilson  
- Dominion Power Upgrade - Discussion
4. 10:30 a.m. Break
5. 10:45 a.m. Roger Goodwin, Chief County Engineer  
- Chesapeake Bay Initiative and the Chesapeake Bay Regulatory &  
Accountability Grant - Discussion/Action  
- Bond Reduction and/or release - Discussion/Action
6. 11:00 a.m. Ronald Fletcher, President - Jefferson County Fire and Rescue Association  
- Fire Department Audits - Discussion/Action

7. 12:00 p.m. Stephanie Grove, Assistant Prosecuting Attorney
  - Statutory Requirements for the Eastern Regional Airport Authority - Discussion/Action
  - Legal Update for Far Away Farms - Discussion
  
8. 12:30 p.m. Paul Shroyer, Financial Director
  - Approval of Capital Outlay Fund summary of expenditures - Discussion/Action
  - Approval of Standard Operating Procedure - Payment of Invoices - Discussion/Action
  - Budget Revision #1 - General County Fund - Discussion/Action
  - Ratify Budget Revision IBR# 1044 - Discussion/Action
  - Ratify Budget Revision IBR# 1045 - Discussion/Action
  - Ratify Budget Revision IBR# 1046 - Discussion/Action
  - Ratify Budget Revision IBR# 1047 - Discussion/Action
  - Ratify Journal Voucher Adjustment - JV# 033 - Discussion/Action
  - Ratify Journal Voucher Adjustment - Discussion/Action

**NEW BUSINESS:**

9. Approval of Grant Contract, Resolution and Letter of Agreement - African American Community Association - Grant is in the amount of \$8,000 - Fisherman's Hall - Discussion/Association
  
10. Approval of Grant Contract, Resolution and Letter of Agreement - African American Community Association - Grant in the amount of \$16,400 - Fisherman's Hall - Discussion/Action
  
11. Reallocate the money (\$102,953.68) in the Cement Mill purchase account to either a) the Shepherdstown regional library capital campaign fund, b) the Animal Welfare Society for needed renovations, or c) a portion to each (WP) - Discussion/Action
  
12. Approval of \$200,000 from the unencumbered fund from the past fiscal year be placed in a Capital Buildings account (DM) - Discussion/Action
  
13. Hiring of County Commission Counsel, Civil Counsel Office - Possible Executive Session §6-9A-4 - Discussion/Action
  
14. Decision on Zoning Map Amendment (Rezoning) for property designated as Tax District: Harpers Ferry, Map: 9-2, Parcel: 58. This property is located on the south side of Route 340 (William L. Wilson Freeway) and to the east side of Route 27/2 (Alstadt's Hill Road) and is a total of 8.98 acres. This property is currently zoned Residential Growth and a request has been made by the owner, Gene Capriotti to change the zoning to Residential/Light Industrial/Commercial - Discussion/Action

**DEPARTMENTS, BOARDS, COMMISSIONS AND AGENCY REPORTS**

- Jefferson County Historic Landmarks Commission

**COUNTY ADMINISTRATOR REPORTS**

**COUNTY COMMISSION REPORTS**

**15. ADJOURN**

**CORRESPONDENCE:**

Notice of Work Session on Tuesday, July 24, 2012 at 9:30 a.m. regarding space needs for the county workforce and possible purchase of a downtown Charles Town building.

Weekly Settlement for Hollywood Casinos at Charles Town Races and Slot received for weeks ending July 7, 2012 received from the West Virginia Lottery.

Letter received from Charles K. McKinney, Assistant Chief Inspector concerning the report on Applying Agreed-Upon Procedures of the Jefferson County Magistrate Court for the period ending December 31, 2011.

*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.*

## PURCHASE ORDERS TO BE APPROVED

July 19, 2012

DEPARTMENT	PURCHASE ORDER	AMOUNT	VENDOR	DESCRIPTION
ANIMAL CONTROL	51157	\$ 551.34	Hillside Vet Hospital	Services
	51158	\$ 207.00	Valley Pet Cemetery	Disposal
CENTRAL GARAGE	49931	\$ 1,212.54	Donald B. Rice	Tires
	49932	\$ 130.00	Creamer's Wrecker	Tow 2 co. vehicles
	49937	\$ 31,413.55	Jerry's Ford Lincoln Mercury	Transmission for s01772
	49938	\$ 195.00	All Star Auto Glass	Windshield install
	51131	\$ 406.31	NAPA	Material/supplies
CIRCUIT CLERK	49883	\$ 872.26	Walz Group, LLC	Certified mailers
	49885	\$ 110.00	Bank of Charles Town	Safe Deposit box rental
	49887	\$ 360.00	Records Management Solutions	On-site destruction 2012-2013
JC431	49935	\$ 2,628.08	CT Carpet & Flooring	Carpet install Dev. Auth.
	49936	\$ 1,702.00	Winchester Security	Install add. Fire alarm Dev. Auth.
COUNTY CLERK	49710	\$ 10,042.43	ES&S	Firmware
COMMISSION	52027	\$ 98,136.80	WV Regional Jail	June '12 billing
COURTHOUSE	49777	\$ 1,477.00	Long Fence	Remove/replace rail Courthouse

	49927	\$ 450.00	Alliance Electric LLC	Break room elec work
	49929	\$ 5,850.00	Minghini	Materials/supplies
EMERGENCY COMMUNICATION	49779	\$ 250.00	SEN COMM	Repair headset
OTHER BUILDINGS	49930	\$ 5,222.00	Roy's Glass	Replace 2 doors Mason Bldg
	49933	\$ 1,017.00	BK Office Supply	Copy Paper
	49934	\$ 704.00	Fidelity Power System	Repair emergency generators
PROSECUTING ATTORNEY	49633	\$ 3,630.61	Matthew Bender & Co.	WV Code books
	49634	\$ 2,975.00	Don B. Austreih, MD	Expert witness fee
SHERIFF	49637	\$ 9,463.00	Digital Alley	Vehicle equipment
	49638	\$ 1,910.07	Gall's LLC	Uniforms/materials/supplies
	50916	\$ 150.00	Vital Signs	Signage
	50917	\$ 1,792.00	Software Systems	Computers
	50919	\$ 1,531.40	Superior Auto Body	Vehicle repair
	50920	\$ 349.47	Town Gun Shop	Vest
	50921	\$ 509.00	WV Signal	Vehicle equipment/repair
	50922	\$ 3,998.00	MPH Industries	Vehicle equipment
VARIOUS	49917	\$ 1,066.61	John Deer Financial	Winter melt/salt pellets

	49928	\$ 4,445.20	Fisher Auto Parts	Vehicle materials/supplies
WVU EXTENSION	53147	\$ 114.29	WPS, Inc.	Savin copier
<b>GRAND TOTAL</b>		<b>\$ 194,871.96</b>	Printed at 11:49 a.m. on 7/16/12	



**Minutes**  
**Jefferson County Commission**  
**Thursday, July 12, 2012**

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A meeting of the Jefferson County Commission was held on Thursday, July 12, 2012 in the County Commission meeting room at the Old Charles Town Library located at 200 E. Washington Street, Charles Town, WV 25414. Present were Commissioners Patricia Noland, Dale Manuel, Lyn Widmyer, Frances Morgan and Walt Pellish. Also present were Debbie Keyser, Interim county Administrator, Debbie Stellato, Administrative Assistant and Jimmy Eddie, Bailiff. (An audio tape of the July 12, 2012 meeting is available through the Jefferson County Commission Office.)

**PLEDGE OF ALLEGIANCE**

Commissioner Manuel led the Pledge of Allegiance.

**APPROVAL OF MINUTES**

Motion by Mr. Manuel to approve the Minutes of the June 28, 2012 regular meeting as amended. Motion seconded by Mr. Pellish and unanimously approved. (Ms. Widmyer abstained from voting due to her absence from the June 28, 2012 meeting.).

Motion by Ms. Morgan to approve the Minutes of the June 28, 2012 Special Session/Public Hearing as presented. Motion seconded by Mr. Pellish and unanimously approved. (Ms. Widmyer abstained from voting due to her absence from the June 28, 2012 special session/public hearing.).

**APPROVAL OF PURCHASE ORDERS**

Motion by Mr. Manuel to approve amended Purchase Orders in the amount of \$48,792.23, being purchase order numbers: 49843, 49844, 49923, 49882, 49696, 49705, 49706, 49709, 49916, 49769, 49770, 49775, 49776, 53192, 49924, 48181, 50990, 49761, 49766, 49768, 49772, 49774, 49921, 49922, 49925, 49948, 49949, 50120, 49630, 49631, 50743, 49721 and 49744. (Purchase order 49771 in the amount of \$207.60 was deleted from the list.). Motion seconded by Ms. Morgan and unanimously approved.

**APPROVAL OF ACCOUNTS PAYABLE**

Motion by Ms. Morgan to approve the accounts payable in the amount of \$1,226,879.25 for July 5, 2012. Motion seconded by Mr. Pellish and unanimously approved.

Motion by Mr. Manuel to approve the accounts payable in the amount of \$88,696.72 for July 12, 2012. Motion seconded by Ms. Widmyer and unanimously approved.

CHCKNO	DEPT	VENDOR	PONUM	POAMT	NOAMT	CHECK AMOUNT
067694	700	USA MOBILITY WIRELESS,IN		\$ -	\$ 178.00	\$ 178.00
067695	425	ABH SERVICES, INC.		\$ -	\$ 14,175.00	\$ 14,175.00
067696	700	MATTHEW ARMEL		\$ -	\$ 115.00	\$ 115.00
067697	439	B-K OFFICE SUPPLY INC	50718	\$ 69.58	\$ -	\$ 69.58

067697	712	B-K OFFICE SUPPLY INC	48182	\$ 752.50	\$ -	\$ 752.50
067698	424	CHARLES TOWN UTILITY BRD		\$ -	\$ 96.51	\$ 96.51
067698	425	CHARLES TOWN UTILITY BRD		\$ -	\$ 1,592.67	\$ 1,592.67
067699	412	CAMPBELL BUSINESS MACHIN	53145	\$ 1,418.41	\$ -	\$ 1,418.41
067700	428	DELL MARKETING LP	50716	\$ 4,034.45	\$ -	\$ 4,034.45
067701	PAYROLL	DELTA DENTAL OF WV		\$ -	\$ 5,654.20	\$ 5,654.20
067702	424	J.C.EHRLICH		\$ -	\$ 34.00	\$ 34.00
067702	425	J.C.EHRLICH		\$ -	\$ 490.72	\$ 490.72
067703	428	GLOBAL DATA CONSULTANTS		\$ -	\$ 320.00	\$ 320.00
067704	425	JEFF CO PUBLIC SER DEPT		\$ -	\$ 108.04	\$ 108.04
067705	425	JEFFERSON COUNTY SOLID	53045	\$ 5.12	\$ -	\$ 5.12
067706	405	DANIEL M. JAMES		\$ -	\$ 213.12	\$ 213.12
067707	403	MATTHEW BENDER & CO	49888	\$ 54.49	\$ -	\$ 54.49
067707	401	MATTHEW BENDER & CO		\$ -	\$ 801.83	\$ 801.83
067708	412	JUDITH A MATLICK		\$ -	\$ 369.14	\$ 369.14
067709	711	BARBARA J. MILLER		\$ -	\$ 305.00	\$ 305.00
067710	424	VERIZON BUSINESS		\$ -	\$ 1,131.64	\$ 1,131.64
067711	401	NAT'L ASSN OF COUNTIES		\$ -	\$ 400.00	\$ 400.00
067712	402	PIFER OFFICE SUPPLY, INC	52026	\$ 98.59	\$ -	\$ 98.59
067713	440	PRINT-O-STAT	51027	\$ 1,956.00	\$ -	\$ 1,956.00
067714	405	PAMELA PATTERSON	49632	\$ 28.50	\$ -	\$ 28.50
067715	433	PICTOMETRY INTERNATIONAL	50854	\$ 2,749.50	\$ -	\$ 2,749.50
067716	402	RECORD MANAGEMENT SOLUTN	49711	\$ 35.00	\$ -	\$ 35.00
067716	403	RECORD MANAGEMENT SOLUTN	49886	\$ 30.00	\$ -	\$ 30.00
067716	403	RECORD MANAGEMENT SOLUTN	50871	\$ 30.00	\$ -	\$ 30.00
067717	401	SOFTWARE SYSTEMS, INC		\$ -	\$ 145.00	\$ 145.00
067717	402	SOFTWARE SYSTEMS, INC		\$ -	\$ 240.50	\$ 240.50
067717	403	SOFTWARE SYSTEMS, INC		\$ -	\$ 495.00	\$ 495.00
067717	404	SOFTWARE SYSTEMS, INC		\$ -	\$ 1,342.20	\$ 1,342.20
067717	406	SOFTWARE SYSTEMS, INC		\$ -	\$ 73.00	\$ 73.00
067717	428	SOFTWARE SYSTEMS, INC		\$ -	\$ 206.12	\$ 206.12
067717	700	SOFTWARE SYSTEMS, INC		\$ -	\$ 274.50	\$ 274.50
067718	408	STATE TAX DEPARTMENT		\$ -	\$ 10,144.88	\$ 10,144.88
067719	PAYROLL	SHERIFF OF JEFFERSON CO		\$ -	\$ 102.07	\$ 102.07
067719	PAYROLL	SHERIFF OF JEFFERSON CO		\$ -	\$ 28.46	\$ 28.46
067720	PAYROLL	SHERIFF OF JEFFERSON CO		\$ -	\$ 114.60	\$ 114.60
067721	401	STAPLES CREDIT PLAN		\$ -	\$ 748.26	\$ 748.26
067721	406	STAPLES CREDIT PLAN		\$ -	\$ 25.55	\$ 25.55
067721	439	STAPLES CREDIT PLAN		\$ -	\$ 299.98	\$ 299.98

067721	712	STAPLES CREDIT PLAN		\$ -	\$ 547.62	\$ 547.62
067722	425	SHENANDOAH VALLEY WATER		\$ -	\$ 702.35	\$ 702.35
067723	PAYROLL	SHERIFF OF JEFFERSON CO		\$ -	\$ 10,827.82	\$ 10,827.82
067724	424	SOFTWARE SYSTEMS, INC.		\$ -	\$ 19,527.74	\$ 19,527.74
067725	425	THOMPSON GAS		\$ -	\$ 689.85	\$ 689.85
067726	700	VINCENT TIONG		\$ -	\$ 115.00	\$ 115.00
067727	425	TML COPIERS & DIGITAL	53046	\$ 313.75	\$ -	\$ 313.75
067728	403	UNITED SYSTEMS & SOFTWARE		\$ -	\$ 187.00	\$ 187.00
067729	PAYROLL	UNICARE EAP		\$ -	\$ 322.20	\$ 322.20
067730	405	WEST PAYMENT CENTER	50419	\$ 2,043.70	\$ -	\$ 2,043.70
067731	425	WM OF WEST VIRGINIA, INC		\$ -	\$ 96.98	\$ 96.98
067731	425	WM OF WEST VIRGINIA, INC		\$ -	\$ 177.80	\$ 177.80
067732	711	WV EMER MANAGMENT COUNCI	53193	\$ 50.00	\$ -	\$ 50.00
067733	425	WV DIVISION OF LABOR	49926	\$ -	\$ 50.00	\$ 50.00
067734	402	XEROX CORPORATION	49676	\$ 1,557.78	\$ -	\$ 1,557.78
<b>TOTAL</b>						<b>\$ 88,696.72</b>
<b>TOTAL</b>				<b>\$ 15,227.37</b>	<b>\$ 73,469.35</b>	<b>\$ 88,696.72</b>

**PUBLIC COMMENT:**

**Cathy Vance** commented on issues regarding Bakerton Road and US Rt. 340.

**Nancy Lutz** commented on the recent storm and inquired as to why it took so long for government officials to advise residents of what to do and where to go for assistance.

**Daniel Lutz** also commented on the recent storm and the length of time it took officials to notify residents where to go for assistance.

**David Tabb** presented the Commission with a copy of his “book.” He requested that the Commission prepare a list of what they did to help the residents during the recent storm and recommended that the Commission compile a list of services available in an emergency and put together an emergency plan for the public. Mr. Tabb also suggested that the Commission reign in its spending.

**PRESENTATIONS:**

- Angela Banks, County Assessor, requested part-time help in the Assessor’s Office for data entry and opening mail.**

Motion by Ms. Widmyer to approve part-time help for the Assessor’s Office as requested by Ms. Banks. Motion seconded by Ms. Morgan and unanimously approved.

- Barbara Miller, Director of Homeland Security and Emergency Management** updated the Commission on steps taken to repair damage and assist residents during and after the recent storm. She cited many agencies and individuals for their help, including, among others, mayors of the municipalities, personnel at the Blue Ridge Mountain Power Site, fire and rescue personnel (who also delivered water to farmers’ animals), emergency services personnel, certain retail stores that provided ice and water to citizens without electricity, and the various power companies for their round-the-clock

work to restore power to the county.

Ms. Miller stated that during this time, the county had huge public information problems and most information had to be transmitted by word of mouth. She stressed that the county needs a CAD system, backup generators for the fire companies and more trained public information providers.

3. **Bobby Orndorff of Dominion Power** who was going to talk about Dominion Power Transmission Line Upgrades in Jefferson County could not be present at this meeting therefore item will be rescheduled.
4. **Steve Barney, Zoning Administrator, standing in for Jennifer Brockman, Director of Planning and Zoning,** requested that the County Commission schedule a public hearing on potential amendments to the Zoning Ordinance text regarding the creation of new commercial and industrial zoning categories and related amendments.

The Commission directed that Debbie Keyser and Steve Barney work together to schedule a work session and subsequent public hearing on the described potential amendments and related issues. Ms. Widmyer suggested that one topic for discussion at the work session should be the integrity of the neighborhoods to be affected. Ms. Widmyer also suggested that members of the Planning Commission should be invited to the work session.

5. **The Commission took a short break at 10:45 a.m.**  
**The Commission reconvened at 10:55 a.m.**
6. **Becky Burns, Bonding Administrator,** requested a reduction or complete release of the remaining construction bond in the amount of \$113,525.00 for Michael A Lowry -Rock Spring Church (File #S05-13).

Motion by Ms. Widmyer to approve the complete release of the remaining construction bond in the amount of \$113,525.00 for Michael A. Lowry- Rock Springs Church (File #S05-13). Motion seconded by Mr. Pellish and unanimously approved.

7. **Lynn Fields, Deputy Clerk, Probate Office:**

Motion by Ms. Morgan to convene as a Fiduciary Board. Motion seconded by Mr. Manuel and unanimously approved.

**Ms. Fields requested:**

- **Approval of estates opened since last quarter; closure/approval of accounts and waivers; and**

Motion by Mr. Manuel to approve the estates opened since last quarter and the closure and approval of accounts and waivers as presented by Ms. Fields. Motion seconded by Mr. Pellish and unanimously approved.

- **Review of Petition to Remove Executor of Printz Estate to determine whether the Petition contains sufficient information to schedule a hearing.** (Ms. Widmyer recused herself because she is acquainted with one of the parties).

David DeJarnett, Esq. representing Charles F. Printz, Jr., Executor of the Estate of Bethel H. Printz, stated that the Petitioner, MaryBeth Printz, filed a Petition containing insufficient facts. Mr. Printz requests that an Order be filed requiring the Petitioner to file another, more complete Petition for review.

Staci Criswell, Esq. representing the Petitioner MaryBeth Printz, had no objection to providing more complete facts and stated that she would also agree to conduct informal discovery. She would like to have a curator appointed in the meantime.

Motion by Ms. Morgan that an Order should be prepared and executed requiring the Petitioner to file a Petition containing sufficient facts with which the Commission, sitting as a Fiduciary Board, would be able to form an opinion and make a ruling in this matter. Motion seconded by Mr. Pellish and unanimously approved.

**The Commission, sitting as a Fiduciary Board, adjourned and reconvened its regular meeting.**

**8. Interviews and appointments to Boards and Commissions:**

- Summit Point Library - One (1) 5-year term ending 06/30/2017.

Motion by Ms. Morgan to reappoint Ed Urzan to the 5-year term ending 06/30/2017. Motion seconded by Mr. Manuel and unanimously approved.

- Harpers Ferry/Bolivar Public Service District - One (1)-year term ending 06/30/2017.

Motion by Mr. Manuel to reappoint Mayor Robert Hardy to the 6-year term ending 06/30/2017. Motion seconded by Ms. Morgan and unanimously approved.

- Solid Waste Authority - One (1) 4-year term ending 06/30/2016.

Motion by Ms. Widmyer to reappoint Bill Weston to the 4-year term ending 06/30/2016. Motion seconded by Mr. Manuel and unanimously approved.

- Jefferson county Board of Health - One (1) 5-year term ending 06/30/2017.

There were two applicants for the position on the Board of Health - Robert Johnson, DDS, MPH (presently serving) and Anna Mary Walsh.

Dr. Johnson was present and presented his qualifications to be reappointed to the Board of Health.

Anna Mary Walsh explained why she is interested in serving on the Board of Health.

Ms. Morgan nominated Ms. Walsh and made a motion to appoint Ms. Walsh to serve on the Jefferson County Board of Health for the 5-year term ending 06/30/2017. Motion seconded by Mr. Manuel and unanimously approved.

- Jefferson County Parks and Recreation Commission - Four (4) 3-year terms ending 06/30/2015.

There were four positions available and only three applicants, Ann Newaz, Toni Milbourne and Ann Mounts.

Motion by Ms. Morgan to reappoint Ann Newaz and Toni Milbourne to serve two of the four 3-year terms on the Jefferson County Parks and Recreation Commission ending 06/30/2015. Motion seconded by Mr. Pellish and unanimously approved.

Motion by Ms. Morgan to appoint Ann Mountz to serve one of the four 3-year terms ending 06/30/2015 on the Jefferson County Parks and Recreation Commission. Motion seconded by Mr. Pellish and unanimously approved.

Mr. Keyser will readvertise the one unfilled position.

- Jefferson County Farmland Protection Board - One unexpired term ending 09/07/2014 (Soil Conservation).

There was only one applicant for appointment to the unexpired term, Nick Kercheval. Mr. Kerchaval presented his qualifications to the Commission.

Motion by Ms. Morgan to appoint Nick Kerchaval to serve out the one unexpired term on the Farmland Protection Board ending 09/07/2014. Motion seconded by Mr. Manuel and unanimously approved.

All appointments having been made, motion by Mr. Manuel to close nominations. Motion seconded by Ms. Morgan and unanimously approved.

9. Paul Shroyer, Financial Director, presented items as follows:

- **Approval of Capital Outlay Fund #246 Policy and Procedures.**

Motion by Ms. Morgan to approve the Capital Outlay Fund #246 Policy and Procedures as presented by Mr. Shroyer with the addition with the insertion of the date it was adopted and the language that "projects costing less than\$10,000.00 may not be charged." Motion seconded by Mr. Pellish and unanimously approved.

- **Approval of Internal Budget Revisions Nos. 1027 through 1044.**

**#1027 for the Circuit Clerk's Department.**

Motion by Mr. Manuel to approve IBR #1027. Motion seconded by Ms. Morgan and unanimously approved.

**#1028 for additional equipment for the Planning and Zoning Department.**

Motion by Ms. Widmyer to approve IBR #1028. Motion seconded by Ms. Morgan and unanimously approved.

**#1029 for additional audit costs (professional services) for the County Commission.**

Motion by Ms. Morgan to approve IBR #1029. Motion seconded by Mr. Manuel and unanimously approved.

**#1030 - duplicate of Circuit Clerk's other revision. Other revision is okay.**

**#1031 - wages and retirement - Tax Office**

Motion by Ms. Morgan to approve IBR #1031. Motion seconded by Ms. Widmyer and unanimously approved.

**#1032 for Prosecuting Attorney's needs, additional professional services (discussed at last meeting).**

Motion by Ms. Morgan to approve IBR #1032. Motion seconded by Mr. Manuel and unanimously approved.

**#1033 for Extension Agent.**

Motion by Mr. Manuel to approve IBR #1033. Motion seconded by Ms. Morgan and unanimously approved.

**#1034 for Elections.**

Motion by Ms. Morgan to approve IBR #1034. Motion seconded by Mr. Manuel and unanimously approved.

**#1035 for Courthouse maintenance charges. (424)**

Motion by Mr. Manuel to approve IBR #1035. Motion seconded by Ms. Noland and unanimously approved.

**#1036 for economic development. (431)**

Motion by Ms. Morgan to approve IBR #1036. Motion seconded by Mr. Manuel and unanimously approved.

**#1037 for Planning Department extra help.**

Motion by Ms. Morgan to approve IBR #1037. Motion seconded by Ms. Widmyer and unanimously approved.

**#1038 for Engineering - cost of retirement.**

Motion by Ms. Morgan to approve IBR #1038. Motion seconded by Ms. Noland and unanimously approved.

**#1039 - \$500 adjustment for Zoning Department**

Motion by Ms. Morgan to approve IBR #1039. Motion seconded by Mr. Manuel and unanimously approved.

**#1040 for law enforcement- maintenance and repair of autos; additional equipment.**

Motion by Ms. Morgan to approve IBR #1040. Motion seconded by Mr. Manuel and unanimously approved.

**#1041 for police uniforms.**

Motion by Mr. Manuel to approve IBR #1041. Motion seconded by Ms. Widmyer and unanimously approved.

**#1042 for JCEMS.**

Motion by Ms. Morgan to approve IBR #1042. Motion seconded by Mr. Manuel and unanimously approved.

**#1043 for E-911 for supplies.**

Motion by Mr. Manuel to approve IBR #1043. Motion seconded by Ms. Widmyer and unanimously approved.

**#1044 for other buildings. (425)**

Motion by Mr. Manuel to approve IBR #1044. Motion seconded by Mr. Pellish and unanimously approved.

Mr. Shroyer advised that the budget for June 30, 2012 has been prepared but some invoices have come in late. It was his recommendation to vote now on the invoices and put them on the agenda for ratification next week.

**Issue #1: IBR #1047 Supplement - need \$22,000 moved into the HRA account.**

Motion by Mr. Manuel to approve IBR #1047. Motion seconded by Mr. Pellish and unanimously approved.

**Issue #2: Journal Voucher Adjustment - HRA account balance back into the balance sheet.**

Motion by Ms. Morgan to approve Issue #2 as presented by Mr. Shroyer. Motion seconded by Mr. Manuel and unanimously approved.

**Issue #3: Tax Office - IBR #1045.**

Motion by Ms. Morgan to approve Issue #3 - IBR #1045. Motion seconded by Mr. Manuel and unanimously approved.

**Issue #4: Moving funds from Capital Outlay account to Coal Severance Fund IBR #1046.**

Motion by Mr. Pellish to approve IBR #1046. Motion seconded by Mr. Manuel and unanimously approved.

**Issue #5: General voucher issues.**

Motion by Mr. Pellish to approve Issue #5 - general voucher issues as presented by Mr. Shroyer. Motion seconded by Mr. Manuel and approved 4 - 1, with Ms. Widmyer voting against.

**The Commission took a short break at 12:35 p.m.**

**The Commission reconvened at 12:40 p.m.**

**10. Todd Fagan, Director, GIS/Addressing.**

Mr. Fagan presented a Power Point describing several Commission departments' plan to scan, archive, index and share land development records in a common records management system. His presentation explained how Document

Management works, why it is needed and how it can be funded. Mr. Fagan estimated the cost for the Content Management System would be approximately \$150,000 and recommended that the Commission consider this Capital Project among the Commission's priorities.

**The Commission broke for lunch at 1:40p.m.  
The Commission reconvened its meeting at 2:00 p.m.**

**11. Stephanie Grove, Assistant Prosecuting Attorney, requested an Executive Session regarding the Deputy Windle personnel matter, pursuant to W Code §6-9A-4.**

Motion by Ms. Widmyer to enter into an Executive Session pursuant to W Code §6-9A-4. Motion seconded by Ms. Morgan and unanimously approved. The Commission entered into Executive Session at 2:17 p.m.

Motion by Mr. Manuel to adjourn the Executive Session and reconvene the Commission's regular meeting. Motion seconded by Mr. Pellish and unanimously approved. The Commission reconvened its regular meeting at 2:47 p.m.

Motion by Mr. Pellish to authorize legal counsel to settle with Deputy Windle Notice of Claim. Motion seconded by Mr. Manuel and unanimously approved.

**UNFINISHED BUSINESS**

**12. Set a date and time for a Public Hearing on the Briel Building.**

By unanimous consent, Debbie Keyser was directed to obtain information as to after what period of time the Commission will lose its lease money; find out what the "drop dead" date is to purchase the building and obtain information about the potential tenant that wants to lease space in the building.

Motion by Ms. Noland to schedule a public hearing on July 26, 2012 with regard to the possible purchase of the Briel Building and to schedule a meeting with Mr. Shroyer and Bill Polk, Maintenance Director prior to the public hearing on July 24, 2012. Motion seconded by Mr. Pellish and approved 3 to 2, with Ms. Widmyer and Ms. Morgan voting against.

**13. Hiring of outside counsel, possible Executive Session.**

Staff was directed to put this item on the Agenda next week and advertise it without the word "outside."

**NEW BUSINESS**

**14. Set a date and time for a Public Hearing on Tolling Policy and Amendments.**

Ms. Keyser suggested that the Public Hearing be scheduled for Thursday, August 9, 2012 at 1:30 p.m. The Commissioners approved the date and time by unanimous consent.

**15. Approval of the Resolution for the Community Participation Grant in the amount of \$2,000 for the Friends of Blackwater.**

Motion by Ms. Morgan to approve the Resolution and to authorize the President of the Commission to execute the Resolution for the Community Participation Grant in the amount of \$2,000 for the Friends of Blackwater. Motion seconded by Mr. Manuel and unanimously approved.

***RESOLUTION***

The Jefferson County Commission met on the 12<sup>th</sup> day of July, 2012 with a quorum present and passed the following Resolution:

Be It Resolved that the County Commission of Jefferson County, West Virginia, hereby authorizes Patricia A. Noland, President of the Jefferson County Commission, to act on its behalf to enter into a contractual agreement with the West Virginia Development Office to receive and administer grant funds pursuant to provisions of the Community Participation Grant Program in the amount of \$2,000. The funds from this project will be used for the Civil War Educational programs and materials for the Friends of Blackwater.

Dated: July 12, 2012

PATRICIA A. NOLAND, PRESIDENT  
JEFFERSON COUNTY COMMISSION

**ATTESTED:**

**County Clerk**

**12LEDA0387**

**16. Approval of the Mutual Aid Agreement between the City of Martinsburg and Jefferson County.**

Motion by Ms. Widmyer to approve the Mutual Aid Agreement between the City of Martinsburg and Jefferson County and to authorize the President of the Commission to execute the Agreement. Motion seconded by Mr. Manuel and unanimously approved.

**17. Approval of Contract for the Court Security Fund in the amount of \$45,062.**

Motion by Mr. Manuel to approve the Contract for the Court Security Fund. Motion seconded by Mr. Pellish and unanimously approved.

**18. Request approval to hire Lori Brown as a Public Safety Dispatcher at a beginning salary of \$35,152.**

Motion by Ms. Morgan to approve Jeff Polzynski, E911 Emergency Communications Director, to hire Lori Brown as a Public Safety Dispatcher at a beginning salary of \$35,152, with the starting date to be determined by the Director of Communications. Motion seconded by Mr. Pellish and unanimously approved.

**COUNTY ADMINISTRATOR REPORTS**

**Debbie Keyser, Interim County Administrator:**

- Presented a notice from WVACO regarding the "Live Well WV" program and asked if the Commission would be interested in joining. the Commissioners agreed to join by unanimous consent.
- Ms. Keyser suggested July 19, 2012 as the date for the Commission to make a decision on the request for rezoning of the Capriotti property. Commission agreed by unanimous consent.
- Ms. Keyser passed around a draft policy and requested the Commission to review same and if any corrections need to be made Ms. Keyser will make them and place it on next week's Agenda for approval.
- Ms. Keyser informed the Commission that a workshop with the Jefferson County Emergency Services Agency and representatives from the fire companies has been scheduled for July 19, 2012 at 11:00 a.m. regarding distribution of funds and fire fees.
- Advised that some computer problems had been encountered within the Sheriff's Tax Office and the County Clerk's Office.
- Informed the Commission that repairs to the Hunter House are proceeding following the damage caused by the recent storm.

- John Reisenweber gave Ms. Keyser two dates when he would be able to meet with the Commission on behalf of the Development Authority and they will work to schedule a meeting.
- Water Authority will be on the agenda for next week to provide an update as per the Commission's request.

#### COUNTY COMMISSIONER REPORTS

##### **Commissioner Morgan:**

- Attended the Shepherdstown Street Fest.
- Attended a jazz concert in Harpers Ferry.
- Attended a celebration by the Shepherdstown residents commemorating the planting of the B Line marker.
- Attended a Farmland Protection Board meeting.
- Attended the monthly meeting of the Berkeley/Jefferson Day Care Center.

##### **Commissioner Pellish:**

- Attended the Shepherdstown Street Fest.
- Attended the CVB seminar on tourism in Jefferson County.
- Attended a Planning Commission meeting,

##### **Commissioner Manuel:**

- Attended the CVB seminar on tourism in Jefferson County.
- Traveled to the 911 Emergency Communications Center during the recent storm and signed the Emergency Declaration.
- Attended a meeting with the Governor and others at the Air Guard in Martinsburg regarding Storm Damage and Relief Assessment.
- Attended a Teen Court meeting at the Ranson Police Department.

##### **Commissioner Widmyer:**

- Attended the Harpers Ferry 4th of July celebration.

##### **Commissioner Noland:**

- Attended the CVB seminar on tourism in Jefferson County.
- Attended her two granddaughters' softball tournaments in Richmond, VA.
- Will be attending the Grand Opening of the Juvenile Drug Court on July 20, 2012.

There being no further business, motion by Mr. Manuel to adjourn the meeting. Motion seconded by Ms. Morgan and unanimously approved. Upon rising at 3:35 p.m. the meeting was adjourned until Thursday next, July 19, 2012.

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PATRICIA A. NOLAND

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

**AGENDA REQUEST FORM**

Name: Jim Cummings

Department or Entity: Public Service District

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

Date Requested – 1<sup>st</sup> Choice: July 19, 2012

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

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

Subject: PSD Update

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):

Attachments:



<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: Angie Banks, Assesor

Department or Entity: Assessor's Office

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

Date Requested – 1<sup>st</sup> Choice: July 19, 2012

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

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

Subject: **Exonerations**

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):

Attachments:



<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: Keryn Newman

Department or Entity: Representing citizen Sharon Wilson

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

Date Requested – 1<sup>st</sup> Choice: July 19, 2012

Date Requested – 2<sup>nd</sup> Choice: July 26, 2012

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

Subject: **Dominion Power Upgrade**

Please provide the County Commission with a description of your request or presentation, including any background information: **Dominion Power is not adequately keeping public informed on current projects**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **NONE**

Attachments:



SA

<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: Roger Goodwin, Chief County Engineer

Department or Entity: Engineering Department

Estimation of amount of time needed for appointment: 15 Minutes

Date Requested – 1<sup>st</sup> Choice: June 21, 2012

Date Requested – 2<sup>nd</sup> Choice: June 28, 2012

7-19-12

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

Subject: **Chesapeake Bay Initiative and the Chesapeake Bay Regulatory & Accountability Grant**

Please provide the County Commission with a description of your request or presentation, including any background information: **Consideration of accepting the proposal presented by Region 9 Planning & Development Council to perform the scope of work (as outlined in the Chesapeake Bay Regulatory & Accountability Grant Funds application) to write a stormwater management ordinance to meet the pollution reduction requirements of the Chesapeake Bay Initiative. Jefferson County was awarded a \$30,000 grant in March, 2012, by the WVDEP and FEMA for the purpose of helping in-house staff to write the stormwater management ordinance. Region 9's proposal is attached.**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **To accept the Region 9 – Eastern Panhandle Planning & Development Council's "Agreement for Administrative Services" to complete the scope of work outlined in the Chesapeake Bay Regulatory & Accountability Grant.**

Attachments: **See attached proposal dated June 7, 2012.**

6/21/12  
minutes

Amended 2012-06-28

- **Discussed list of expenses for the CIP, Courthouse and Other Buildings.**

Included on the list was a new phone system for all County offices estimated by Bill Polk to cost approximately \$175,000; cost for moving the AS400; cost of a new server for the Planning and Zoning Department; cost of mapping software for GIS Department rough estimate of \$75,000 – Mr. Fagan is working on getting a more solid figure; the possible purchase of the Briel Building; space needs; CAD System (estimated cost of \$800,000); possible addition behind the Smoot Building; elevator for the Mason Building estimated at \$250,000; repairs on County Courthouse

- **Request from Mark Hofe of the Twenty-Third Circuit Probation Department for the Commission to provide tables and chairs for the Juvenile Drug Court.**

Mr. Hofe and Shroyer spoke and it was decided that Mr. Hofe will meet with Bill Polk, Maintenance Director, and look over the tables and chairs that the County is not currently using to see if any will serve his purpose.

- **Mr. Shroyer discussed audit findings and the response he received from Stuart Stickel, CPA, Deputy State Auditor.** The audit cited two departments which showed excess budget wages paid to employees in 2010 and 2011. Ms. Keyser will draft a policy regarding authorization for any expenditure of excess budget monies.

- **Mr. Shroyer prepared and submitted a Budget Analysis for May 2012 which he discussed with the Commissioners.**

The Commission took a short break at 10:53 a.m.

The Commission reconvened the meeting at 11:05 a.m.

**12. Roger Goodwin, Chief County Engineer, along with Carol Goolsby from Region 9 spoke about the Chesapeake Bay Initiative and the Chesapeake Bay Regulatory and Accountability Grant. Ms. Goolsby explained that Region 9 assists by researching and providing information to the County.**

The Commission directed Ms. Keyser to submit the application for the Grant to the Legal Department for review and, if approved by Ms. Grove, to put the item on the Agenda for sometime in July 2012.

- **Rebecca Burns, Office Manager, Engineering Department, requested that the Commission authorize Staff to call on any Letter of Credits that are due and are not renewed by the close of business on Monday, July 9, 2012.**

- Motion by Ms. Morgan to authorize Engineering Department Staff to call on any Letter of Credits that are due and are not renewed by the close of business on Monday, July 9, 2012. Motion seconded by Mr. Pellish and unanimously approved.

**13. Request by Terry Simons, WorkCamp Coordinator for the Office of Youth Ministry that the Commission approve a waiver of permit fees for approximately 96 proposed charitable home repair projects for those in need.**

Motion by Mr. Manuel to waive permit fees for the Office of Youth Ministry home repair projects for people in the area that are in need of assistance. Motion seconded by Mr. Pellish and unanimously approved.

**14. Discussion for setting a date for a Public Hearing concerning the purchase of the Briel Building was**



RECEIVED

June 7, 2012

JUN 12 2012

Honorable Patsy Noland, President  
Jefferson County Commission  
PO Box 250  
Charles Town, WV 25414

Jefferson County Commission

Dear Commissioner Noland,

I have met with Roger Goodwin, Chief County Engineer for the Jefferson County Commission, to discuss possible options for securing a consultant to write your new stormwater management ordinance in order to satisfy the requirements of the Chesapeake Bay Initiatives and the Chesapeake Bay Regulatory and Accountability Grant (CBRAP).

I am contacting you to inform you that as members of the Eastern Panhandle Regional Planning and Development Council (Region 9), you are eligible to utilize our services for planning and technical assistance as outlined in WV State Code Chapter §8-25-8 Sub-section C. In addition, WV State Code Chapter §8-25-7 empowers and authorizes the Regional Councils to contract consultants for services including, planning, development, engineering, legal or other services of a professional, specialized or technical nature. Region 9, through a formal Request for Proposal (RFP) process has secured Delta Development Group, Inc., to provide technical assistance to Region 9 and its local governmental members. Therefore, Region 9 would like to propose that the Jefferson County Commission utilize our services to write your new stormwater management ordinance.

Region 9, through funding from WVDEP, has utilized Delta Development Group, Inc. for various Chesapeake Bay related projects, such as the development of the Region 9 Model Stormwater Ordinance, Phase II of the Watershed Implementation Plan (WIP) and the Harpers Ferry/Bolivar Stormwater Management Plan. Throughout this process, Delta Development Group, Inc. has lead local stakeholder work group meetings, public involvement meetings and worked closely with government representatives of the Eastern Panhandle.

The following are some of the benefits the Jefferson County Commission would receive, should they choose to utilize Region 9's technical assistance for this project:

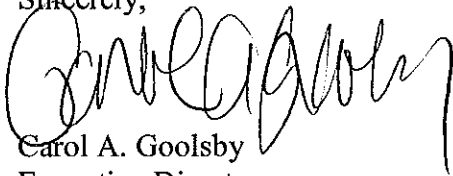
- Delta Development Group, Inc., already under contract with Region 9, was selected via a formal RFP process, which included a review of the firm's qualifications, available at your request. Thus satisfying grant procurement process requirements.
- The grant has a deadline for completion of the scope of work. Utilizing Region 9 eliminates the need for the Jefferson County Engineering Department perform the

Request for Proposal (RFP) process, including advertising and associated costs, assembling a committee to review the proposals and selecting a consultant, thus expediting the project as well as conserving costs.

- Region 9's consultant has the proven qualifications and experience, along with the resources to perform the scope of work outlined under the grant application and to write the new stormwater management ordinance.
- Delta Development Group Inc., having worked on several projects with the CBRAP, is already familiar with the grant terms and conditions and is flexible when it comes to working with the payment terms under the grant.
- Having much experience in working with the Chesapeake Bay Initiatives in the region, Delta is familiar with the Eastern Panhandle and has either completed or is currently working on projects for the City of Charles Town, the City of Ranson, and the towns of Harpers Ferry/Bolivar, Berkeley County Fire Board, Jefferson County Emergency Service and the Region 9 – Eastern Panhandle Regional Planning and Development Council.
- Region 9 will administer the grant on behalf of Jefferson County, including providing the required periodic updates, reports and preparing the necessary documentation for request for payments for the WV Department of Environmental Protection; thus reducing engineering department staff time devoted to administrative work and allow more time concentrating on working with Delta Development Group, Inc. writing the ordinance. Overall, this will allow expertise to be assigned appropriately, producing an ordinance in an efficient manner.

Please find the enclosed agreement for administrative services between Jefferson County Commission and Region 9 along with the Work Statement from Delta Development Group, Inc. Should you agree to retain the technical assistance of Region 9, please sign the enclosed agreement and return to our office at your earliest convenience. If there are any questions please feel free to contact me.

Sincerely,



Carol A. Goolsby  
Executive Director

Enclosures

jlo



West Virginia  
Department of  
Environmental Protection

<b>CFDA#</b>	<b>NPS Number</b>	<b>Sub Recipient DUNS</b>
66.466	NPS1399	07-741-4548

<b>Recipient Type:</b>	<b>Grant Year/Type:</b>	<b>Grant Number:</b>	<b>Mailing Date:</b>	<b>Date of Award:</b>
Government	2011/CBRAP	19049		February 22, 2012
<b>Sub Recipient: (Include FEIN)</b>		<b>Sub Recipient Contact:</b>		
Jefferson County Commission FEIN #55-66000333 P.O. Box 250 124 East Washington Street Charles Town, WV 25414		Patricia Noland, President		
<b>Project Title and Description:</b>				
Jefferson County Stormwater Ordinance - This project will fund a consultant to do an all-inclusive review of Jefferson County's Comprehensive Plan, Zoning Ordinance, Subdivision Ordinance, Improvement Location Permit Ordinance and Floodplain Ordinance; and conduct a comparison of these ordinances / regulations.				
<b>Performance Period:</b>		<b>Total Sub Grant Award:</b>		
February 22, 2012 - June 30, 2013		\$30,000		
<b><u>NOTICE OF AWARD</u></b>				
<p>The West Virginia Department of Environmental Protection (WVDEP), Division of Water and Waste Management (DWWM), Nonpoint Source Program has determined, based on the project proposal identified above and made a part hereof by reference, to award a sub-grant to the Sub Recipient identified above in the amount of \$30,000. This award is being granted from federal Chesapeake Bay Regulatory and Accountability Grant funds. The Sub Recipient must match the Chesapeake Bay funding at 25 %, which is \$10,000.</p> <p>This sub-grant may be terminated by WVDEP without further cause if the sub-recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section, as well as signing all included certifications and assurances, and returning all pages of this agreement to the WVDEP Sub Grant Unit listed below within 21 days after receipt. This agreement is subject to all applicable federal and statutory provisions, the referenced project proposal, and all terms and grant conditions of this agreement and any attachments. Funding is contingent upon availability.</p>				
<b>WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION</b> Scott G. Mandirolo, Director West Virginia Department of Environmental Protection Division of Water and Waste Management 601 57 <sup>th</sup> Street, S.E. Charleston, WV 25304				
<b>WVDEP Grants Manager:</b>		<b>WVDEP Project Manager:</b>		
Teresa M. Koon, Assistant Director WVDEP Division of Water and Waste Management Nonpoint Source Program 601 57 <sup>th</sup> Street, S.E. Charleston, WV 25304 Phone: 304-926-0499 ext 1020		Jennifer Pauer, Project Manager Division of Water and Waste Management Nonpoint Source Program 601 57 <sup>th</sup> Street, S.E. Charleston, WV 25304 Phone: 304-926-0499 ext 1038		
<b>Signature of Award Official</b>	<b>Typed Name and Title:</b>		<b>Date</b>	
	Scott G. Mandirolo, Director Division of Water and Waste Management		3/26/12	
<b>AFFIRMATION OF AWARD</b>				
<b>BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION</b>				
<b>Signature of Recipient</b>	<b>Typed Name and Title:</b>		<b>Date</b>	
	Patricia Noland, President		3-15-2012	

## **Agreement for Administrative Services**

This Agreement, entered into this \_\_\_\_ day of \_\_\_\_\_ 2012 by and between the Jefferson County Commission, hereinafter referred to as the “**COMMISSION**”, and the Eastern Panhandle Regional Planning and Development Council, (“**Region 9**”), hereinafter referred to as the “**REGION 9**”, set forth as follows:

Whereas, the COMMISSION, a government entity in Jefferson County, on February 22, 2012, received funding in the amount of \$30,000 from the WV Department of Environmental Protection (WV DEP) Chesapeake Bay Regulatory and Accountability Program (CBRAP) Grant for The Jefferson County Stormwater Ordinance Project; and

Whereas, the COMMISSION is required to obligate itself to comply and adhere to the program requirements, regulations, terms and condition of said Program; and

Whereas, the REGION 9 has experience in the proper administration and operation of projects with these types of requirements and regulations, and

Whereas, WV State Code Chapter §8-25-7 empowers and authorizes the Regional Councils to contract consultants for services including, planning, development, engineering, legal or other services of a professional, specialized or technical nature, and

Whereas, REGION 9 has contracted with Delta Development, Inc., through a formal RFP process, to provide technical assistance where needed

NOW, THEREFORE BE IT RESOLVED, the COMMISSION and REGION 9 do agree as follows:

ARTICLE I: Upon signature of this document and Work Statement #8 from Delta Development Inc., REGION 9 and Delta Development Inc. will provide technical assistance to the COMMISSION and its staff in all matters relating to the proper administration of this project and compliance with the relevant program requirements and continues to agree to provide technical assistance until the project is complete. These duties involve, but are not limited to, the following areas:

- Accounting and financial transactions
- Project management
- Record retention and access to records
- Compliance with all Equal Opportunity and Disadvantaged Business requirements
- State and Federal reporting requirements
- Project close-out procedures
- Any additional program requirements that may be imposed by either the State or Federal Government

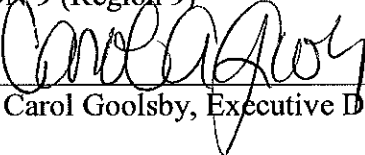
ARTICLE II: REGION 9 agrees to provide the COMMISSION with periodic reports and, at the completion of the project, with a complete file of the project activities, presented and organized with the required methodology and suitable for auditing purposes.

ARTICLE III: REGION 9 and the COMMISSION agree to follow program guidelines as they relate to the requirements and regulations set forth in the grant award from the WV DEP CBRAP.

ARTICLE IV: This agreement may be altered upon mutual agreement of both parties. It may also be terminated by either party upon the service of a thirty day notice so stating.

**IN WITNESS HEREOF**, the COMMISSION and REGION 9 have executed this agreement on or as of the date first written above.

Eastern Panhandle Regional Planning and Development  
REGION 9 (Region 9)

By:   
Carol Goolsby, Executive Director

Jefferson County Commission – WV DEP CBRAP

By: \_\_\_\_\_  
Patsy Noland, President

***Work Statement No. 8***  
***Jefferson County Stormwater Management Ordinance Development and Review***

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**WORK STATEMENT NO. 8**

Pursuant to Paragraph 2 of the Professional Services Agreement dated as of June 1, 2009 (Original Agreement), and as previously amended by the Letters of Amendment agreed to and accepted on April 15, 2010, May 31, 2011, and May 31, 2012 (Prior Amendments), by and between Delta Development Group, Inc., hereinafter referred to as "DELTA," and the Eastern Panhandle Regional Planning and Development Council, hereinafter referred to as the "CLIENT," DELTA has been contracted by the CLIENT to provide comprehensive planning and economic development strategies, community and economic development studies addressing goals in the CLIENT's five-year Comprehensive Economic Development Strategy (CEDS), and web design and development.

Project-specific services provided by DELTA are detailed in the attached Work Statement. Under this Work Statement, such services will be provided to the CLIENT.

Attachment 1 hereto specifies the Work Statement's scope of services, compensation, schedule, and deliverables.

In consideration of the foregoing and intending to be legally bound by the terms herein, DELTA and the CLIENT have caused this Work Statement to be executed by their duly authorized representatives as set forth below.

**DELTA DEVELOPMENT GROUP, INC.**

**EASTERN PANHANDLE REGIONAL  
PLANNING AND DEVELOPMENT  
COUNCIL (REGION 9)**

By: \_\_\_\_\_  
**Eric R. Clancy**  
**Executive Vice President**

By: \_\_\_\_\_  
**Carol A. Goolsby**  
**Executive Director**

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

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



***Work Statement No. 8***  
***Jefferson County Stormwater Management Ordinance Development and Review Attachment 1***

**SUMMARY OF OUTPUTS**

DELTA will assist the Jefferson County Commission, Engineering Department and Planning Commission (Jefferson County) with preparing a new Stormwater Management Ordinance and amendments to the County's Comprehensive Plan, Zoning Ordinance, Subdivision Ordinance, Improvement Location Permit Ordinance, and Floodplain Ordinance to achieve the following water quality and quantity objectives:

- Enable Jefferson County to comply with the Environmental Protection Agency's (EPA) Total Maximum Daily Loads (TMDLs) Water Quality Standards established for the Potomac River Basin
- Limit the post-construction runoff rates to rates equal to or less than pre-development runoff rates
- Include provisions that will improve water quality by reducing nonpoint source pollution and nutrients
- Encourage flexible Best Management Practice (BMP) requirements and Low Impact Design (LID) criteria
- Address the vast areas of Karst geology and specify BMP criteria in these areas

DELTA's services will include performing a gap analysis of Jefferson County's stormwater management (i.e., water quality and quantity) policies by evaluating the County's Comprehensive Plan, Zoning Ordinance, Subdivision Ordinance, Improvement Location Permit Ordinance, and Floodplain Ordinance, and comparing them against the relevant stormwater management recommendations and BMPs documented in the following publications:

- West Virginia Phase II Watershed Implementation Plan
- Model Stormwater Management Ordinance produced for the Eastern Panhandle of West Virginia
- U.S. EPA Chesapeake Bay TMDL Executive Summary
- West Virginia Department of Environmental Protection Municipal Separate Storm Sewer Systems (MS4) permit program requirements
- West Virginia National Flood Insurance Program (NFIP) Model Floodplain Ordinance

DELTA's stormwater policy gap analysis will identify conflicts among Jefferson County's existing stormwater management policies; identify barriers within existing design standards that do not accommodate BMPs or allow for the flexibility in project designs that could reduce impacts to water quality and quantity; and develop recommended amendments to the existing ordinances and regulations (as specified above) required to achieve consistency and compatibility with the County's new Stormwater Management Ordinance.

The results of DELTA's policy gap analysis will be documented in Microsoft Word and summarized in PowerPoint, which will be used to disseminate gap analysis findings, water quality and quantity BMPs, and policy recommendations to the general public through the County's website, public meetings, news media outlets, and other appropriate and cost-effective means including Facebook, etc.



## ***Work Statement No. 8***

### ***Jefferson County Stormwater Management Ordinance Development and Review Attachment 1***

DELTA's preparation of the new Stormwater Management Ordinance and proposed amendments to Jefferson County's existing ordinances and regulations will include the following public involvement and stakeholder outreach initiatives:

- Work sessions with Jefferson County staff
- Stakeholder involvement with developers, economic development practitioners, watershed protection interests, Jefferson County Public Service District officials, etc.
- Public meetings to present, review, and discuss proposed new regulations and amendments
- Public hearings pursuant to the ordinance adoption and enactment procedures of West Virginia Code Chapter 8A
- Technical assistance for Jefferson County's public education and outreach initiatives

DELTA will culminate its technical assistance services by presenting the proposed Stormwater Management Ordinance and proposed amendments to the above-referenced ordinances and regulations to the Jefferson County Planning Commission and Jefferson County Commission for enactment and adoption.

## **DELIVERABLES**

### **MEETINGS**

- Four (4) Jefferson County work sessions
- One (1) stakeholder involvement session
- One (1) Planning Commission meeting
- Two (2) Jefferson County public hearings

### **WRITTEN REPORTS, ORDINANCES, AND AMENDMENTS**

- Written gap analysis report (Microsoft Word) and summary (PowerPoint)
- Draft and final Stormwater Management Ordinance (printing of draft and final ordinances for public meetings and hearings will be at cost to Jefferson County)
- Draft and final Amendments to Jefferson County's Comprehensive Plan, Zoning Ordinance, Subdivision Ordinance, Improvement Location Permit Ordinance, and Floodplain Ordinance (printing of draft and final amendments for public meetings and hearings will be at cost to Jefferson County)

## **TASKS**

DELTA will execute the following tasks to achieve the project's objectives and deliverables:

Task 1 – Scoping and Kick-off Meeting with Jefferson County (Work Session #1)

Task 2 – Stormwater Management Policy Gap Analysis

Task 3 – Stakeholder Involvement

Task 4 – Synthesis of Gap Analysis Findings

Task 5 – Jefferson County Work Session #2

Task 6 – Draft Stormwater Management Ordinance

Task 7 – Draft Ordinance and Regulation Amendments

Task 8 – Planning Commission Public Meeting



***Work Statement No. 8***  
***Jefferson County Stormwater Management Ordinance Development and Review Attachment 1***

Task 9 – Jefferson County Work Session #3 (to review public comments)

Task 10 – Revisions to Stormwater Management Ordinance and Other Ordinances/Regulations

Task 11 – Jefferson County Work Session #4

Task 12 – Jefferson County Public Hearing(s) and Readings (Enactment/Adoption pursuant to West Virginia Code Chapter 8A)

**SCHEDULE**

The performance period for this Work Statement will be six (6) months from the date of execution of this Work Statement.

**FEE**

DELTA will be compensated for the services to be performed under this Work Statement on an hourly basis as established by the employee rate schedule below. Unless directed in writing by the CLIENT, DELTA's total compensation for executing this Work Statement shall not exceed Thirty Thousand Dollars (\$30,000.00), including reasonable and ordinary expenses.

Project Manager .....	\$150.00/hour
Senior Associate/Associate .....	\$120.00/hour
Quality Assurance Analyst .....	\$75.00/hour
Administrative Support.....	\$55.00/hour





<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: Roger Goodwin

Department or Entity: Department of Engineering

Estimation of amount of time needed for appointment: 5 minutes

Date Requested – 1<sup>st</sup> Choice: July 19, 2012

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

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

Subject: Bond reduction and/or release.

Please provide the County Commission with a description of your request or presentation, including any background information: Complete release of the Construction Bond security for Cambridge, LLC – Cambridge Manufactured Mobile Home Development, Section 4, Phase 3, Lots D124 (File #07-25) – Letter of Credit #S140282 with The Columbia Bank, Columbia, Maryland.

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): I authorize a complete release of the remaining \$48,860.00 from Letter of Credit #S140282 surety for the construction bond agreement for Cambridge, LLC – Cambridge Manufactured Mobile Home Development, Section 4, Phase 3, Lots D124 (File #07-25).

Attachments: Bond Release Letter  
Site Map



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

PRESIDENT

*Patsy Noland*

VICE PRESIDENT

*Dale Manuel*

COMMISSIONER

*Frances Morgan*

COMMISSIONER

*Walt Pellish*

COMMISSIONER

*Lyn Widmyer*

July 19, 2012

Ms. Linda L. Davis, Vice President

The Columbia Bank

P. O. Box 1493

Columbia, Maryland 21044-0493

RE: Irrevocable Letter of Credit #S140282 dated October 29, 2009 Construction Bond Surety for  
Flowing Springs, LLC – Cambridge Manufactured Home Development, Section 4, Phase 3,  
Lot D124 & Residue (PCFile #07-25).

Dear Ms. Davis:

The Jefferson County Commission authorizes a complete release of the remaining \$48,860.00 construction bond amount for Flowing Springs, LLC – Cambridge Manufactured Home Development, Section 4, Phase 3, Lot D124 (PCFile #07-25). This project is located on the south side of Flowing Acres Road (Route 17/5) at the corner of Sherwood Lane and Canterbury Trail.

In summary, you are hereby authorized to fully release the remaining amount for the above referenced Irrevocable Letter of Credit, originally issued in the amount of \$48,860.00. Please contact the Jefferson County Department of Engineering at (304)-728-3257 if you have any questions.

Sincerely,

Patricia A. Noland, President  
Jefferson County Commission

PAN:rfb

cc: Mr. Curtis Myers, Manager  
Cambridge, LLC  
11 Manchester Drive  
Charles Town, WV 25414  
Department of Engineering

Acting County Administrator  
*Debbie Keyser*

Deputy County Administrator  
*Sandy Slusher McDonald*

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

### BOND REDUCTION or RELEASE REQUEST - REPORT

Date Received: 06 / 18 / 2012 J.C.P.C. File No. 07 - 25

Consultant/Engineer/Firm Name: CAMBRIDGE, LLC

Mailing Address: 11 MANCHESTER DRIVE

City: CHARLES TOWN State: WV Zip: 25414

Contact Person: CURTIS MYERS Phone: \_\_\_\_\_

Project/Subdivision Name: CAMBRIDGE

Section/Phase: SECTION 4 PHASE 3 Lots: D 124

Review Comments:

The bond release/reduction is Approved as Submitted.  The bond release/reduction request is Denied.

\_\_\_\_ Add items/revise as shown per our comments on your attached bond release/reduction form & resubmit reduction/release request to our office for review and approval.

\_\_\_\_ Some site work has progressed beyond the required "milestone" site inspections that are to be performed by our office. As a result, you will need to schedule the inspections with our Land Development Inspector, and/or provide the certifications noted on the attached "Third-Party Certifications" checklist. Please collect all the required third-party certifications and submit them all at one time along with a copy of this report and the checklist.

\_\_\_\_ Bonding Policy & Unit Cost Figures attached for your use.

Comments: ALL CERTIFICATION LETTERS RECEIVED

RECOMMEND RELEASE OF BOND

**Approved for:**  
BOND RELEASE  
By [Signature] 07/06/12  
**County Engineer Date**

Original Bond Amt. \$ 42,486<sup>25</sup> + 15% Cont. \$ 6,372<sup>25</sup> = Total Original Bond Amt. \$ 48,860

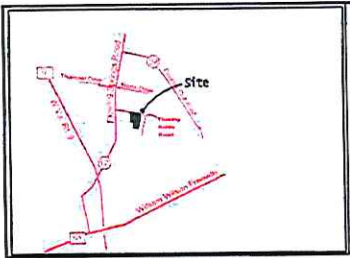
Total Current Bond Amount \$ 48,860.00

Cost of Work Remaining \$ 0.00 + Contingency Amount \$ 0.00

= Approved for Revised Bond Amount \$ 0.00

Reviewed By: JOSEPH W. KEAT Title: L.O.I.

Signature: [Signature] Date: 07 / 06 / 2012



VICINITY MAP  
SCALE: 1" = 2000 FEET

1. All utilities of Public/Private Service Districts shall have access in and on all rights-of-way and utility easements to maintain, extend, or otherwise modify their facilities.
2. All units shall be connected to the central water and sewer systems, no individual (on-site) systems or wells are permitted. 2.1. WATER SHALL BE PROVIDED BY JEFFERSON UTILITIES, INC. 2.2. SEWER SERVICE SHALL BE PROVIDED BY J.C.P.S.D
3. Roadways, common sidewalks, recreational areas, and other common facilities shall be maintained by the owner or their assignees.
4. Unit leaseholder shall abide by the covenants and restrictions contained in the lease, including restrictions on pets. Should pet restrictions be lifted Section 13.3 of the Jefferson Co. Land Development Ordinance shall be in effect.
5. Developer and operator of this community is FLOWING SPRINGS, Limited Liability Company, 2630 Buckleystown Pike, Adamstown, MD. 21710
6. Lots shown hereon are for lease only and shall not be sold as individual parcels.
7. All lot access shall be limited only to interior streets which connects to W.Va. Sec. Rt. 175
8. Per firm panel 540035 0035e this site is not in the 100 yr. flood zone. (flood zone c) area of minimal flooding
9. There are no wetlands areas as shown in the site report
10. Per lease agreement and per Jefferson county subdivision ordinance section 13.3, the homeowner's association shall petition the county commission to adopt a leash law within the subdivision shown hereon. dogs are to be leashed when outside.



COMMON PARK AREA - 1.1627 Acre  
 EXISTING BUFFER AREA - 0.8471 Acre  
 PROPOSED BUFFER AREA - 0.2451 Acre

HUNTLEY, NYCE & ASSOCIATES, LLC  
 REGISTERED & CERTIFIED LAND PLANNERS  
 1000 WASHINGTON CENTER  
 SUITE 200  
 FARMERSVILLE, VIRGINIA 22645  
 TEL: 540-626-1111  
 FAX: 540-626-1112  
 WWW.HUNTLEYNYCE.COM  
 Virginia is a Commonwealth of Independent Land Planning & Surveying Engineers

JEFFERSON COUNTY PLANNING AND ZONING COMMISSION  
**CONDITIONAL USE PERMIT**

This is to certify that effective May 28, 1996 the property described as:

Developer/Owner: Rahmi Hanny, Owner  
 2618 Zondar Avenue  
 Alexandria, Virginia 22313

Telephone Number: (703) 931-0741  
David John, Designer  
 4215 Brookevinton Pike  
 Adamstown, Maryland 21710

Telephone Number: (703) 931-1177

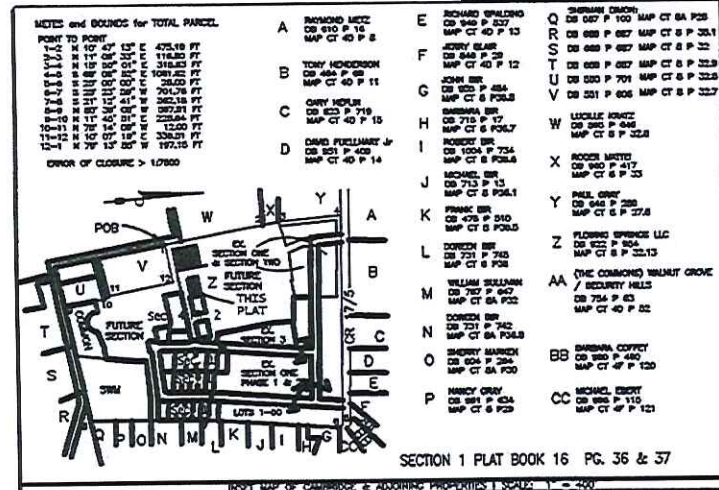
Tax Map Reference: Charles Town District Tax Map 8 Parcel 32.33  
 Deed Book Reference: Deed Book 8535 Page B166  
 Subdivision Name: Flowing Springs Estates  
 Zoning District: Residential Agricultural  
 Other Descriptions:

has been granted permission to use said property in the following way:

179 single family lots for manufactured housing.

Conditional upon:

1. The developer enforcing the following minimum covenants: every tenant will sign a lease and abide by all covenants; no metal on metal all riding will be allowed or vinyl; all accommodations will be obtained, inspected and approved by the developer; no manufactured homes older than 5 years (5) years will be allowed to move in; all tenants will have to abide by a nuisance clause; all tenants will be on a minimum 90 day lease; all sheds, porches and decks will be approved by the developer prior to their construction; no dog houses; all animals will abide by the leash law; no parking or junk will be allowed to accumulate; lawn will be maintained and in presentable condition; only self-said fencing is permitted with the developer approval and no vehicles will be allowed on blocks except for routine maintenance.
2. No manufactured houses moving in in any given year which is older than 5 years (5) years.
3. No subleasing of lots or homes to a third party.
4. Having an on site resident manager once every 90 units have been occupied and.
5. Providing a buffer some along Flowing Acres Road and to the end of the site property in accordance with Article 4, Section 4.11(d) of the Zoning and Development Review Ordinance which is to be maintained by the developer.



A	RAYMOND MEECE	DB 940 P 16	MAP CT 40 P 8
B	TOMMY HENDERSON	DB 464 P 69	MAP CT 40 P 11
C	CORY NEPLER	DB 823 P 719	MAP CT 40 P 15
D	DAVID FREEMAN	DB 851 P 428	MAP CT 40 P 14
E	EDWARD SPENDING	DB 940 P 237	MAP CT 40 P 13
F	JERRY BLAIR	DB 848 P 29	MAP CT 40 P 12
G	JOHN BEE	DB 103 P 484	MAP CT 8 POBLS
H	BARBARA BEE	DB 823 P 719	MAP CT 8 POBLS
I	ROBERT BEE	DB 1004 P 734	MAP CT 8 POBLS
J	MICHAEL BEE	DB 713 P 13	MAP CT 8 POBLS
K	FRANK BEE	DB 478 P 210	MAP CT 8 POBLS
L	DORRIN BEE	DB 701 P 740	MAP CT 8 POBLS
M	WILLIAM BULLMAN	DB 787 P 847	MAP CT 8A POBLS
N	DORRIN BEE	DB 701 P 742	MAP CT 8A POBLS
O	SHERRY BARNETT	DB 804 P 204	MAP CT 8A POBLS
P	MARCY GRAY	DB 881 P 434	MAP CT 8 P 20
Q	SHERRY GRAY	DB 887 P 100	MAP CT 8A POBLS
R	SHERRY GRAY	DB 887 P 100	MAP CT 8 P 20.1
S	SHERRY GRAY	DB 887 P 100	MAP CT 8 P 20.2
T	SHERRY GRAY	DB 887 P 100	MAP CT 8 P 20.3
U	SHERRY GRAY	DB 887 P 100	MAP CT 8 P 20.4
V	SHERRY GRAY	DB 887 P 100	MAP CT 8 P 20.5
W	LOUISE BOWEN	DB 885 P 448	MAP CT 8 P 22.8
X	ROOSE MITCHELL	DB 940 P 417	MAP CT 8 P 33
Y	PAUL GRAY	DB 848 P 289	MAP CT 8 P 27.8
Z	FLOWING SPRINGS LLC	DB 822 P 804	MAP CT 8 P 32.13
AA	ONE COMMONS TRAILWAY GROVE / SECURITY HILLS	DB 784 P 43	MAP CT 40 P 82
BB	BARBARA COFFEE	DB 880 P 490	MAP CT 4 P 120
CC	MICHAEL COFFEE	DB 888 P 110	MAP CT 4 P 121

CAMBRIDGE

LIST OF VARIANCES

SECTION	DESCRIPTION	DATE APPROVED
S.2.a.5	ROAD WIDTH TO 40'	MAY 28, 1996
S.2.a.5	CENTERLINE OF MANCHESTER DRIVE & AVALON TERRACE ST. OFFSET FROM CENTERLINE R/W	MAY 27, 1997
S.2.c.8	12" DRAIN PIPE WHEN USED IN CONJUNCTION WITH A SLOT DRAIN	MAY 27, 1997

STATEMENT OF ACCEPTANCE  
 The developer, FLOWING SPRINGS, LLC, in signing this plat agrees to abide by all conditions, terms, and specifications provided herein.

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

HORIZONTAL & VERTICAL CONTROL, BOUNDARY, & TOPOGRAPHY PROVIDED BY sp,LLC., 1997.  
 Surveyor Certificate  
 I certify that this survey and plat was made by me and its accuracy is within the accepted standards. Error of closure 1:7500 or better

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

FINAL PLAT APPROVED BY JCPZ&E

Sherry Kelly  
 Deputy Director of Planning  
 Jefferson County Planning, Zoning and Engineering

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FINAL PLAT  
 SHOWING CONVERSION - MANUFACTURED HOME DEVELOPMENT  
 SECTION 4 PHASE 3 - LOT 124  
 PROPERTY OF: FLOWING SPRINGS LLC  
 CHARLES TOWN DISTRICT  
 MAP 8 P 20.1 & 20.2

SCALE 1" = 50'  
 DATE 10-27-07  
 SHEET NO. 1 OF 2  
 CHECKED BY  
 DRAWN BY  
 TITLE

OWNER/DEVELOPER  
 Flowing Springs LLC  
 C/O Dave Leas  
 335 Hardensville Drive  
 Charles Town, WV 25414  
 304-724-4653

SHEET 1 OF 2  
 FILE NO.

P:\00656069\p09565\math\43-A.dwg 12/20/07 4:47:38 AM EEST

07-25

6

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

**AGENDA REQUEST FORM**

Name: Jefferson County Fire and Rescue Association

Department or Entity: \_\_\_\_\_

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

Date Requested – 1<sup>st</sup> Choice: July 19, 2012

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

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

Subject:

**Discuss Fire Department Audits**

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):

Attachments:



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

**AGENDA REQUEST FORM**

Name: Stephanie Grove

Department or Entity: Assistant Prosecuting Attorney

Estimation of amount of time needed for appointment: 15 min

Date Requested – 1<sup>st</sup> Choice: 7/19/2012

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

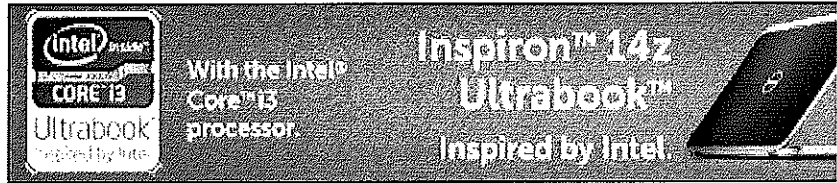
If a specific date is needed, please provide reason for specific date:

Subject: Statutory Requirements for the Eastern Regional Airport Authority  
Legal Update for Far Away Farms - Discussion

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):

Attachments:



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## Airport Authority getting new members

### Controversy continues over how number of appointees Council gets

July 9, 2012

By John McVey, Journal staff writer , journal-news.net

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MARTINSBURG - The Eastern West Virginia Regional Airport Authority can expect at least one new face on its board at its meeting at 6 p.m. Tuesday, the first of the new fiscal year.

Berkeley County Council appointee Robert L. "Bob" Burkhart resigned last month for health reasons. He has been replaced by Richard Talbott.

Burkhart's term on the Airport Authority would have expired at the end of June, so Talbott will serve a full three-year term.

Berkeley County Council also decided at its June 7 meeting to appoint four more members to the Airport Authority along with its three usual appointees.

Under the statute creating airport authorities, jurisdictions like the County Council can appoint one member for each \$5,000 contribution. Historically, the county has allocated \$15,000 for three members on the authority.

Councilwoman Elaine Mauck argued that because the County Council is contributing \$22,500 in addition to its usual \$15,000 allocation, the council should appoint four more members.

County Council allotted \$22,500 this fiscal year to help offset the Airport Authority's loss of funding from the National Guard Bureau, which had amounted to \$45,000 a year. The NGB payment

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accounted for about 20 percent of the Airport Authority's total operating budget.

The Airport Authority had a joint-use agreement with NGB for the West Virginia Air National Guard's 167th Airlift Wing's use of the Eastern Regional Airport. That agreement expired June 30, 2011.

NGB initially offered the Airport Authority a five-year joint-use agreement that would have paid the authority \$45,000 the first year, but the payment would have been reduced annually until it would have been \$1 in the fifth year.

#### **Fact Box**

##### **FAST FACTS**

The Eastern W.Va. Regional Airport's regularly scheduled monthly meeting for July is at 6 p.m. Tuesday in the airport's second-floor conference room at 170 Aviation Way, Martinsburg. The Airport Authority's meeting in the first month of each quarter is held in the evening. Usually, the Airport Authority meets at 8 a.m. on the first Tuesday of each month. This month's meeting was pushed back a week because of the Independence Day holiday.

Agenda items include nomination and election of officers; airport lease/rents/fees; and airport improvement report/runway regulator degradation.

For more information, call 304-263-2106.

The Airport Authority rejected that offer and tried to negotiate a better deal.

NGB then made a counter offer of \$1 a year for five years.

After more negotiations, the Airport Authority finally accepted that deal. The new agreement was retroactive to the beginning of the last fiscal year.

With the loss of NGB funds, the Airport Authority appealed to the county and Martinsburg City Council for extra funds to offset the loss.

State code is not completely clear on whether the additional \$22,500 entitles County Council to an additional four appointees or if their current appointees are entitled to more than one vote, according to some officials.

The County Council's legal counsel, Norwood Bentley, argued that state code does not authorize the County Council to appoint four more members because it allocated the additional funds.

County Council also has contributed \$12,000 as its share of matching funds for a federal Airport Improvement Program, which it allotted this fiscal year also.

That brings the County Council's total contribution this fiscal year to \$49,500. That amount would give the county at least nine appointees.

County Administrator Deborah Hammond said in a recent telephone interview that County Council is interviewing candidates for the four additional seats on the Airport Authority, but that a time frame for appointing the additional members has not been set.

Martinsburg City Council also has allocated the same total amount as the county - \$49,500 - to the Airport Authority this fiscal year in the same categories: \$15,000 for three members; \$12,000 for Airport Improvement Program matching funds; and \$22,500 to help offset the loss of NGB funds.

However, City Council has no intention of appointing any more members.

"City Manager Mark Baldwin and I have talked about this and on the advice of our city attorney (Kin Sayre) and statements by Norwood Bentley, whom I trust, I have decided not to add members," Martinsburg Mayor George Karos said quite emphatically in a telephone interview Friday.

Although justified, Karos said City Council considers the \$22,500 a one-time, emergency contribution, not an on-going budget line item that will continue after this fiscal year.

According to state code, Airport Authority members are appointed to three-year terms.

"What do I do? Appoint (four) people and then take them off after one year?" Karos asked rhetorically. "We're standing our ground on this."

Sayre agreed that adding members under these circumstances would create problems.

"The two entities (Berkeley County and Martinsburg) have over the years pegged their permanent financing to the number of members," Sayre said in a telephone interview Friday, "and not looked at additional funds as buying additional seats."

Karos added that this issue is expected to be discussed during a joint County Council and City Council meeting planned for the near future.

The city also is looking to fill one of its three seats on the Airport Authority. Former Councilman Rodney Woods had served on the authority, but when he decided not to seek re-election to the council, he resigned his spot on the authority.

In a related matter, the Jefferson County Commission decided earlier this year to pay \$5,000 to have a member on the Airport Authority beginning this fiscal year. Commissioners appointed the executive director of the Jefferson County Development Authority, John Reisenweber, as their member.

The Airport Authority is a regional organization encompassing Berkeley, Jefferson and Morgan counties as well as the municipalities in those counties.

State code says that the appointee must be a resident of the jurisdiction from which he or she is appointed. Effectively, the Jefferson County Commission's appointee must live in Jefferson County.

Reisenweber does not. He lives in Berkeley County.

Jefferson County Commission President Patsy Noland said in a recent telephone interview that commissioners were waiting for clarification on the residency issue.

"We haven't got an answer yet," she said. "We hope to get an answer before our next meeting (Thursday)."

Noland suggested talking with Stephanie Grove, the assistant Jefferson County prosecutor who acts as the commission's legal counsel, but Grove did not return a telephone call.

Jefferson County did take part in the Airport Authority in the past, but dropped its membership, officials have said.

In a telephone conversation Friday, Reisenweber said he was appointed because he was pushing for Jefferson County's participation in the Airport Authority and because he is the Development Authority's executive, but he does not believe he has to be the commissioners' appointee.

"Jefferson County should be represented on the Airport Authority - Jefferson County should have a voice on the board of this incredibly valuable asset," he said. "It wasn't necessary for me to be appointed, but it's too important to not have a representative, a liaison on the Airport Authority."

Reisenweber said the appointee should be someone with good business sense and who has the aviation knowledge and skills to contribute to the conversation.

- Staff writer John McVey can be reached at 304-263-3381, ext. 128 or [jmcvey@journal-news.net](mailto:jmcvey@journal-news.net)

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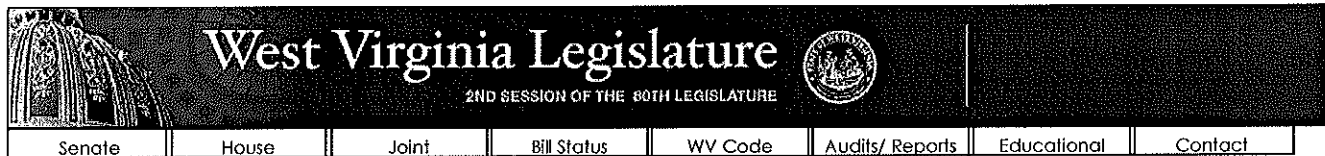
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**journal-news.net**

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## WEST VIRGINIA CODE

## CHAPTER 8. MUNICIPAL CORPORATIONS.

## ARTICLE 29. INTERGOVERNMENTAL RELATIONS -- REGIONAL AIRPORTS.

PART I. AUTHORITIES AUTHORIZED; ORGANIZATION OF AUTHORITIES;  
OPERATION OF AIRPORTS; DEFINITIONS.**§8-29-1. Regional airport authorities authorized; definitions.**

Any two or more municipalities, any two or more contiguous counties, or any county or two or more contiguous counties and one or more municipalities located therein or partly therein, of this state, are hereby authorized to create and establish one or more authorities for the purpose of acquiring, establishing, constructing, equipping, improving, financing, maintaining and operating a regional airport or airports, as the case may be, for the use of aircraft: *Provided*, That no such municipality or county shall participate in such authority unless and until the governing body or county court so provides. As used in this article, the terms "airport" and "aircraft" shall have the meanings ascribed to them in section one, article two-a, chapter twenty-nine of this code, the term "contiguous counties" means two or more counties which constitute a compact territorial unit within an unbroken boundary wherein one county touches at least one other county, but does not require that each county touch all of the other counties so combining, and the term "authority" means a regional airport authority created pursuant to the provisions of this article.

**§8-29-2. Authorities to be public corporations.**

Each authority when created and established, and the members thereof, shall constitute a public corporation and as such, shall have perpetual succession, may contract and be contracted with, sue and be sued, and have and use a common seal.

**§8-29-3. Authorities empowered and authorized to acquire, operate, etc., airports and develop industrial parks; state aeronautics commission.**

Each authority is hereby empowered and authorized to acquire, establish, construct, equip, improve, finance, maintain and operate a regional airport or landing field and appurtenant facilities so located to best serve the region in which they are located, including, but not limited to, industrial parks. Each authority shall be subject to the jurisdiction of the state aeronautics commission to the same extent as a state or municipal airport.

**§8-29-4. Management of authority vested in members; appointment and terms of members; vote of members; valuation of property contributed to an authority; participation by additional municipalities or counties without state.**

The management and control of each authority, its property, operations, business and affairs shall be lodged in a board of not less than five nor more than twenty-one individuals who shall be known as members of the authority and who shall be appointed for terms of three years each by the municipalities and county courts contributing moneys or property to the authority. However, the first board shall be comprised of one member appointed by each participating municipality and one member appointed by each participating county court, and any such member shall serve a term of one year, beginning as of the date the authority is created. No more than three members shall serve from one county on the first board.

Each municipality or county shall have one vote for each five thousand dollars it has contributed to the authority in the form of moneys or property. When property is contributed, the contributing municipality or county court and the authority shall agree in writing at the time the contribution is made as to the fair market value of such property, which valuation shall determine the number of votes to be allocated to the municipality or county on the basis thereof. For the fiscal year during which any authority is formed, the number of votes to which any municipality or county shall be entitled shall be determined as of the time of formation of the authority and shall govern until the end of that fiscal year, even though additional moneys or property are contributed during that fiscal year. Thereafter, the number of votes shall be determined at the end of each fiscal year and such determination shall govern for the ensuing fiscal year, even though additional moneys or property are contributed during that fiscal year. Subsequent to its formation, any authority may permit any municipality or county without this state to participate in the affairs of the authority, to appoint members of the authority in the same manner, and to have

such vote or votes beginning as of the next ensuing fiscal year, as prescribed by law with respect to the original participating municipalities or counties or any combination thereof.

**§8-29-5. Substitution of members.**

If any member of an authority die, or resign, or be removed, or for any other reason cease to be a member of the authority, the municipality or the county court (or other similar body in the case of an out-of-state participating county) which such member represented shall appoint another individual to fill the unexpired portion of the term of such member.

**§8-29-6. Qualification of members.**

All members of the board of each authority shall be residents of the municipality or county which said members represent.

**§8-29-7. Compensation of members.**

No member of the board of an authority shall receive any compensation, whether in form of salary, per diem allowance or otherwise, for or in connection with his services as such member. Each member shall, however, be entitled to reimbursement by the authority for all reasonable and necessary expenses actually incurred in connection with the performance of his duties as such member.

**PART II. GENERAL POWERS OF AUTHORITIES.**

**§8-29-8. Powers of authorities generally.**

Each authority is hereby given plenary power and authority as follows:

- (1) To make and adopt all necessary bylaws and rules for its organization and operations not inconsistent with law;
- (2) To elect its own officers, to appoint committees and to employ and fix the compensation for personnel necessary for its operation;
- (3) To enter into contracts with any person, including both public and private corporations, or governmental department or agency, and generally to do any and all things necessary or convenient for the purpose of acquiring, establishing, constructing, equipping, improving, financing, maintaining and operating a public airport to best serve the region in which it is located, including the development of an industrial park in the same general area;
- (4) To delegate any authority given to it by law to any of its officers, committees, agents or employees;
- (5) To apply for, receive and use grants-in-aid, donations and contributions from any source or sources, including, but not limited to, the federal government and any department or agency thereof, and this state subject to any constitutional and statutory limitations with respect thereto, and to accept and use bequests, devises, gifts and donations from any person;
- (6) To acquire lands and hold title thereto in its own name;
- (7) To purchase, own, hold, sell and dispose of personal property and to sell, lease or otherwise dispose of any real property which it may own;
- (8) To borrow money and execute and deliver negotiable notes, mortgage bonds, other bonds, debentures and other evidences of indebtedness therefor, and give such security therefor as shall be requisite, including giving a mortgage or deed of trust on its airport properties and facilities or assigning or pledging the gross or net revenues therefrom;
- (9) To raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article sixteen of this chapter, it being hereby expressly provided that for the purpose of the issuance and sale of revenue bonds, each authority is a "governing body" as that term is used in said article only;
- (10) To establish, charge and collect reasonable fees and charges for services or for the use of any part of its property or facilities, or for both services and such use;
- (11) To expend its funds in the execution of the powers and authority herein given;
- (12) To apply for, receive and use loans, grants, donations, technical assistance and contributions from any regional or area commissions that may be established; and
- (13) To prescribe by bylaw the manner of financial participation by members.

PART III. CONTROL OF VEHICULAR AND  
PEDESTRIAN TRAFFIC NEAR AIRPORTS.

**§8-29-9. Rules and regulations to control vehicular and pedestrian traffic within quarter mile of airport; violation of rule and regulation a misdemeanor; penalty.**

The county court of the county in which any such airport or the major portion thereof is located is hereby empowered and authorized, upon request of the authority, to adopt and promulgate rules and regulations to: (1) Control the movement and disposition of vehicular and pedestrian traffic within one-fourth mile of any building or installation of any such airport, (2) regulate and control vehicular parking within such areas by the installation of parking meters or by other methods, and (3) impose reasonable charges for the use of the parking space so metered or otherwise allocated, so as to provide maximum opportunity for the public use thereof.

Violation of any such rule and regulation shall constitute a misdemeanor and the offender, upon conviction in the manner provided by law, may be fined not less than two dollars nor more than ten dollars for each such violation.

Justices of the peace shall have concurrent jurisdiction with the circuit courts and with statutory courts of record having criminal jurisdiction for the trial of offenses under this section.

PART IV. INDEBTEDNESS; FUNDS; EMINENT DOMAIN; EXEMPTION  
FROM TAXATION; DISPOSITION OF SURPLUSES.

**§8-29-10. Indebtedness of authorities.**

Each authority may incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary and advisable in connection with carrying out its purposes as hereinbefore mentioned.

No indebtedness or obligation incurred by an authority shall give any right against any member of the governing body of any of said municipalities, or the county court (or other similar body in the case of an out-of-state participating county) of any of said counties, or any member of the board of the authority. No indebtedness of any nature of an authority shall constitute an indebtedness of any municipality or county or the governing body of any such municipality or the county court (or other similar body in the case of an out-of-state participating county) of any such county, or be a charge against any property of any municipality or county. The rights of creditors of an authority shall be solely against the authority as a corporate body and shall be satisfied only out of property held by it in its corporate capacity.

**§8-29-11. Agreements in connection with obtaining funds.**

Each authority may, in connection with obtaining moneys or property for its purposes, enter into any agreement with any person, including the federal government, or any department, agency or subdivision thereof, containing such provisions, covenants, terms and conditions as the authority may deem advisable.

**§8-29-12. Authorities to have right of eminent domain.**

Whenever it shall be deemed necessary by an authority, in connection with the exercise of its powers herein conferred, to take or acquire any lands, structures or buildings or other rights, either in fee or as easements, for the purposes herein set forth, the authority may purchase the same directly or through its agents from the owner or owners thereof, or failing to agree with the owner or owners thereof, the authority may exercise the power of eminent domain in the manner provided for condemnation proceedings in chapter fifty-four of this code, and such purposes are hereby declared to be public uses for which private property may be taken or damaged: **Provided**, That under no circumstances shall an authority have the right of immediate entry.

**§8-29-13. Property, bonds and obligations of authorities exempt from taxation.**

Each authority shall be exempt from the payment of any taxes or fees to the state or any subdivisions thereof or any municipalities or to any officer or employee of the state or of any subdivision thereof or of any municipality.

The property of each authority shall be exempt from all municipal and county taxes. Bonds, notes, debentures and other evidences of indebtedness of the authority are declared to be issued for a public purpose and to be public instrumentalities, and, together with interest thereon, shall be exempt from taxation.

**§8-29-14. Authorities may lease facilities.**

Each authority may lease its airport and all or any part of the appurtenances and facilities therewith to any available lessee, subject to all constitutional and statutory limitations with respect thereto, at such rental and upon such terms and conditions as the authority deems proper. The leases shall be subordinate to any mortgage or deed of trust executed by the authority.

An authority may lease land, the original taking of which was necessary for airport purposes, for economic development purposes compatible with, but not necessarily associated with, airport activities.

**§8-29-15. Disposition of surplus of authorities.**

If an authority should realize a surplus, whether from operating the airport or leasing it for operation, over and above the amount required for the equipping, improvement, maintenance and operation of the airport and for meeting all required payments on its obligations, it shall set aside such reserve for future equipping, improvements, maintenance, operations and contingencies as it shall deem proper and shall then apply the residue of such surplus, if any, to the payment of any recognized and established obligations not then due, and after all such recognized and established obligations have been paid off and discharged in full, the authority shall, at the end of each fiscal year, set aside the reserve for future equipping, improvements, maintenance, operations and contingencies, as aforesaid, and then pay the residue of such surplus, if any, to the municipalities and counties in direct proportion to their contribution of moneys and property.

**§8-29-16. Contributions to authorities; funds and accounts of authorities.**

Contributions of moneys may be made to authorities from time to time by the participating municipalities and counties, and persons that shall desire to do so. All such moneys and all other moneys received by an authority shall be deposited in such banking institution or banking institutions as the authority may direct and shall be withdrawn therefrom in such manner as the authority may direct. Each authority shall keep strict account of all of its receipts and expenditures and shall each quarter make a quarterly report thereon to the municipalities and counties which have made contributions of moneys or property, and such report shall contain an itemized account of its receipts and disbursements during the preceding quarter. Such report shall be made within sixty days after the termination of the quarter. Within sixty days after the end of each fiscal year, each authority shall make an annual report containing a summary of its receipts and disbursements for the preceding fiscal year, and publish the same as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty- nine of this code, and the publication area for such publication shall be the municipalities and counties, as provided in section one of this article. The books, records and accounts of each authority shall be subject to audit and examination by the office of the state tax commissioner and by any other proper public official or body in the manner provided by law.

**§8-29-17. Participation.**

The municipalities and counties or any one or more of them participating therein, jointly or severally, are hereby empowered and authorized to appoint members of the said authorities and to contribute to the cost of acquiring, establishing, constructing, equipping, improving, and maintaining and operating the said regional airports and appurtenant facilities.

Any of the municipalities or counties as provided in section one of this article is hereby empowered and authorized to convey or transfer to the authorities property of any kind heretofore acquired by the municipalities or counties for airport purposes.

**PART V. DISSOLUTION OF AUTHORITIES; WORKMEN'S COMPENSATION; CONSTRUCTION.**

**§8-29-18. Dissolution of authority; disposition of assets after payment of debts.**

In the event full and adequate provision is made for the payment of all of the debts of an authority, the participating municipalities or counties or any combination thereof which have contributed at least sixty percent of the total value of all moneys and property (the value of which property is determined as specified in section four of this article) contributed to the authority by the participating municipalities and counties may by resolution provide for the dissolution of the authority and for (1) the conveyance of the real and tangible personal property contributed to it to those participating municipalities and counties which contributed the same, (2) equitable distribution among the contributing municipalities and counties of any real and tangible personal property purchased or condemned by the authority or of the proceeds of sale thereof, or the fair value thereof, and (3) the equitable distribution of all moneys on hand to the participating municipalities and counties in direct proportion to the contribution of moneys by them.

**§8-29-19. Employees to be covered by workmen's compensation.**

All eligible employees of any authority shall be deemed to be within the workmen's compensation statute of this state and premiums on their compensation shall be paid by the authority as required by law.

**§8-29-20. Liberal construction of article.**

The purposes of this article are to provide for the acquisition, establishment, construction, equipping, improvement, financing, maintenance and operation of regional airports in a prudent and economical manner, and this article shall be

liberally construed as giving to any authority created and established hereunder full and complete power reasonably required to give effect to the purposes hereof. The provisions of this article are in addition to and not in derogation of any power granted to or vested in municipalities and county courts under any constitutional, statutory or charter provisions which may now or hereafter be in effect.

Note: WV Code updated with legislation passed through the 2011 4th Special Session



S. Groh

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RECEIVED

JUN 19 2012

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA JEFFERSON COUNTY  
CIRCUIT CLERK

GARY L. CAPRIOTTI,  
EDWARD R. MOORE,  
EDWARD E. DUNLEAVY, and,  
SHEPHERDSTOWN BATTLEFIELD  
PRESERVATION ASSOCIATION, INC.,

Petitioners,

v.

CIVIL ACTION NO. 11-C-325  
(Consolidating 11-C-325, 11-C-326,  
11-C-327 and 11-C-328)

JEFFERSON COUNTY PLANNING  
COMMISSION, a public body,

Respondent.

**ORDER GRANTING PETITIONERS'  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

This matter came on for consideration on the \_\_\_\_ day of April, 2012, upon  
Petitioner' Motion for Partial Summary Judgment, the response and reply thereto.

The Court has read the Motion, and the Memoranda of both parties, has reviewed  
the contents of the case file and has studied the relevant case law and legal authorities. The  
Court has considered the representations and arguments of the parties at a hearing held herein on  
February 10, 2012, and the prior Orders of the Court entered in this civil action. As a result of  
these deliberations, the Court is of the opinion that the Petitioners' Motion must be granted, and  
partial summary judgment entered in favor of Petitioners.

This is an action alleged violations of the West Virginia Open Governmental  
Proceedings Act, W.Va. Code § 6-9A-1, *et seq.* (hereinafter, "the Act") brought by citizens who

claim to have been adversely affected by a decision of the Jefferson County Planning Commission (hereinafter, "the Planning Commission") made in violation of the advance notice and reporting requirements of the Act. The decision by which Petitioners claim to have been adversely affected was the July 26, 2012, decision of the Planning Commission to enter into an agreed settlement order in Civil Action No. 11-C-125. Said civil action was an appeal pursuant to W.Va. Code § 8A-9-1, *et seq.*, of the March 22, 2011, decision denying the extension of the Community Impact Statement ("CIS") and deadlines attendant thereto which had been requested by prospective developer Far Away Farm (hereinafter, "FAF").

Petitioners, being immediate neighbors to the FAF parcel and/or otherwise interested in the proposed development, had filed a motion to intervene in Civil Action No. 11-C-125, which motion was ripe for decision but still pending resolution when the Planning Commission and FAF submitted to the Court therein an Agreed Settlement Order, which the Court entered on August 3, 2011, thus resolving said civil action. The Agreed Settlement Order, among other things, reversed the Planning Commission's previous denial of the extension of the CIS and attendant deadlines. The Agreed Settlement Order signed by the Planning Commission and FAF was submitted to the Court without service on the prospective intervenors, who had no notice of the settlement agreement until receiving a copy of the entered order, on August 8, 2011, from the Circuit Clerk.

Thereafter, Petitioners timely filed the instant civil action in which they assert, *inter alia*, that they were and are adversely affected by the decision of the Planning Commission, which decision was made in violation of the requirements of the Act. Petitioners in their pleading seek all relief available under the Act, including the invalidation of the decision of the

Jefferson County Planning Commission to approve the Agreed Settlement Order in Civil Action No. 11-C-125, injunctive relief, and the fees and costs that they have incurred herein.

Prior to filing a responsive pleading, the Planning Commission filed a motion to dismiss. The Planning Commission has not disputed the contents of its own official records (agenda and minutes) on which Petitioners have relied in asserting violations of the Act, but disputed that the Planning Commission's conduct violated the Act. The motion was fully briefed by both parties, and was argued to the Court at a hearing on February 10, 2012. Subsequently, the Court entered an Order denying the Motion to Dismiss.

Thereafter, on March 19, 2012, the Court entered a Scheduling Order setting this matter for trial on May 7, 2012. In said Order, this Court concluded that the facts of this case are not in dispute, which conclusion was based upon the papers filed by the parties in this case, and the representations and arguments of the parties at the hearing of February 10, 2012.

To date, the Planning Commission has not filed a responsive pleading in this civil action.

#### *Findings of Fact*

The undisputed facts that are relevant and necessary to the resolution of the instant summary judgment motion are:

1. By decision dated March 22, 2011, the Planning Commission denied the extension of plat approval process deadlines sought by would-be developer, Far Away Farm, LLC (hereinafter, "FAF"). Verified Petition at ¶ 11.<sup>1</sup>

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<sup>1</sup> Reference is made only to the documentary record. However, most, if not all, of the facts were also presented by counsel at the hearing of February 10, 2012, and were not in dispute. Additionally, the Court notes that Respondent Planning Commission did not file a responsive pleading in which it denied the allegations of the verified Petition.

2. FAF appealed the denial to this Court, which action appears at Civil Action No. 11-C-125. Verified Petition at ¶¶ 12-13.

3. Petitioners, being immediate neighbors to the FAF parcel and/or otherwise interested in the proposed development, timely filed a motion to intervene in Civil Action No. 11-C-125, which motion was fully briefed to the Court by the parties therein, and argued to the Court at a hearing conducted on June 28, 2011. Verified Petition at ¶¶ 14-16.

4. Before the Court had ruled upon the motion to intervene filed in Civil Action No. 11-C-125 by Petitioners herein, the Planning Commission and FAF submitted to the Court an Agreed Settlement Order, which the Court entered on August 3, 2011, thus resolving said civil action. Verified Petition at ¶ 18 and exhibit thereto.

5. It was at its regular meeting of July 26, 2011, that the Planning Commission authorized its President and legal counsel to enter into the negotiated settlement reflected in the aforesaid Agreed Settlement Order. Verified Petition at ¶ 20; Official Audio Recording of Planning Commission Meeting of July 26, 2011, posted at the official website at [http://129.71.117.176/camera/archived\\_meeting.php](http://129.71.117.176/camera/archived_meeting.php), at time marker 2:02:02.

6. The official Agenda of the Planning Commission for its meeting of July 26, 2011, gives no indication that a proposed settlement with FAF in Civil Action No. 11-C-125 would be discussed at the meeting, nor do the materials to be considered by the Planning Commission at the meeting, nor, in fact, is there any indication that the FAF litigation would be discussed at all – the agenda only vaguely says, “Reports from Legal Counsel and legal advice to PC.” Verified Petition at ¶ 21; Final Agenda and Attachment Packet for July 26, 2011, posted at the official website at <http://www.jeffersoncountywv.org/uploads/planning/pc/agendas/2011/07-26-11%20Final%20Agenda%20and%20Attachment%20Packet.pdf>.

7. The official audio of the meeting of July 26, 2011, reveals that the Planning Commission moved to go into executive session upon being told by its legal counsel then present that, "... I will expect action immediately after the session." Verified Petition at ¶ 25; Official Audio Recording of Planning Commission Meeting of July 26, 2011, *supra*.

8. Prior to retiring into executive session, the presiding officer of the Planning Commission did not identify the authorization for the executive session under the Open Governmental Proceedings Act. Verified Petition at ¶ 26; Official Audio Recording of Planning Commission Meeting of July 26, 2011, *supra*.

9. After the executive session ended and upon resuming the public meeting, the Planning Commission entertained the motion of a Commissioner, which was stated as follows: "I move that we proceed with the order as drawn by counsel today and presented to the Commission ... and to authorize president to sign it." Verified Petition at ¶ 28; Official Audio Recording of Planning Commission Meeting of July 26, 2011, *supra*, at time marker 2:02:50.

10. The litigation to which the subject of the aforesaid motion pertained was not identified at the time of the vote, nor was any discussion had upon the motion from which an interested person might have discerned the subject of the order approved upon the motion. Official Audio Recording of Planning Commission Meeting of July 26, 2011, *Id*.

11. The aforesaid motion passed by unanimous vote. Verified Petition at ¶ 30; Official Audio Recording of Planning Commission Meeting of July 26, 2011, *Id*.

12. Neither the order, which was entered by the Court on August 3, 2011, nor the terms of the order were revealed in the official minutes of the Planning Commission meeting of July 26, 2011, which were approved at the meeting of August 9, 2011. Verified Petition at ¶ 32, and the July 26, 2011, Minutes attached thereto.

13. Neither the order nor the terms of the order were revealed in the official minutes of the Planning Commission meeting of August 9, 2011, which were not approved until the September 13, 2011, meeting, more than a month after the Court's adoption of the settlement agreement. *See*, Minutes of August 9, 2011.

14. Neither the order nor the terms of the order were revealed in the official minutes of the Planning Commission meeting of September 13, 2011, which were not approved until the October 11, 2011, meeting, more than two months after the Court's adoption of the settlement agreement, and a month after the filing of this civil action. *See*, Minutes of September 13, 2011.

15. The agreed settlement order was finally revealed in the minutes of the Planning Commission meeting of October 11, 2011, which minutes were approved at the November 8, 2011, meeting, more than three months after the Court's adoption of the settlement agreement, and two months after the filing of this civil action. *See*, Minutes of October 11, 2011.

16. Although the approved minutes of the October 11, 2011, Planning Commission meeting reveal that the Commission discussed the entry of the agreed settlement order, and also retired into executive session with its counsel "to discuss litigation," neither the agreed settlement order in the FAF case, nor the litigation to be discussed in executive session with counsel was revealed in the advance agenda for the October 11, 2011, meeting. *See*, Agenda for October 11, 2011, Meeting.

### ***Conclusions of Law***

#### **Summary Judgment Standard**

Rule 56(a) and (c) of the West Virginia Rules of Civil Procedures, in relevant part, provide:

(a) For claimant. — A party seeking to recover upon a claim, ... may, at any time after the expiration of 30 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(c) ... The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. ....

The West Virginia Supreme Court of Appeals has clarified the provisions of Rule 56, holding that:

Summary judgment is appropriate if, from the totality of the evidence presented, the record could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove.

Syll. Pt. 2, *Williams v. Precision Coil, Inc.*, 194 W.Va. 52, 459 S.E.2d 329 (1995). *See, also*, Syl. pt. 3, *Aetna Casualty & Surety Co. v. Fed. Ins. Co.*, 148 W. Va. 160, 133 S.E.2d 770 (1963), holding that summary judgment should be granted when there is no genuine issue of fact to be tried, and “and inquiry concerning the facts is not desirable to clarify the application of the law.” “[T]he purpose of the summary judgment proceeding is to expedite the disposition of the case....” Syl. pt. 2, *Arnold v. Palmer*, 224 W. Va. 495, 686 S.E.2d 725 (2009).

#### Discussion

Because the relevant and necessary facts are not in dispute, it remains only to apply the law to those facts to determine whether or not the facts constitute a violation of the Act. The clear, express provisions of the Act leave no room for doubt that the conduct of the Planning Commission in relation to the approval of an agreed settlement order in Civil Action No. 11-C-125, was a violation – in fact, was a series of violations of the requirements of the Act.

The Act is unequivocal in its requirement that public bodies such as the Planning Commission must provide advance notice to the public and the news media of the agenda for their meetings. W.Va. Code § 6-9A-3. Discussion may not be had, nor action taken on items not appearing on the agenda. *See, Sprout v. Bd. of Educ. of County of Harrison*, 215 W.Va. 341, 599 S.E.2d 764, 768 at n. 2 (2004). As is shown by the facts, the Planning Commission failed to make any mention of the FAF litigation in the agenda for its July 26, 2011, meeting, let alone a disclosure that the potential for or offer of a negotiated resolution of the litigation would be discussed.

In *Peters v. County Comm'n of Wood County*, 205 W.Va. 481, 519 S.E.2d 179 (1999), the Supreme Court established that executive sessions to consult with legal counsel are not subject to the public meeting provisions, but are subject to the advance notice and other requirements of the Act. Said the Court:

Such executive session may be closed to the public *only* when the following statutory requirements are met: 1) a majority affirmative vote of the members present of the governing body of the public body, as required by West Virginia Code § 6-9A-4; 2) the notice requirements as found in West Virginia Code § 6-9A-3 shall be followed; and, 3) the written minutes requirements as found in West Virginia Code § 6-9A-5 shall be followed. However, a public agency is not permitted to close a meeting that otherwise would be open merely because an agency attorney is present.

Emphasis added. 519 S.E.2d at 187. *See, also*, W.Va. Code § 6-9A-4(11). In sum, the Act requires public bodies to expose to the light of public scrutiny all of its business, except that which is specifically protected from disclosure in furtherance of other important and countervailing public policies.

The minutes clearly reveal that the Planning Commission did not comply with the advance notice requirements of W.Va. Code § 6-9A-3. The record in this case also clearly

reveals that the Planning Commission likewise utterly failed to comply with the requirements of W.Va. Code § 6-9A-4(a) before it closed the public meeting and retired to an executive session with its legal counsel. The Planning Commission then emerged from that executive session to make its decision – that is, to approve the proposed agreed order to resolve Civil Action No. 11-C-125 by consenting to reverse its earlier decision denying an extension of FAF’s Community Impact Statement deadlines and more – by a unanimous vote on a motion so vaguely and ambiguously worded as to reveal nothing to anyone but those who had participated in the executive session. No one who had not participated in the executive session would have been able to discern the subject of the decision that the Planning Commission had just made.

Although W.Va. Code § 6-9A-4(b)(11) only requires a public body to reveal the terms of a settlement if the terms “allow disclosure,” there is nothing in the Act which suggests that the fact that a settlement has been made is, itself, allowed to be concealed. It is the terms of a confidential settlement, not the fact of it, that are given protection under the Act. *Id.* The agreed settlement order approved by the Planning Commission at its July 26, 2011, meeting was to be submitted to and become a part of the court’s public record in Civil Action No. 11-C-125, whether or not the Court accepted and entered it. Consequently, there is no room to suggest that disclosure of the terms of the settlement were not allowed. Accordingly, the Planning Commission also violated the Act when it concealed that it had approved an agreed settlement in the FAF case.

Finally, the Planning Commission failed to disclose in its minutes the terms of the settlement “within a reasonable time after the settlement [was] concluded.” *Id.* The indisputable facts show that the Planning Commission did not report the settlement, or its terms, in the minutes until more than three (3) months after its conclusion. And, then, the Commission did so

only after being served with this civil action and with "Petitioners' Response to Defendant's Amended Motion to Dismiss." Although our Supreme Court has never determined precisely what satisfies the "reasonable time" requirement, the Court concludes that a delay of more than three months in reporting its settlement of Civil Action No. 11-C-125 not only fails to satisfy the Act's requirement, but is offensive to the very policy and purpose of the Act. *See*, Code § 6-9A-1.

In reaching this conclusion, the Court is persuaded by the fact that the Act only provides for an action to enforce its requirements if brought "within one hundred twenty days after the action complained of was taken or the decision complained of was made." W.Va. Code § 6-9A-6. In order to meet this deadline, citizens must have sufficiently timely notice of what a public body has done. If a public body fails to report its action or decision in its minutes for three and a half months, as the Planning Commission did in this instance, it can effectively foreclose the opportunity for citizens to exercise their right to challenge the violations of the Act by denying them sufficiently timely notice.

Were it not for the fact that Petitioners in the instant case had filed a motion to intervene in Civil Action No. 11-C-125, and that the Circuit Clerk provided to their counsel a copy of the Agreed Settlement Order when it was entered by the Court, Verified Petition at ¶ 19, it is likely that they would not have learned of the Planning Commission's action/decision within the time allowed by the Act to bring this action. Even then, the absolute absence of any mention in the Planning Commission's agenda and minutes made it impossible for Petitioners to identify with certainty the meeting at which the action had been taken, Verified Petition at ¶ 20, and they were left to make such determination by process of elimination and deductive logic. Verified

Petition at ¶¶ 21-22, 24-26, 28. The Act does not intend for citizens to be left operating in the dark in this way. The Act, instead, is clear:

The people in delegating authority do not give their public servants the right to decide what is good for them to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government created by them.

W.Va. Code § 6-9A-1.

In failing to properly notice and report its consideration of and decision on the agreed settlement order in Civil Action No. 11-C-125, the Planning Commission violated both the letter and the spirit of the Open Governmental Proceedings Act.


In consideration of all of the foregoing, the Court concludes that Petitioner's Motion for Partial Summary Judgment, asking that the Court rule as a matter of law that the Planning Commission violated the Act as aforesaid, must be granted.

Accordingly, it is hereby **ADJUDGED** and **ORDERED** that the Defendants' Motion for Partial Summary Judgment must and hereby is **GRANTED**.

This is a final order. Any party may appeal this order to the West Virginia Supreme court of Appeals.

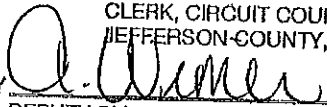
The Clerk shall enter the foregoing and forward attested copies hereof to all counsel and pro se parties who have appeared of record.

3cc  
- L. Gutsell  
- S. Gron  
R. Bay  
6/21/12  
AW

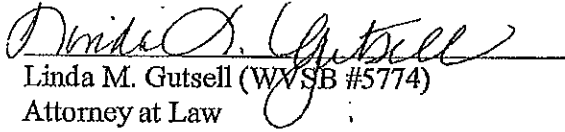
ENTER: 6/19/12  
  
DAVID H. SANDERS, Circuit Judge

A TRUE COPY  
ATTEST:

LAURA E. STORM  
CLERK, CIRCUIT COURT  
JEFFERSON-COUNTY, W.VA.

BY   
DEPUTY CLERK

Prepared by:

  
Linda M. Gutsell (WVSB #5774)  
Attorney at Law  
107 N. College St.  
Martinsburg, WV 25401  
Counsel for Petitioners

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

**AGENDA REQUEST FORM**

Name: Paul Shroyer, Director, Financial Management

Department or Entity: County Commission

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

Date Requested – 1<sup>st</sup> Choice: July 19, 2012

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

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

Subject: Capital Outlay Fund Summary of Expenditures

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):

**Attachments:**

**Jefferson County Commission**  
**Capital Outlay Fund**  
**Summary of Expenditures**  
**For the period 7/1/2011 thru 6/6/2012**

The following is a summary of expenditures by account number.

Account Name	Account Number:	Amount	Remarks
Other Building Rents	246-425-02-219-005-GG-000	\$77,111.36	Rent-201 N. George Street - <i>Brief Bldg.</i>
Professional Service	246-425-02-223-000-GG-000	\$2,035.00	David A. Kemnitzer - <i>Arch. Serv. on Ct. House</i>
Material & Supplies	246-425-03-341-000-GG-000	\$4,221.75	Computer parts & service contract
Other Building Repairs	234-425-04-457-000-GG-000	\$290,939.00	Old courthouse columns -
Construction in progress	246-425-04-460-000-GG-000	\$124,161.14	Most does not appear to be CIP
County Commission Cap O/L	246-986-04-458-000-CP-000	\$81,000.00	Mortgage JCESA
<b>Total Expenses</b>		<b>\$579,468.25</b>	

ACCOUNT NUMBER/DESCRIPTION	POST	JRNL.	TRANS	REF.	VENDOR	CHECK	TRANSACTION DESCRIPTION	DEBIT	CREDIT	BALANCE	
-TRANSACTION--	DATE	NO.	DATE	NUMBER	NUMBER	NUMBER					
					VENDOR						
					NAME						
246-425-02-219-005-GG-000							* BEGINNING BALANCE			.00	
VP C01341	-001	10/2011	04988 10/11/2011	C01341	11202	001341	OCT 2011 RENT/DEPOSIT	19277.84			
							201 N. GEORGE ST LLC				
VP C01358	-001	12/2011	05041 12/01/2011	C01358	11202	001358	DEC 2011 RENT	9638.92			
							201 N. GEORGE ST LLC				
VP C01364	-001	01/2012	05068 01/01/2012	C01364	11202	001364	JAN 2012 RENT	9638.92			
							201 N. GEORGE ST LLC				
VP C01371	-001	02/2012	05101 02/01/2012	C01371	11202	001371	FEB 2012 RENT	9638.92			
							201 N. GEORGE ST LLC				
VP C01376	-001	03/2012	05138 03/01/2012	C01376	11202	001376	MARCH 2012 RENT	9638.92			
							201 N. GEORGE ST LLC				
VP C01384	-001	04/2012	05177 04/02/2012	C01384	11202	001384	APRIL 2012 RENT	9638.92			
							201 N. GEORGE ST LLC				
VP C01396	-001	05/2012	05204 05/01/2012	C01396	11202	001396	MAY 2012 RENT	9638.92			
							201 N. GEORGE ST LLC				
TOTAL PREPAID VOUCHERS								77111.36	.00		
TOTAL CAP O/L OTHER BLDGS RENT								** ACCOUNT TOTALS	77111.36	.00	
								*** ENDING BALANCE		77111.36	
246-425-02-223-000-GG-000							* BEGINNING BALANCE			.00	
VP C01344	-001	10/2011	04988 09/01/2011	C01344	20051	001344	ARCHITECTURAL SERVICES	1430.00			
							DAVID A. KEMNITZER				
VP C01345	-001	10/2011	04988 10/03/2011	C01345	20051	001345	REIMB ATTNDING MEETING	165.00			
							DAVID A. KEMNITZER				
VP C01349	-001	11/2011	05015 11/01/2011	C01349	20051	001349	VISIT/MEETING/EMEMORANDUM	220.00			
							DAVID A. KEMNITZER				
VP C01373	-001	02/2012	05101 02/01/2012	C01373	20051	001373	MTNG CRTHSE/CRTHSE REHAB	220.00			
							DAVID A. KEMNITZER				
TOTAL PREPAID VOUCHERS								2035.00	.00		
TOTAL CAP O/L PROF SVCS								** ACCOUNT TOTALS	2035.00	.00	
								*** ENDING BALANCE		2035.00	
246-425-03-341-000-GG-000							* BEGINNING BALANCE			.00	
VP C01350	-001	11/2011	05015 10/27/2011	C01350	12234	001350	CATALYST 2960S/CISCO	3929.25			
							CORE BTS INC.				
VP C01357	-001	11/2011	05015 11/04/2011	C01357	12234	001357	MAINT CONTRACT	292.50			
							CORE BTS INC.				
TOTAL PREPAID VOUCHERS								4221.75	.00		
TOTAL CAP O/L MATERIAL/SUPPLIES								** ACCOUNT TOTALS	4221.75	.00	
								*** ENDING BALANCE		4221.75	
246-425-04-457-000-GG-000							* BEGINNING BALANCE			.00	
VP C01366	-001	01/2012	05068 12/14/2011	C01366	22050	001366	REPAIRS CRTHSE COLUMNS	2312.00			
							MINGHINI'S				
VP C01370	-001	02/2012	05101 01/18/2012	C01370	22050	001370	WV000056/GRADING CRTYRD	22950.00			
							MINGHINI'S				
VP C01387	-001	04/2012	05177 03/05/2012	C01387	22050	001387	REPRS TO COLUMNS/CRTHSE	108028.00			
							MINGHINI'S				
VP C01390	-001	04/2012	05177 03/27/2012	C01390	10086	001390	INV#1819/COLUMN REINFORCE	565.00			
							A. F. MCCORMICK				
VP C01399	-001	05/2012	05204 05/21/2012	C01399	22050	001399	COLUMNS/CTRHSE	157084.00			
							MINGHINI'S				
TOTAL PREPAID VOUCHERS								290939.00	.00		
TOTAL CAP O/L OTHR BLDG - BLDGS								** ACCOUNT TOTALS	290939.00	.00	
								*** ENDING BALANCE		290939.00	
246-425-04-460-000-GG-000							* BEGINNING BALANCE			.00	

ACCOUNT NUMBER/DESCRIPTION	POST DATE	JRNL. NO.	TRANS DATE	REF. NUMBER	VENDOR NUMBER	CHECK NUMBER	TRANSACTION DESCRIPTION	DEBIT	CREDIT	BALANCE
VP C01338	-001 10/2011	04988	09/13/2011	C01338	27065	001338	INV#2204/MOBOTIX CAMERAS RCS SECURITY	4468.25		
VP C01339	-001 10/2011	04988	09/10/2011	C01339	19041	001339	BACKHOE/BUFFER/JACKHAMMER JEFFERSON RENTAL	443.87		
VP C01342	-001 10/2011	04988	09/23/2011	C01342	29028	001342	SUPPLIES NEW BLDG CAPITAL TRISTATE	651.84		
VP C01343	-001 10/2011	04988	09/27/2011	C01343	14082	001343	SUPPLIES NEW BLDG 84 LUMBER	2721.54		
VP C01346	-001 11/2011	05015	11/01/2011	C01346	12219	001346	RPLC HVAC IN MAINT 2 CRAIGO 1ST CHOICE HEATING	4900.00		
VP C01347	-001 11/2011	05015	10/20/2011	C01347	28066	001347	PAINT MNT BLDG 2 SHERWIN-WILLIAMS	3908.08		
VP C01348	-001 11/2011	05015	10/03/2011	C01348	19041	001348	EQUIPMNT RENTAL JEFFERSON RENTAL	1184.80		
VP C01351	-001 11/2011	05015	10/25/2011	C01351	27065	001351	SECURITY MAINT #2/SUPPLS RCS SECURITY	4089.64		
VP C01352	-001 11/2011	05015	10/14/2011	C01352	11203	001352	WHEEL BALACER BG TIRE & BRAKE EQUIPMENT	289.50		
VP C01353	-001 11/2011	05015	11/01/2011	C01353	15080	001353	COMPRESSOR/476873/47207 FISHER AUTO PARTS	444.06		
VP C01354	-001 11/2011	05015	08/04/2011	C01354	23012	001354	74888/INSTALL LOCKS NORVAC LOCK TECHNOLOGY	802.90		
VP C01355	-001 11/2011	05015	10/26/2011	C01355A	14082	001355	TRUSS/178209 84 LUMBER	10500.00		
VP C01355	-002 11/2011	05015	10/26/2011	C01355B	14082	001355	SUPPLIES F/MAINT #2 84 LUMBER	4560.42		
VP C01356	-001 11/2011	05015	11/08/2011	C01356	11051	001356	GARAGE DOOR MAINT #2 BLUE RIDGE GARAGE DOORS	850.00		
VP C01359	-001 12/2011	05041	11/30/2011	C01359	12219	001359	INSTALL DUCT WORK/GARAGE CRAIGO 1ST CHOICE HEATING	6500.00		
VP C01360	-001 12/2011	05041	11/16/2011	C01360	10086	001360	INV#1781/INSTPEC/CONSULT A. F. MCCORMICK	4620.00		
P C01361	-001 12/2011	05041	11/08/2011	C01361	12113	001361	CISCO SMARTNET/1936241 CDW-GOVERNMENT INC	1411.75		
VP C01362	-001 12/2011	05041	10/03/2011	C01362	12219	001362	RPLC EXSTNG HEATING SYSTEM CRAIGO 1ST CHOICE HEATING	3624.00		
VP C01363	-001 12/2011	05041	11/22/2011	C01363	32153	001363	LABOR/MATERIALS #1 WINCHESTER SECURITY LLC	1275.00		
VP C01365	-001 01/2012	05068	11/22/2011	C01365	32153	001365	NEW FIRE ALARM/11197 WINCHESTER SECURITY LLC	6318.00		
VP C01367	-001 01/2012	05068	12/29/2011	C01367	13030	001367	COMPUTER/XFMF6F139 DELL MARKETING LP	2539.36		
VP C01368	-001 01/2012	05068	12/27/2011	C01368	14082	001368	ACCT#04350177000 84 LUMBER	1548.95		
VP C01369	-001 01/2012	05068	12/27/2011	C01369	22047	001369	ACCT#4556 HOME DEPOT CREDIT SERVICE	613.13		
VP C01372	-001 02/2012	05101	01/03/2012	C01372	10090	001372	MNTHLY BLLNG/673589 AUTOZONE	6399.00		
VP C01374	-001 02/2012	05101	02/06/2012	C01374	10124	001374	LABOR MAINT OFF/5555 ALLIANCE ELECTRIC LLC	5511.90		
VP C01377	-001 03/2012	05138	02/08/2012	C01377	11082	001377	308322/308321/OFFICE SUPP B-K OFFICE SUPPLY INC	351.00		
VP C01378	-001 03/2012	05138	02/14/2012	C01378	22087	001378	INV#330942/SUPPLIES V.E. MAUCK PLUMBING SPPLY	1673.08		
VP C01379	-001 03/2012	05138	02/21/2012	C01379	27065	001379	LOCKS/P2517 RCS SECURITY	434.89		
VP C01380	-001 03/2012	05138	02/17/2012	C01380	22087	001380	INV#331151/SUPPLIES V.E. MAUCK PLUMBING SPPLY	606.70		
VP C01381	-001 03/2012	05138	02/28/2012	C01381	30076	001381	MNTHLY BLLNG/7683 UNITED BANKCARD CENTER	1748.35		
VP C01382	-001 03/2012	05138	02/16/2012	C01382	29028	001382	INV#S01228333/ELEC.SUPPL CAPITAL TRISTATE	176.42		
VP C01383	-001 03/2012	05138	01/27/2012	C01383	14082	001383	ACCT#0177/SUPPLIES 84 LUMBER	3662.11		
VP C01385	-001 04/2012	05177	03/02/2012	C01385	30022	001385	INV#2009-1113/JCLOT18 U S PAVING LLC	23400.00		
P C01386	-001 04/2012	05177	03/01/2012	C01386A	27065	001386	INV2537/2535 RCS SECURITY	995.20		
VP C01386	-002 04/2012	05177	03/01/2012	C01386B	27065	001386	INV2540 OVERHEAD DOOR RCS SECURITY	144.00		
VP C01386	-003 04/2012	05177	03/01/2012	C01386C	27065	001386	INV2574/75/BATTERIES/PANL RCS SECURITY	266.28		
VP C01388	-001 04/2012	05177	02/11/2012	C01388	12098	001388	CARPET/CT001242 CT CARPET ONE FLOOR&HOME	2933.50		

ACCOUNT NUMBER/DESCRIPTION	POST DATE	JRNL. NO.	TRANS DATE	REF. NUMBER	VENDOR NUMBER	CHECK NUMBER	TRANSACTION DESCRIPTION	DEBIT	CREDIT	BALANCE	
VP C01389	-001 04/2012	05177	03/01/2012	C01389	19041	001389	BOBCAT/17266/17291/17294 JEFFERSON RENTAL	247.11			
VP C01391	-001 04/2012	05177	03/26/2012	C01391	10124	001391	ELECTRICAL CONF ROOM/5580 ALLIANCE ELECTRIC LLC	985.00			
VP C01392	-001 04/2012	05177	03/24/2012	C01392	10086	001392	STRUCTURAL INSPEC/1818 A. F. MCCORMICK	420.00			
VP C01393	-001 04/2012	05177	03/15/2012	C01393	11082	001393	CHAIRS/TABLES B-K OFFICE SUPPLY INC	3344.00			
VP C01394	-001 04/2012	05177	03/25/2012	C01394	22047	001394	MNTHLY BLLNG HOME DEPOT CREDIT SERVICE	624.35			
VP C01395	-001 04/2012	05177	04/04/2012	C01395	32153	001395	LABOR/MATERIALS/4079 WINCHESTER SECURITY LLC	145.00			
VP C01397	-001 05/2012	05204	04/06/2012	C01397	12113	001397	INV#J096323/BAND SNGL RDO CDW-GOVERNMENT INC	379.18			
VP C01398	-001 05/2012	05204	04/27/2012	C01398	30076	001398	BESTBUY UNITED BANKCARD CENTER	1799.98			
TOTAL PREPAID VOUCHERS								124512.14	.00		
VPVC01377	-001 06/2012	05208	06/06/2012	C01377	11082	001377	VOID CHECK NO. 001377 B-K OFFICE SUPPLY INC		351.00		
TOTAL VOIDING PREPAID VOUCHERS								.00	351.00		
TOTAL CAP O/L CNSTRCTN IN PRGSS								** ACCOUNT TOTALS	124512.14	351.00	
								*** ENDING BALANCE			124161.14
								* BEGINNING BALANCE			.00
246-986-04-458-000-CP-000 CO COMM CAP O/L BLDG	VP C01340	-001 10/2011	04988 09/29/2011	C01340	19006	001340	MORTGAGE JEFF CO EMERGY JEFFERSON CO EMERGENCY	81000.00			
TOTAL PREPAID VOUCHERS								81000.00	.00		
TOTAL CO COMM CAP O/L BLDG								** ACCOUNT TOTALS	81000.00	.00	
								*** ENDING BALANCE			81000.00
								* BEGINNING BALANCE			.00
TOTAL LEDGER BEGINNING BALANCE											.00
TOTAL PERIOD TRANSACTIONS & ENDING BALANCE								579819.25	351.00		579468.25

<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: Paul Shroyer, Director of Financial Management

Department or Entity: County Commission

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

Date Requested – 1<sup>st</sup> Choice: July 19, 2012

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

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

Subject: Approval of Standard Operating Procedure - Payment of Invoices

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):

Attachments:

**Standard Operating Procedure-Payment of Invoices**

Jefferson County Commission  
Charles Town, West Virginia

**Standard Operating Procedure-Payment of Invoice:**

It shall be the Standard Operation Procedure of the Jefferson County Commission to refuse to pay any invoice submitted for payment in excess of approved budget allocations as directed by West Virginia State Code Section 11-8-26, which states in part.....a local fiscal body shall not expend money or incur obligations: In and unauthorized manner; for an unauthorized purpose; in excess of the amount allocated to the fund in the levy order; or in excess of the funds available for current expenses.

**Action to be taken by Elected Officials and Department Heads:**

Each elected official or department head shall insure that adequate funding is available in their budget for all invoices submitted to the bookkeeping department for payment. Insuring adequate funding is available for all invoices submitted will insure timely payment and avoid the delay of having an invoice returned awaiting a budget revision.

**Action to be taken by Clerk of the County Commission:**

In the event an invoice is received by the Clerk's Bookkeeping Department that would exceed current allocations if paid, the Clerk of the County Commission shall return to the elected official or department the "Unpaid" invoice with instructions that a budget revision is required before the invoice can be paid.

**Budget Revisions:**

Budget revision request are to be submitted to the Finance Director for processing and submission to the County Commission for approval. Budget revisions which are a reallocation of current budget funding will require one to two week for processing. Budget revision requiring additional funding from the County Commission will take two to three weeks for processing; those revisions must be approved by the State Auditor's Office in addition to the County Commission.

**Jefferson County Commission Approval:**

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

\_\_\_\_\_  
President of the County Commission

**Revisions:**

- 1 \_\_\_\_\_
- 2 \_\_\_\_\_
- 3 \_\_\_\_\_

8c

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

**AGENDA REQUEST FORM**

Name: Paul Shroyer

Department or Entity: County Commission

Estimation of amount of time needed for appointment: 5 minutes

Date Requested – 1<sup>st</sup> Choice: 7/19/12

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

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

**Subject: Approval of State Level Budget Revision #1**

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):

Attachments:

# Budget Revision Narrative

Rev #1, State Level Budget Revision

**This budget revision is required to update the beginning fund balance for the General County Fund at the State Level.**

**REQUEST FOR REVISION TO APPROVED BUDGET**

CONTROL NUMBER

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

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

Jefferson County, West Virginia  
 GOVERNMENT ENTITY

FY  
**2013**  
 FUND  
**1**  
 REV. NO.  
**1**  
 PG. OF NO.

Person To Contact Regarding 215 W. Washington Street  
 Budget Revision: **Paul Shroyer** STREET OR PO BOX  
 Phone: **304-728-3283**  
 Fax: **304-725-7916** Charles Town 25414  
 CITY ZIP CODE

COUNTY  
 Government Type

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

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
299	Unassigned Fund Balance	3,991,390	233,107		4,224,497
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				

**NET INCREASE/(DECREASE) Revenues (ALL PAGES)** 233,107

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

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

(WV CODE 7-1-9)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
986	County Commission	3,014,616	233,107		3,247,723
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				

**NET INCREASE/(DECREASE) Expenditures** 233,107

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

AUTHORIZED SIGNATURE OF ENTITY \_\_\_\_\_ APPROVAL DATE \_\_\_\_\_



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

**AGENDA REQUEST FORM**

Name: Paul Shroyer, Director of Financial Management

Department or Entity: County Commission

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

Date Requested – 1<sup>st</sup> Choice: July 19, 2012

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

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

- Subject:
- Budget Revision
  - Ratify Budget Revision IRB# 1044
  - Ratify Budget Revision IRB# 1045
  - Ratify Budget Revision IRB# 1046
  - Ratify Budget Revision IRB# 1047
  - Ratify Journal Voucher Adjustment - JV# 033
  - Ratify Journal Voucher Adjustment

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):

Attachments:







JC431	49924	\$ 1,413.03	84 Lumber	Building materials
EMERGENCY COMMUNICATION	48181	\$ 225.00	Jefferson County Fair	Fair space
	50990	\$ 195.00	NEAMD	Recertifications
<del>OTHER BUILDINGS 341</del>	49761	\$ 102.06	Southern Refrigeration	Filters
425-341	49766	\$ 599.40	Grainger	5 smoking stations
425-341	49768	\$ 169.00	BK OFFICE SUPPLY	Office chair
425-223	49772	\$ 609.50	Boland	service calls
425-341	49774	\$ 1,580.24	Daycon	Cleaning supplies
425-223	49921	\$ 1,725.00	ABH	Interior/Exterior window cleaning
425-341	49922	\$ 1,312.00	BK OFFICE SUPPLY	Conference Room tables
425-230	49925	\$ 1,172.00	Miller & Anderson	HVAC Sam Michaels Service contract
PLANNING & ZONING	49948	\$ 400.01	Xerox	Monthly copy cost
	49949	\$ 534.12	Manpower	Temp
	50720	\$ 443.12	Manpower	Temp
PROSECUTING ATTORNEY	49630	\$ 2,250.00	WV State Bar	Dues
	49631	\$ 143.93	Staples	Office Supplies
	50743	\$ 3,760.00	Oglesby & Conference Center	Summer meeting

PAB  
 7/12/2012  
 \$7,269.20



## Issue #3

This budget revision is required to stay within budget appropriations



## Issue #4

This budget revision is required to budget line 002-401-02-223 in the Coal Severance Fund which has no budget funding. This is to cover charges being transferred from the GCF.



## Issue #1

A budget revision in the amount of \$22,000 is required to fund the liability for the Health Reimbursement Account as of June 30, 2012. This amount of additional funding will cover all HRA cost through the end of the plan year, December 31, 2012.

1047



## Issue #5

These are Journal Voucher Entries that need to be made to reduce certain cost in the General County Fund and Accrue those same cost into the Coal Severance Fund. These adjustments are required to stay within budget allocations in the GCF.



PORT DATE 06/30/2012  
 STEM DATE 07/10/2012  
 LES ID A

JEFFERSON COUNTY COMMISSION  
 TRIAL BALANCE  
 AS OF 06/30/2012

PAGE 1  
 TIME 14:49:25  
 USER PSHROYER

COUNT NUMBER	ACCOUNT DESCRIPTION	PREV PERIOD ENDING BALANCE		CURRENT TRANSACTIONS		CURRENT BALANCE	
		DEBIT	CREDIT	DEBIT	CREDIT	DEBIT	CREDIT
					466.66	307283.22	
210100000	CASH - COAL SEVERANCE	307749.88					
211400000	DUE FROM OTHER FUNDS						
220200000	VOUCHERS PAYABLE						
220300000	ENCUMBRANCE CONTROL						
221500000	DUE TO OTHER FUNDS						
228000000	RESERVE, CURRENT YEAR ENC						343253.96
228000001	RESERVE, LAST YEAR ENC		343253.96				161916.26
229900000	UNENCUMBERED FUND BLANACE		161916.26				
230000000	REVENUE CONTROL	197420.34		466.66		197887.00	
240000000	EXPENDITURE CONTROL						
	BALANCE SHEET TOTALS	505170.22	505170.22	466.66	466.66	505170.22	505170.22
1229800002	ASSIGNED FUND BALANCE						160534.47
1229900002	CS UNEMCUMB BAL BUDGETED		160534.47				1381.79
12305TT000	COAL SEVERANCE TAX		1381.79				
12365II000	CS INTEREST EARNED						
12366MM000	MISCELLANEOUS REVENUE						
12388TR000	TRANSFER FROM OTHER FUNDS						161916.26
	REVENUE TOTALS		161916.26				
1240102219000GG000	CO COMM BLDG/EQUIP RENTAL						
1240102223000GG000	CO COMM PROF SERVICES						
1240102230000GG000	CO COMM CONTRACTED SRVCS					26.42	
1240104459000GG000	CO COMM CAP/OUTLAY-EQUIP						
0240104460000CP000	CO COMM CNSTRCTN IN PRGSS	26.42					
0240105566000GG000	CO COMM TRANS TO FUNDS					2800.00	
0240105568000GG000	CO COMM CONTR OTH GOV UNT						
0241202216000GG000	AG AGT MAIN/REP EQUIPMENT	2800.00					
0242402215000GG000	CT HSE MAIN/REPAIR-BLDG						
0242504457000GG000	OTHR BLDGS CAP/OUTLAY						
02803341000GG000	DATA PROC MATERIAL/SUPPLS						
0905599000GG000	CONTING ACTUARIAL RESERVE						
0271105566000PS000	EMG SVC TRANS TO FUNDS					16099.98	
0271204459000PS000	COMM CTR CAP/OUTL EQUIP					178960.60	
0280002219000HS000	HLTH DEPT BLDG RENTAL	15633.32		466.66			
0280105567000HS000	MTL HLTH TRANS TO ENTITIE	178960.60					
0298604459000CP000	CO COMM CAPITAL O/L						
0299204459000CP911	COMM CTR - CAPITAL OUTLAY					197887.00	
	EXPENDITURE TOTALS	197420.34		466.66			

#12390



THE COUNTY COMMISSION OF JEFFERSON COUNTY  
Charles Town, West Virginia 25414

REQUISITION

No. 50613

VENDOR:

RCS Security

DELIVER TO:

Other Buildings

QUANTITY	DESCRIPTION - BUDGET LINE - ITEM NUMBER	PRICE	UNIT	AMOUNT
	Security For Britt Building Prosecutor's Office 201 N. GEORGE STREET  CHARGE TO:  002-986-04-459-000-CP-000 <del>001-425-02-344-000-66-000</del>			7400 00

1. ENTER NAME AND MAILING ADDRESS OF VENDOR IN SPACE PROVIDED
2. PROVIDE MAILING AND/OR SHIPPING ADDRESS. ITEMS THAT ARE SHIPPED MUST HAVE STREET ADDRESS.
3. PROVIDE A DESCRIPTION OF ITEMS(S) BEING REQUESTED.
4. INCLUDE BUDGET LINE-ITEM NUMBER TO BE CHARGED FOR EACH ITEM.
5. SIGN AND FORWARD TO COUNTY COMMISSION. UPON APPROVAL, A COUNTER-SIGNED COPY WILL BE RETURNED FOR YOUR RECORDS.

THE ITEMS REQUESTED ABOVE ARE NECESSARY AND FOR THE EXCLUSIVE USE OF THIS DEPARTMENT.

*James M. Collier*  
Signature 10/31/11  
Date

PURCHASE OF THE ABOVE REQUESTED ITEMS APPROVED. FUNDS HAVE BEEN ENCUMBERED.

*D. J. Boyd*  
Signature 11-3-11  
Date



**THE COUNTY COMMISSION OF JEFFERSON COUNTY**  
Charles Town, West Virginia 25414

**No. 50628**

**REQUISITION**

VENDOR:

DELIVER TO:

*RCS Security*

*Other Buildings*

QUANTITY	DESCRIPTION - BUDGET LINE - ITEM NUMBER	PRICE	UNIT	AMOUNT
	<i>Security Supplies for Briel Building</i>			<i>2250 00</i>
<b>CHARGE TO:</b>				
<i>002-986-04-459-000-CP-000</i>				
<del><i>001-425-03-344-000-66-000</i></del>				

1. ENTER NAME AND MAILING ADDRESS OF VENDOR IN SPACE PROVIDED
2. PROVIDE MAILING AND/OR SHIPPING ADDRESS. ITEMS THAT ARE SHIPPED MUST HAVE STREET ADDRESS.
3. PROVIDE A DESCRIPTION OF ITEMS(S) BEING REQUESTED.
4. INCLUDE BUDGET LINE-ITEM NUMBER TO BE CHARGED FOR EACH ITEM.
5. SIGN AND FORWARD TO COUNTY COMMISSION. UPON APPROVAL, A COUNTER-SIGNED COPY WILL BE RETURNED FOR YOUR RECORDS.

THE ITEMS REQUESTED ABOVE ARE NECESSARY AND FOR THE EXCLUSIVE USE OF THIS DEPARTMENT.

*James M. Collins* 11/8/11  
Signature Date

PURCHASE OF THE ABOVE REQUESTED ITEMS APPROVED. FUNDS HAVE BEEN ENCUMBERED.

*Tommy Boyer* 11-10-11  
Signature Date



**THE COUNTY COMMISSION OF JEFFERSON COUNTY**  
Charles Town, West Virginia 25414

**No. 50748**

**REQUISITION**

VENDOR:

DELIVER TO:

*Rockwells Mowing  
Co*

*Other Buildings*

QUANTITY	DESCRIPTION - BUDGET LINE - ITEM NUMBER	PRICE	UNIT	AMOUNT	
	<i>Move Prosecutor to Breit Building</i>			<i>2100</i>	<i>00</i>
				<i>600</i>	<i>00</i>
				<i>2700</i>	<i>00</i>
<b>CHARGE TO:</b>					
<i>002-401-02-223-000-69-000</i>					
<del><i>001-425-02-223-000-66-000</i></del>					

1. ENTER NAME AND MAILING ADDRESS OF VENDOR IN SPACE PROVIDED
2. PROVIDE MAILING AND/OR SHIPPING ADDRESS. ITEMS THAT ARE SHIPPED MUST HAVE STREET ADDRESS.
3. PROVIDE A DESCRIPTION OF ITEMS(S) BEING REQUESTED.
4. INCLUDE BUDGET LINE-ITEM NUMBER TO BE CHARGED FOR EACH ITEM.
5. SIGN AND FORWARD TO COUNTY COMMISSION. UPON APPROVAL, A COUNTER-SIGNED COPY WILL BE RETURNED FOR YOUR RECORDS.

THE ITEMS REQUESTED ABOVE ARE NECESSARY AND FOR THE EXCLUSIVE USE OF THIS DEPARTMENT.

*Jane M. Collier* *12/3/11*  
Signature Date

PURCHASE OF THE ABOVE REQUESTED ITEMS APPROVED. FUNDS HAVE BEEN ENCUMBERED.

*Ken Beady* *12-8-11*  
Signature Date



**THE COUNTY COMMISSION OF JEFFERSON COUNTY**  
Charles Town, West Virginia 25414

**REQUISITION**

**No. 50628**

VENDOR:

DELIVER TO:

*RCS Security*

*Other Buildings*

QUANTITY	DESCRIPTION - BUDGET LINE - ITEM NUMBER	PRICE	UNIT	AMOUNT
	<i>Security Supplies for Briel Building</i>			<i>2250 00</i>
<i>TRANSFER TO CAR SEVERANCE</i>				
<i>001-425-03-341-000-66-000</i>				

1. ENTER NAME AND MAILING ADDRESS OF VENDOR IN SPACE PROVIDED
2. PROVIDE MAILING AND/OR SHIPPING ADDRESS. ITEMS THAT ARE SHIPPED MUST HAVE STREET ADDRESS.
3. PROVIDE A DESCRIPTION OF ITEMS(S) BEING REQUESTED.
4. INCLUDE BUDGET LINE-ITEM NUMBER TO BE CHARGED FOR EACH ITEM.
5. SIGN AND FORWARD TO COUNTY COMMISSION. UPON APPROVAL, A COUNTER-SIGNED COPY WILL BE RETURNED FOR YOUR RECORDS.

THE ITEMS REQUESTED ABOVE ARE NECESSARY AND FOR THE EXCLUSIVE USE OF THIS DEPARTMENT.

*Janet M. Collins*  
Signature *11/8/11*  
Date

PURCHASE OF THE ABOVE REQUESTED ITEMS APPROVED. FUNDS HAVE BEEN ENCUMBERED.

*Tom Boyer*  
Signature *11-10-11*  
Date



THE COUNTY COMMISSION OF JEFFERSON COUNTY  
Charles Town, West Virginia 25414

No. 50613

REQUISITION

VENDOR:

RCS Security

DELIVER TO:

Other Buildings

QUANTITY	DESCRIPTION - BUDGET LINE - ITEM NUMBER	PRICE	UNIT	AMOUNT
	<p><del>Security For Britt Building</del> Prosecutor's Office 201 N. GEORGE STREET</p> <p>TRANSFER TO COAL SEVERANCE</p> <p>001-425-03-341-000-66-000</p>			7400 00

1. ENTER NAME AND MAILING ADDRESS OF VENDOR IN SPACE PROVIDED
2. PROVIDE MAILING AND/OR SHIPPING ADDRESS. ITEMS THAT ARE SHIPPED MUST HAVE STREET ADDRESS.
3. PROVIDE A DESCRIPTION OF ITEMS(S) BEING REQUESTED.
4. INCLUDE BUDGET LINE-ITEM NUMBER TO BE CHARGED FOR EACH ITEM.
5. SIGN AND FORWARD TO COUNTY COMMISSION. UPON APPROVAL, A COUNTER-SIGNED COPY WILL BE RETURNED FOR YOUR RECORDS.

THE ITEMS REQUESTED ABOVE ARE NECESSARY AND FOR THE EXCLUSIVE USE OF THIS DEPARTMENT.

*James M. Collier* 10/3/11  
Signature Date

PURCHASE OF THE ABOVE REQUESTED ITEMS APPROVED. FUNDS HAVE BEEN ENCUMBERED.

*D. J. Byrde* 11-3-11  
Signature Date



**THE COUNTY COMMISSION OF JEFFERSON COUNTY**  
Charles Town, West Virginia 25414

**No. 50748**

**REQUISITION**

VENDOR:

DELIVER TO:

*Rockwell's Moving Co*

*Other Buildings*

QUANTITY	DESCRIPTION - BUDGET LINE - ITEM NUMBER	PRICE	UNIT	AMOUNT	
	<i>Move Prosecutor to Breit Building</i>			<i>2100</i>	<i>00</i>
				<i>600</i>	<i>00</i>
				<i>2700</i>	<i>00</i>
<i>TRANSFER TO COAL SEV:</i>					
<i>001-425-02-223-000-66-000</i>					

1. ENTER NAME AND MAILING ADDRESS OF VENDOR IN SPACE PROVIDED
2. PROVIDE MAILING AND/OR SHIPPING ADDRESS. ITEMS THAT ARE SHIPPED MUST HAVE STREET ADDRESS.
3. PROVIDE A DESCRIPTION OF ITEMS(S) BEING REQUESTED.
4. INCLUDE BUDGET LINE-ITEM NUMBER TO BE CHARGED FOR EACH ITEM.
5. SIGN AND FORWARD TO COUNTY COMMISSION. UPON APPROVAL, A COUNTER-SIGNED COPY WILL BE RETURNED FOR YOUR RECORDS.

THE ITEMS REQUESTED ABOVE ARE NECESSARY AND FOR THE EXCLUSIVE USE OF THIS DEPARTMENT.

*Janet M. Collier* *12/3/11*  
Date  
Signature

PURCHASE OF THE ABOVE REQUESTED ITEMS APPROVED. FUNDS HAVE BEEN ENCUMBERED.

*Ken Byrd* *12-8-11*  
Date  
Signature

RE: Message from "MPC5502"

From: Laura Kuhn  
To: 'Paul Shroyer'  
Date: Tuesday, July 10, 2012 10:59:49 AM  
Subject: RE: Message from "MPC5502"  
Everything is 425-341, except

49772	Boland	\$609.50	425-223
49921	ABH	\$1725.00	425-223
49925	Miller & An.	\$1172.00	425-230

**From:** Paul Shroyer [mailto:pshroyer@jeffersoncountywv.org]  
**Sent:** Tuesday, July 10, 2012 10:48 AM  
**To:** lkuhn@jeffersoncountywv.org  
**Subject:** Fw: Message from "MPC5502"

Laura,

Here is the scanned copy,

Sorry,

Paul

*TO BE PAID  
7/12/2012  
AND CHARGED  
TO 6/30/2012  
BUDGET*

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

From: <helpdesk@jeffersoncountywv.org>  
Sent 7/10/2012 10:35:16 AM  
To: "Paul Shroyer" <pshroyer@jeffersoncountywv.org>  
Subject: Message from "MPC5502"

This E-mail was sent from "MPC5502" (Aficio MP C5502).

Scan Date: 07.10.2012 10:35:15 (-0400)  
Queries to: [helpdesk@jeffersoncountywv.org](mailto:helpdesk@jeffersoncountywv.org)

## Issue #2

This is a required Journal Voucher Adjustment (\$218,838.00) that is required to adjust the General County Fund Balance to the last Audit Balance because the HRA is not on the current books. The additional adjustment of (\$21,825.80) is the amount of additional cost that must be booked to cover the total cost of the HRA (\$240,66380) through the end of the plan year December 31, 2012.



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

**AGENDA REQUEST FORM**

Name: Sandy McDonald, Deputy County Administrator

Department or Entity: County Commission

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

Date Requested – 1<sup>st</sup> Choice: July 19, 2012

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

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

**Subject: Approval of Grant Contract, Resolution and Letter of Agreement – African American Community Association – Grant is in the amount of \$8,000 – Fisherman’s Hall**

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): **Motion to approve the Grant Contract, Resolution and Letter Agreement for the African American Community Association - Fisherman's Hall in the amount of \$8,000 and to authorize the President of the Commission to affix her signature to the appropriate documents**

Attachments:

# JEFFERSON COUNTY COMMISSION CHARLES TOWN, WV

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## *RESOLUTION*

The County Commission of Jefferson County, met on July 19<sup>th</sup>, 2012 with a quorum present and passed the following Resolution:

**WHEREAS**, The Jefferson County Commission has agreed to assist the African American Community Association to continue restoration of the historic Fisherman's Hall with funds made available through the Governor's Community Participation Grant program in the amount of \$4,500.

**NOW, THEREFORE BE IT RESOLVED**, that the Jefferson County Commission hereby authorizes the President of the Jefferson County Commission, to act on its behalf to enter into a contractual agreement with the West Virginia Development Office and to receive and administer grant funds pursuant to provision of the Governor's Community Participation Grant Program.

Signed: \_\_\_\_\_  
COUNTY CLERK

11LEDA0132



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

PRESIDENT  
*Patsy Noland*

VICE PRESIDENT  
*Dale Manuel*

COMMISSIONER  
*Frances Morgan*

COMMISSIONER  
*Walt Pellish*

COMMISSIONER  
*Lyn Widmyer*

Letter of Agreement  
Community Participation Grant  
between the  
Jefferson County Commission  
and the  
African American Community Association

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by the Jefferson County Commission and the African American Community Association its officers, agents, and representatives.

WITNESS THAT:

WHEREAS, the Jefferson County Commission has promised and agreed to act as funding agency to assist African American Community Association to perform specific tasks through funding from the Governor's Community Participation Grant Program.

NOW, THEREFORE, the parties hereby mutually agree as follows:

1. The Jefferson County Commission will serve as funding agency for the African American Community Association.
2. The African American Community Association agrees to abide by the terms and conditions of the Governor's Community Participation Grant Program Contract between the West Virginia Development Office and the Jefferson County Commission as contained herein. (attached)
3. This agreement shall be signed by the authorized officers, agents or representatives of the African American Community Association and the President of the Jefferson County Commission.

JEFFERSON COUNTY COMMISSION

\_\_\_\_\_  
President

African American Community Association

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

11LEDA0132

ACTING COUNTY ADMINISTRATOR  
*Debbie Keyser*

Deputy County Administrator  
*Sandy Slusher McDonald*

**GOVERNOR'S COMMUNITY PARTICIPATION  
GRANT PROGRAM CONTRACT**

**between the**

**WEST VIRGINIA DEVELOPMENT OFFICE**

**and the**

**JEFFERSON COUNTY COMMISSION**

**THIS AGREEMENT**, entered into this 1st day of July, 2010, by the West Virginia Department of Finance and Administration on behalf of the West Virginia Development Office hereinafter called the "WVDEVO" and the Jefferson County Commission and its authorized officers, agents, and representatives, hereinafter called the "Grantee."

**WITNESS THAT:**

**WHEREAS**, the WVDEVO has promised and agreed to assist the Grantee to perform such tasks hereafter described in the scope of services, which is to be partially financed by funds made available through the Governor's Community Participation Grant program.

**NOW, THEREFORE**, the parties hereto do mutually agree as follows:

1. **Assistance of the Grantee.** The WVDEVO hereby agrees to assist the Grantee including all authorized officers, agents, and representatives, to perform such tasks and functions as set forth below in the scope of services.
2. **Scope of Services.** The Grantee, or its designated agent, shall do, perform and carry out, in a satisfactory and proper manner as determined by the WVDEVO, and appropriate regulatory agencies, if required, all duties, tasks, and functions necessary to repair and restore Fisherman's Hall in cooperation with the African American Community Association. The project will include floor repairs, new insulation and drywall, painting and additional improvements as funds permit.
3. **Personnel.** The Grantee represents that it has, or will secure at its own expense, personnel with the necessary qualifications and experience required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with WVDEVO.
4. **Time Performance.** The Grantee will commence its duties under this Contract on July 1, 2010, and such duties shall be undertaken and completed in such sequences as to assure their expeditious completion in the light of the purpose of the Contract; but, in any event, all of the services required hereunder shall be completed by June 30, 2012. The completion date of this contract may only be extended by mutual written agreement of both parties dependent on the reappropriation of funds under the Governor's Community Participation Grant program. If no such agreement exists, the Grantee shall not receive payment for services rendered or work performed relative to this grant after June 30, 2012.

5. **Compensation.** In consideration of the services rendered by the Grantee, the WVDEVO agrees to pay the Grantee the sum of \$8,000. This amount constitutes complete compensation for all services rendered. In no instance shall the agreed upon compensation exceed \$8,000 without the written consent of the Governor of the State of West Virginia.

6. **Method of Payment.** In order to receive payments under the terms of this Agreement, the Grantee shall submit the following: (a) a Letter of Transmittal containing a progress report, and (b) a Request for Payment Financial Report. The final ten percent shall be made available upon submission of certification of completion and acceptance of the project by the Grantee. Upon receipt of said documents, the WVDEVO shall review the same for reasonableness and appropriateness.

7. **Changes.** The WVDEVO and the Grantee may, from time to time, require changes in the scope of the services of the work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Grantee's compensation and work to be performed, which are mutually agreed upon by and between the WVDEVO and the Grantee, shall be incorporated in written amendments to this Contract.

8. **Sub-Grantees and Reversion of Property.** The Grantee may administer funds on behalf of sub-grantees, provided that such a sub-grantee is certified as a nonprofit organization by the United States Internal Revenue Service and the West Virginia Secretary of State's Office. Should such a sub-grantee cease to exist, all commodities or supplies purchased with funds provided under the auspices of this Contract by or for the sub-grantee shall become the property of the Grantee.

9. **Competitive Bid Procedures.** Competitive bidding shall be pursued in all instances. The Grantee must follow the more stringent of either state or local purchasing regulations. The West Virginia Purchasing Division requirements, at a minimum, are as follows: Commodities and services expected to cost \$2,500 or less require no bids, however, competition is encouraged. Purchases between \$2,500.01 and \$5,000 require three verbal bids to be documented on a verbal bid quotation summary. Purchases \$5,000.01 to \$25,000 require three written bids.

**The Grantee shall solicit competitive, sealed bids for commodities and supplies related to this project which have an estimated value of over \$25,000. Any attempts by the Grantee to segregate the project into sections having an estimated value of less than \$25,000 shall be cause for termination of this agreement under the provisions of Paragraph 28.** These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date.

The Grantee shall also, where feasible, solicit sealed bids by listing the project in the F. W. Dodge Reports, sending requests by mail to prospective suppliers or contractors, and by posting notice on a bulletin board in a public place. The Grantee shall have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance with these procedures.

10. **Project Wage Rates.** Every contract involving construction, reconstruction, demolition, improvement, enlargement, painting, decoration, alteration, and/or repair work which involves the employment of any contractor and/or subcontractor necessary for the undertaking and completion of this project, regardless of the source of funds utilized to pay such contract, must comply with the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. **This law applies to all construction contracts, regardless of cost.**

The receipt and utilization of funds procured under this agreement mandate that all construction contracts necessary for the undertaking and completion of this project, regardless of the source of funds utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.

Such provisions shall include the payment of the Fair Minimum Wage Rates as determined by the West Virginia Commissioner of Labor for each craft or classification of all workmen needed to perform the contract in the locality in which the public work is performed. For projects involving federal funds which are covered by the provisions of the Davis Bacon Act (40 U.S.C. 276-a 276a-5), the Grantee shall cause the contractor and/or subcontractors to pay the higher wage rate, federal or state.

Further, the Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bid documents. The Grantee shall also have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance including copies of contractor's payrolls.

11. **Construction.** The Grantee shall procure construction contracts in accordance with West Virginia Code §5-22-1. **The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding \$25,000 in total cost.**

Further, the receipt and utilization of funds procured under this agreement mandate that **ALL CONSTRUCTION CONTRACTS NECESSARY FOR THE UNDERTAKING AND COMPLETION OF THIS PROJECT, regardless of the source of funds utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.**

The term construction shall mean any construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement let to contract. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date.

Any contracts under this agreement must comply with the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. This law applies to all construction contracts, regardless of cost. The Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bidding blanks.

The Grantee shall designate the time and place for opening such construction bids in accordance with West Virginia Code §5-22-2.

12. **Bonding.** The Grantee shall secure bonding in accordance with West Virginia Code §5-22-1. All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the state of West Virginia or its subdivisions. Following the solicitation of such bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: provided, that the state and its subdivisions may reject all bids and solicit new bids.

In the procurement of contracts or subcontracts for construction of less than \$100,000, the Grantee shall follow local or State requirements relating to bid guarantees, performance bonds, and payment bonds, provided that the Grantee's and State's interests are adequately protected and that such contracts can be executed in a timely manner.

**In the procurement of contracts or subcontracts for construction that exceed \$100,000, the Grantee shall obtain the following:**

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. This bid guarantee shall consist of a firm commitment such as bid bond, certified check, or other negotiable instrument accompanying a bid that the bidder will, upon acceptance of the bid, execute the contractual documents as may be required with the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. This performance bond shall be executed by the successful contractor in connection with the contract to secure fulfillment of the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. This payment bond shall be executed in connection with a contract to assure payment is required by law of all persons supplying labor and materials in the execution of the work provided for in the contract.

13. **Architecture and Engineering.** The Grantee shall procure architectural or engineering services in accordance with of the West Virginia Code §5G. In the procurement of architectural and engineering services for projects estimated to cost \$250,000 or more, the Grantee shall publish a Class II legal ad in compliance with West Virginia Code §59-3. In the procurement of services for projects estimated to cost less than \$250,000, the Grantee shall conduct discussions with three or more professional firms.

14. **Design-Build.** The Grantee shall procure design-build projects in accordance with West Virginia Code §5-22A-1. This applies solely to building projects. Highways, water, sewer, and all other public works projects are specifically prohibited from using the design-build method.

15. **Environmental and Historical Assessment.** The Grantee shall comply with all applicable federal, state and local environmental and historical preservation laws and regulations. The Grantee acknowledges this requirement and certifies that the project will be in compliance with such laws and regulations.

16. **Equal Employment Opportunity.** With respect to employment in carrying out the program objectives, the Grantee agrees that it will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, national origin, or physical handicap.

17. **Facilities Accessible to the Handicapped.** The Grantee shall require any facilities constructed under the auspices of this Contract to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A117.1-1961, as modified (41CFR101-17.1703 and (13CFR309.14)). The Grantee shall be responsible for conducting inspections to ensure compliance with these specifications.

18. **Facilities Operation.** The Grantee shall operate and maintain all facilities constructed under the auspices of this Contract in accordance with minimum standards as may be required or prescribed by the applicable federal, state and local statute, law, ordinance or regulation as to actual construction procedures, as well as maintenance and operation of such facilities upon completion.

19. **Interest of Members of WVDEVO and Others.** No officer, member or employee of the WVDEVO or officer, member or employee of the Grantee who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or has any personal or pecuniary interest, nor shall any officer, member of, or

employee of, the Grantee or any member of its governing body, or officer, member, or employee of the contractor have any interest, direct or indirect, in this Contract or the proceeds thereof.

20. **Officials Not To Benefit.** No member of the Legislature of the State of West Virginia, or individual performing a service for the Grantee in connection with this project, shall be admitted to any share thereof or to any benefit to arise from this Agreement.

21. **Inspections of Project Records.** At any time during normal business hours and as often as the WVDEVO or its designated representative may deem necessary, there shall be made available to the WVDEVO or its designated representative for examination, all of its records with respect to all matters covered by this Contract and permit the WVDEVO or its designated representative to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records and personnel, conditions of employment and other data relating to all matters covered by this Contract during the entire time period beginning with project approval and ending three years after the final disbursement of grant funds.

22. **Project Audits.** (a) The Grantee shall cause an audit of this program to be included in the audit of the Grantee performed by the West Virginia State Auditor's Office, Chief Inspection Division, or its designated representative in accordance with West Virginia Code §6-9-7. The audit shall be performed in conformance with generally acceptable accounting procedures.

(b) In accordance West Virginia Code §12-4-14, if the grantee is not audited by the West Virginia State Auditor's Office and the grantee received state funds or grants in the amount of fifteen thousand dollars or more, the grantee shall file an audit of the disbursement of funds with the legislative auditor's office. The audit shall be filed within two years of the disbursement of funds or grants by the grantee and shall be made by an independent certified public accountant at the cost of the corporation, association or other organization, and must show that the funds or grants were spent for the purposes intended when the grant was made. State funds or audits of state funds or grants under fifteen thousand dollars (\$15,000) may be authorized by the joint committee on government and finance to be conducted by the legislative auditor's office at no cost to the grantee.

23. **Reporting.** The Grantee shall submit any reports requested by the WVDEVO concerning financial status and program progress. Failure to provide such reports as required by WVDEVO in a timely manner shall be cause for termination of this Contract under the terms of Paragraph 7.

24. **Fiscal Management.** The Grantee shall be responsible for establishing and maintaining adequate procedures and internal financial controls governing the management and utilization of funds provided under this Contract, as well as funds provided as the Grantee's matching share.

25. **Political Activity.** No officer or employee of the Grantee whose principal employment is in connection with any activity which is financed in whole or in part pursuant to this agreement shall take part in any of the activities expressly prohibited by the Hatch Act.

26. **Repayment.** The Grantee shall refund to the State any expenditures determined to be made for an ineligible purpose for which State funds were received.

27. **Resolution of Disputes.** Resolution of disputes between the State and the Grantee concerning administrative and programmatic matters during the terms of this Agreement shall be initiated through consultation and discussion at the State's Administrative Offices with final decision on questions of policy or fact being determined by the Director of the Community Development Division or his/her designated representative. Nothing in this Agreement shall be construed as making the final decision on a question of law, or to limit in any

manner any remedies or recourses available under applicable laws. Citizen's complaints or disputes regarding Grantee performance or actions relative to the approved project are the responsibility of the Grantee.

28. **Termination of Contract for Cause.** If, through any cause, the Grantee shall fail to fulfill in a necessary and proper manner his obligations under this Contract, or if the Grantee shall violate any of the covenants, agreements, or stipulations of this Contract, the WVDEVO shall thereupon have the right to terminate this Contract by giving written notice to the Grantee of such termination and specifying the effective date thereof, at least fifteen days before the effective date of such termination. The Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on the described project.

Notwithstanding the above, the Grantee shall not be relieved of liability to the WVDEVO for damages sustained by the WVDEVO by virtue of any breach of the Contract by the Grantee, and the WVDEVO may withhold any payments to the Grantee for the purpose of set-off until such time as the exact amount of damages due the WVDEVO from the Grantee is determined.

29. **Termination for Convenience of WVDEVO.** The WVDEVO may terminate this Contract at any time by giving written notice to the Grantee of such termination and specifying the effective date of termination. If the Contract is terminated by the WVDEVO as provided herein, the Grantee will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this Contract, less payments of compensation previously made.

30. **Termination by the Grantee.** The Grantee may unilaterally rescind this agreement at any time prior to the commencement of the project. After project commencement, this agreement may be rescinded, modified, or amended only by mutual agreement. A project shall be deemed commenced when the Grantee makes any expenditure or incurs any obligation with respect to the project.

31. **Signing.** This Contract shall be signed by the Executive Director of the West Virginia Development Office and by the President of the Jefferson County Commission upon authorization of the Jefferson County Commission by adoption and passage of a resolution, motion or similar official action.

**IN WITNESS WHEREOF, the WVDEVO and the Grantee have executed this Agreement as of the date first above written.**

**STATE OF WEST VIRGINIA  
WEST VIRGINIA DEVELOPMENT OFFICE**

\_\_\_\_\_  
**J. Keith Burdette, Executive Director**

**JEFFERSON COUNTY COMMISSION**

By: \_\_\_\_\_  
**Patricia Noland, President**

Federal Employee Identification Number

\_\_\_\_\_  
**55-6000333**  
F.E.I.N.

<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: Sandy McDonald, Deputy County Administrator

Department or Entity: County Commission

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

Date Requested – 1<sup>st</sup> Choice: July 19, 2012

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

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

**Subject: Approval of Grant Contract, Resolution and Letter of Agreement – African American Community Association – Grant is in the amount of \$16,400 – Fisherman’s Hall**

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): **Motion to approve the Grant Contract, Resolution and Letter Agreement for the African American Community Association - Fisherman's Hall in the amount of \$16,400 and to authorize the President of the Commission to affix her signature to the appropriate documents**

Attachments:

# JEFFERSON COUNTY COMMISSION CHARLES TOWN, WV

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## *RESOLUTION*

The County Commission of Jefferson County, met on June 19<sup>th</sup>, 2012 with a quorum present and passed the following Resolution:

**WHEREAS**, The Jefferson County Commission has agreed to assist the African American Community Association to continue restoration of the historic Fisherman's Hall with funds made available through the Governor's Community Participation Grant program in the amount of \$16,400.

**NOW, THEREFORE BE IT RESOLVED**, that the Jefferson County Commission hereby authorizes the President of the Jefferson County Commission, to act on its behalf to enter into a contractual agreement with the West Virginia Development Office and to receive and administer grant funds pursuant to provision of the Governor's Community Participation Grant Program.

Signed: \_\_\_\_\_  
COUNTY CLERK



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

PRESIDENT  
*Patsy Noland*

VICE PRESIDENT  
*Dale Manuel*

COMMISSIONER  
*Frances Morgan*

COMMISSIONER  
*Walt Pellish*

COMMISSIONER  
*Lyn Widmyer*

Letter of Agreement  
Community Participation Grant  
between the  
Jefferson County Commission  
and the  
African American Community Association

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by the Jefferson County Commission and the African American Community Association its officers, agents, and representatives.

WITNESS THAT:

WHEREAS, the Jefferson County Commission has promised and agreed to act as funding agency to assist African American Community Association to perform specific tasks through funding from the Governor's Community Participation Grant Program.

NOW, THEREFORE, the parties hereby mutually agree as follows:

1. The Jefferson County Commission will serve as funding agency for the African American Community Association.
2. The African American Community Association agrees to abide by the terms and conditions of the Governor's Community Participation Grant Program Contract between the West Virginia Development Office and the Jefferson County Commission as contained herein. (attached)
3. This agreement shall be signed by the authorized officers, agents or representatives of the African American Community Association and the President of the Jefferson County Commission.

JEFFERSON COUNTY COMMISSION

\_\_\_\_\_  
President

African American Community Association

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

11LEDA0499  
ACTING COUNTY ADMINISTRATOR  
*Debbie Keyser*

Deputy County Administrator  
*Sandy Slusher McDonald*

**GOVERNOR'S COMMUNITY PARTICIPATION  
GRANT PROGRAM CONTRACT**

**between the**

**WEST VIRGINIA DEVELOPMENT OFFICE**

**and the**

**JEFFERSON COUNTY COMMISSION**

**THIS AGREEMENT**, entered into this 1st day of July, 2010, by the West Virginia Department of Finance and Administration on behalf of the West Virginia Development Office hereinafter called the "WVDEVO" and the Jefferson County Commission and its authorized officers, agents, and representatives, hereinafter called the "Grantee."

**WITNESS THAT:**

**WHEREAS**, the WVDEVO has promised and agreed to assist the Grantee to perform such tasks hereafter described in the scope of services, which is to be partially financed by funds made available through the Governor's Community Participation Grant program.

**NOW, THEREFORE**, the parties hereto do mutually agree as follows:

1. **Assistance of the Grantee**. The WVDEVO hereby agrees to assist the Grantee including all authorized officers, agents, and representatives, to perform such tasks and functions as set forth below in the scope of services.
2. **Scope of Services**. The Grantee, or its designated agent, shall do, perform and carry out, in a satisfactory and proper manner as determined by the WVDEVO, and appropriate regulatory agencies, if required, all duties, tasks, and functions necessary to repair and restore Fisherman's Hall in cooperation with the African American Community Association. The project will include floor repairs, new insulation and drywall, painting and additional improvements as funds permit.
3. **Personnel**. The Grantee represents that it has, or will secure at its own expense, personnel with the necessary qualifications and experience required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with WVDEVO.
4. **Time Performance**. The Grantee will commence its duties under this Contract on July 1, 2010, and such duties shall be undertaken and completed in such sequences as to assure their expeditious completion in the light of the purpose of the Contract; but, in any event, all of the services required hereunder shall be completed by June 30, 2012. The completion date of this contract may only be extended by mutual written agreement of both parties dependent on the reappropriation of funds under the Governor's Community Participation Grant program. If no such agreement exists, the Grantee shall not receive payment for services rendered or work performed relative to this grant after June 30, 2012.

5. **Compensation.** In consideration of the services rendered by the Grantee, the WVDEVO agrees to pay the Grantee the sum of \$16,400. This amount constitutes complete compensation for all services rendered. In no instance shall the agreed upon compensation exceed \$16,400 without the written consent of the Governor of the State of West Virginia.

6. **Method of Payment.** In order to receive payments under the terms of this Agreement, the Grantee shall submit the following: (a) a Letter of Transmittal containing a progress report, and (b) a Request for Payment Financial Report. The final ten percent shall be made available upon submission of certification of completion and acceptance of the project by the Grantee. Upon receipt of said documents, the WVDEVO shall review the same for reasonableness and appropriateness.

7. **Changes.** The WVDEVO and the Grantee may, from time to time, require changes in the scope of the services of the work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Grantee's compensation and work to be performed, which are mutually agreed upon by and between the WVDEVO and the Grantee, shall be incorporated in written amendments to this Contract.

8. **Sub-Grantees and Reversion of Property.** The Grantee may administer funds on behalf of sub-grantees, provided that such a sub-grantee is certified as a nonprofit organization by the United States Internal Revenue Service and the West Virginia Secretary of State's Office. Should such a sub-grantee cease to exist, all commodities or supplies purchased with funds provided under the auspices of this Contract by or for the sub-grantee shall become the property of the Grantee.

9. **Competitive Bid Procedures.** Competitive bidding shall be pursued in all instances. The Grantee must follow the more stringent of either state or local purchasing regulations. The West Virginia Purchasing Division requirements, at a minimum, are as follows: Commodities and services expected to cost \$2,500 or less require no bids, however, competition is encouraged. Purchases between \$2,500.01 and \$5,000 require three verbal bids to be documented on a verbal bid quotation summary. Purchases \$5,000.01 to \$25,000 require three written bids.

**The Grantee shall solicit competitive, sealed bids for commodities and supplies related to this project which have an estimated value of over \$25,000. Any attempts by the Grantee to segregate the project into sections having an estimated value of less than \$25,000 shall be cause for termination of this agreement under the provisions of Paragraph 28.** These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date.

The Grantee shall also, where feasible, solicit sealed bids by listing the project in the F. W. Dodge Reports, sending requests by mail to prospective suppliers or contractors, and by posting notice on a bulletin board in a public place. The Grantee shall have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance with these procedures.

10. **Project Wage Rates.** Every contract involving construction, reconstruction, demolition, improvement, enlargement, painting, decoration, alteration, and/or repair work which involves the employment of any contractor and/or subcontractor necessary for the undertaking and completion of this project, regardless of the source of funds utilized to pay such contract, must comply with the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. **This law applies to all construction contracts, regardless of cost.**

**The receipt and utilization of funds procured under this agreement mandate that all construction contracts necessary for the undertaking and completion of this project, regardless of the source of funds utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.**

Such provisions shall include the payment of the Fair Minimum Wage Rates as determined by the West Virginia Commissioner of Labor for each craft or classification of all workmen needed to perform the contract in the locality in which the public work is performed. For projects involving federal funds which are covered by the provisions of the Davis Bacon Act (40 U.S.C. 276-a 276a-5), the Grantee shall cause the contractor and/or subcontractors to pay the higher wage rate, federal or state.

Further, the Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bid documents. The Grantee shall also have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance including copies of contractor's payrolls.

11. **Construction.** The Grantee shall procure construction contracts in accordance with West Virginia Code §5-22-1. **The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding \$25,000 in total cost.**

**Further, the receipt and utilization of funds procured under this agreement mandate that ALL CONSTRUCTION CONTRACTS NECESSARY FOR THE UNDERTAKING AND COMPLETION OF THIS PROJECT, regardless of the source of funds utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.**

The term construction shall mean any construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement let to contract. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date.

Any contracts under this agreement must comply with the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. This law applies to all construction contracts, regardless of cost. The Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bidding blanks.

The Grantee shall designate the time and place for opening such construction bids in accordance with West Virginia Code §5-22-2.

12. **Bonding.** The Grantee shall secure bonding in accordance with West Virginia Code §5-22-1. All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the state of West Virginia or its subdivisions. Following the solicitation of such bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: provided, that the state and its subdivisions may reject all bids and solicit new bids.

In the procurement of contracts or subcontracts for construction of less than \$100,000, the Grantee shall follow local or State requirements relating to bid guarantees, performance bonds, and payment bonds, provided that the Grantee's and State's interests are adequately protected and that such contracts can be executed in a timely manner.

**In the procurement of contracts or subcontracts for construction that exceed \$100,000, the Grantee shall obtain the following:**

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. This bid guarantee shall consist of a firm commitment such as bid bond, certified check, or other negotiable instrument accompanying a bid that the bidder will, upon acceptance of the bid, execute the contractual documents as may be required with the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. This performance bond shall be executed by the successful contractor in connection with the contract to secure fulfillment of the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. This payment bond shall be executed in connection with a contract to assure payment is required by law of all persons supplying labor and materials in the execution of the work provided for in the contract.

13. **Architecture and Engineering**. The Grantee shall procure architectural or engineering services in accordance with of the West Virginia Code §5G. In the procurement of architectural and engineering services for projects estimated to cost \$250,000 or more, the Grantee shall publish a Class II legal ad in compliance with West Virginia Code §59-3. In the procurement of services for projects estimated to cost less than \$250,000, the Grantee shall conduct discussions with three or more professional firms.

14. **Design-Build**. The Grantee shall procure design-build projects in accordance with West Virginia Code §5-22A-1. This applies solely to building projects. Highways, water, sewer, and all other public works projects are specifically prohibited from using the design-build method.

15. **Environmental and Historical Assessment**. The Grantee shall comply with all applicable federal, state and local environmental and historical preservation laws and regulations. The Grantee acknowledges this requirement and certifies that the project will be in compliance with such laws and regulations.

16. **Equal Employment Opportunity**. With respect to employment in carrying out the program objectives, the Grantee agrees that it will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, national origin, or physical handicap.

17. **Facilities Accessible to the Handicapped**. The Grantee shall require any facilities constructed under the auspices of this Contract to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A117.1-1961, as modified (41CFR101-17.1703 and (13CFR309.14)). The Grantee shall be responsible for conducting inspections to ensure compliance with these specifications.

18. **Facilities Operation**. The Grantee shall operate and maintain all facilities constructed under the auspices of this Contract in accordance with minimum standards as may be required or prescribed by the applicable federal, state and local statute, law, ordinance or regulation as to actual construction procedures, as well as maintenance and operation of such facilities upon completion.

19. **Interest of Members of WVDEVO and Others**. No officer, member or employee of the WVDEVO or officer, member or employee of the Grantee who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or has any personal or pecuniary interest, nor shall any officer, member of, or

employee of, the Grantee or any member of its governing body, or officer, member, or employee of the contractor have any interest, direct or indirect, in this Contract or the proceeds thereof.

20. **Officials Not To Benefit.** No member of the Legislature of the State of West Virginia, or individual performing a service for the Grantee in connection with this project, shall be admitted to any share thereof or to any benefit to arise from this Agreement.

21. **Inspections of Project Records.** At any time during normal business hours and as often as the WVDEVO or its designated representative may deem necessary, there shall be made available to the WVDEVO or its designated representative for examination, all of its records with respect to all matters covered by this Contract and permit the WVDEVO or its designated representative to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records and personnel, conditions of employment and other data relating to all matters covered by this Contract during the entire time period beginning with project approval and ending three years after the final disbursement of grant funds.

22. **Project Audits.** (a) The Grantee shall cause an audit of this program to be included in the audit of the Grantee performed by the West Virginia State Auditor's Office, Chief Inspection Division, or its designated representative in accordance with West Virginia Code §6-9-7. The audit shall be performed in conformance with generally acceptable accounting procedures.

(b) In accordance West Virginia Code §12-4-14, if the grantee is not audited by the West Virginia State Auditor's Office and the grantee received state funds or grants in the amount of fifteen thousand dollars or more, the grantee shall file an audit of the disbursement of funds with the legislative auditor's office. The audit shall be filed within two years of the disbursement of funds or grants by the grantee and shall be made by an independent certified public accountant at the cost of the corporation, association or other organization, and must show that the funds or grants were spent for the purposes intended when the grant was made. State funds or audits of state funds or grants under fifteen thousand dollars (\$15,000) may be authorized by the joint committee on government and finance to be conducted by the legislative auditor's office at no cost to the grantee.

23. **Reporting.** The Grantee shall submit any reports requested by the WVDEVO concerning financial status and program progress. Failure to provide such reports as required by WVDEVO in a timely manner shall be cause for termination of this Contract under the terms of Paragraph 7.

24. **Fiscal Management.** The Grantee shall be responsible for establishing and maintaining adequate procedures and internal financial controls governing the management and utilization of funds provided under this Contract, as well as funds provided as the Grantee's matching share.

25. **Political Activity.** No officer or employee of the Grantee whose principal employment is in connection with any activity which is financed in whole or in part pursuant to this agreement shall take part in any of the activities expressly prohibited by the Hatch Act.

26. **Repayment.** The Grantee shall refund to the State any expenditures determined to be made for an ineligible purpose for which State funds were received.

27. **Resolution of Disputes.** Resolution of disputes between the State and the Grantee concerning administrative and programmatic matters during the terms of this Agreement shall be initiated through consultation and discussion at the State's Administrative Offices with final decision on questions of policy or fact being determined by the Director of the Community Development Division or his/her designated representative. Nothing in this Agreement shall be construed as making the final decision on a question of law, or to limit in any

manner any remedies or recourses available under applicable laws. Citizen's complaints or disputes regarding Grantee performance or actions relative to the approved project are the responsibility of the Grantee.

28. **Termination of Contract for Cause.** If, through any cause, the Grantee shall fail to fulfill in a necessary and proper manner his obligations under this Contract, or if the Grantee shall violate any of the covenants, agreements, or stipulations of this Contract, the WVDEVO shall thereupon have the right to terminate this Contract by giving written notice to the Grantee of such termination and specifying the effective date thereof, at least fifteen days before the effective date of such termination. The Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on the described project.

Notwithstanding the above, the Grantee shall not be relieved of liability to the WVDEVO for damages sustained by the WVDEVO by virtue of any breach of the Contract by the Grantee, and the WVDEVO may withhold any payments to the Grantee for the purpose of set-off until such time as the exact amount of damages due the WVDEVO from the Grantee is determined.

29. **Termination for Convenience of WVDEVO.** The WVDEVO may terminate this Contract at any time by giving written notice to the Grantee of such termination and specifying the effective date of termination. If the Contract is terminated by the WVDEVO as provided herein, the Grantee will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this Contract, less payments of compensation previously made.

30. **Termination by the Grantee.** The Grantee may unilaterally rescind this agreement at any time prior to the commencement of the project. After project commencement, this agreement may be rescinded, modified, or amended only by mutual agreement. A project shall be deemed commenced when the Grantee makes any expenditure or incurs any obligation with respect to the project.

31. **Signing.** This Contract shall be signed by the Executive Director of the West Virginia Development Office and by the President of the Jefferson County Commission upon authorization of the Jefferson County Commission by adoption and passage of a resolution, motion or similar official action.

**IN WITNESS WHEREOF, the WVDEVO and the Grantee have executed this Agreement as of the date first above written.**

**STATE OF WEST VIRGINIA  
WEST VIRGINIA DEVELOPMENT OFFICE**

\_\_\_\_\_  
**J. Keith Burdette, Executive Director**

**JEFFERSON COUNTY COMMISSION**

By: \_\_\_\_\_  
**Patricia Noland, President**

Federal Employee Identification Number

\_\_\_\_\_  
**55-6000333**  
F.E.I.N.

<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: Walt Pellish

Department or Entity: Commissioner

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

Date Requested – 1<sup>st</sup> Choice: 7/19/2012

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

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

Subject: Reallocate the money (\$102,953.68) in the Cement Mill purchase account to either a) the Shepherdstown regional library capital campaign fund, b) the Animal Welfare Society for needed renovations, or c) a portion to each.

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):

Attachments:



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

**AGENDA REQUEST FORM**

Name: Dale Manuel, Commissioner

Department or Entity: County Commission

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

Date Requested – 1<sup>st</sup> Choice: 7/19/12

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

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

**Subject: Approval of \$200,000 from the unencumbered fund from the past fiscal year be placed in a Capital Building Account**

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):

Attachments:

13

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

**AGENDA REQUEST FORM**

Name: Debbie Keyser, Interim County Administrator

Department or Entity: County Commission

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

Date Requested – 1<sup>st</sup> Choice: July 19, 2012

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

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

Subject: **Hiring of County Commission – Civil Counsel Office – Possible Executive Session 56-9A-4**

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):

Attachments:

<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: Debbie Keyser, Acting County Administrator

Department or Entity: County Commission

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

Date Requested – 1<sup>st</sup> Choice: July 12, 2012

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

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

**Subject: Decision on a Zoning Map Amendment (Rezoning) for property designated as Tax District: Harpers Ferry, Map 9-2, Parcel 58 – This property is located on the south side of Route 340 (William L. Wilson Freeway) and to the east side of Route 27/2 (Alstadt’s Hill Road) and is a total of 8.98 acres. This property is currently zoned Residential Growth and a request has been made the owner, Gene Capriotti to change the zoning to Residential/Light Industrial/Commercial – Public Hearing was held on June 14, 2012 at 7pm**

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):

Attachments:

the crossroads group.....

22 van Clevesville Rd. Kearneysville WV, 25430

June 14, 2012

Jefferson County Commission  
112 East Washington Street  
Charles Town WV 25414

Dear President Noland, Members Morgan, Widmyer, Manuel & Pellish:

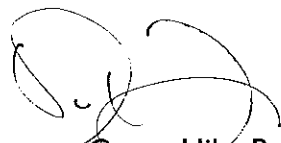
Let me introduce myself, I am Annette van Hilst, an almost life long resident of Kearneysville, having moved to Walper's Crossroads in 1955. I am a registered architect in the State of West Virginia. Until early this year, I worked part time as a Senior Land Planner for Dewberry, first out of our Ranson office & then from my home. I previously worked for Appalachian Surveys of WV & for 5 years I was the Planner & Zoning Administrator for the City of Charles Town. Prior to that, I worked for 20+ years, as a Community Development Director in both Washington & Montgomery Counties, Maryland.

Tonight, I am representing Eugene Capriotti in his request for a rezoning of a property he owns in the Harper's Ferry District. Attached to this letter are the following:

- A 10 slide presentation (on 5 sheets) that I will be using tonight.
- A 1 page summary on previous action regarding the petition for rezoning currently before you & the restatement of why the petition should be approved.

I ask you to carefully consider all the material presented in making your decision regarding the requested rezoning.

Sincerely



Annette G. van Hilst R.A.  
Principal, the crossroads group

On February 14, 2012, Gene Capriotti submitted a petition seeking a map amendment for his property (located between the flea market and River Riders) from Residential Growth to Residential-Light Industrial-Commercial to the Jefferson County Planning Commission. The Planning Commission accepted the petition and scheduled the matter for a public hearing on April 24, 2012. After the Public Hearing, the Planning Commission voted unanimously that the map amendment was consistent with the 2004 Jefferson County Comprehensive Plan and recommended that the County Commission approve the map amendment.

Please note that the Planning Commission did not vote to incorporate the Staff's report as a part of their recommendation or advice to the County Commission.

§8A-7-9 of the West Virginia State Code, as amended, states that the County Commission with the advice of the Planning Commission must find that an amendment to the zoning ordinance is consistent with the adopted Comprehensive Plan. If the County Commission finds that the amendment is inconsistent with the Comprehensive Plan, the Commission can still approve the rezoning provided that the Commission makes additional findings concerning the neighborhood.

In this case, since the Planning Commission found it consistent with the Comprehensive Plan, the Applicant would request that the County Commission act favorably on the map amendment. The Planning Commissioners made several comments that supported this decision. The Applicant's Petition also cites many portions of the Comprehensive Plan that also shows that the requested map amendment is consistent and compatible with the Comprehensive Plan. The Petition also includes a discussion on changes in the neighborhood and transportation characteristics that support this map amendment. Finally, the Petition outlines the growth that has occurred in the area.

Even though the County Commission does not have to look beyond the fact that the Map Amendment is consistent with the Comprehensive Plan, other considerations can be found within the Petition.

1. The Shenandoah Professional Building property across Route 340 and the Gibson Property across the street from the subject property were recently rezoned to the Residential/Light Industrial/Commercial District. The same justification for those map amendments can be applied directly to this request.
2. Central/Public Water and Wastewater Facilities are now available on this property. The Comprehensive Plan very much supports growth where there are existing water and sewer facilities;
3. The immediate neighborhood has already been planned for commercial uses including the Shenandoah Professional Building and the expansion of River Riders. These changes all happened since the 2004 Plan was written and are major use changes.

Based on the original petition, the Planning Commission's unanimous recommendation, the information above and the 2004 Comprehensive Plan, the Applicant respectfully asks that the County Commission find that the requested amendment is consistent with the Comprehensive Plan. Accordingly, the Applicant requests that the County Commission approve the map amendment for Parcel 58 on Map 9 in the Harpers Ferry Tax District from Residential Growth to Residential-Light Industrial-Commercial.

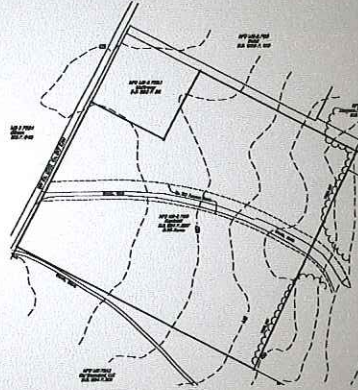
# REZONING REQUEST

Parcel 58 Map 9:2 Harpers Ferry  
District  
June 14, 2012

## LOCATION



# CURRENT STATUS



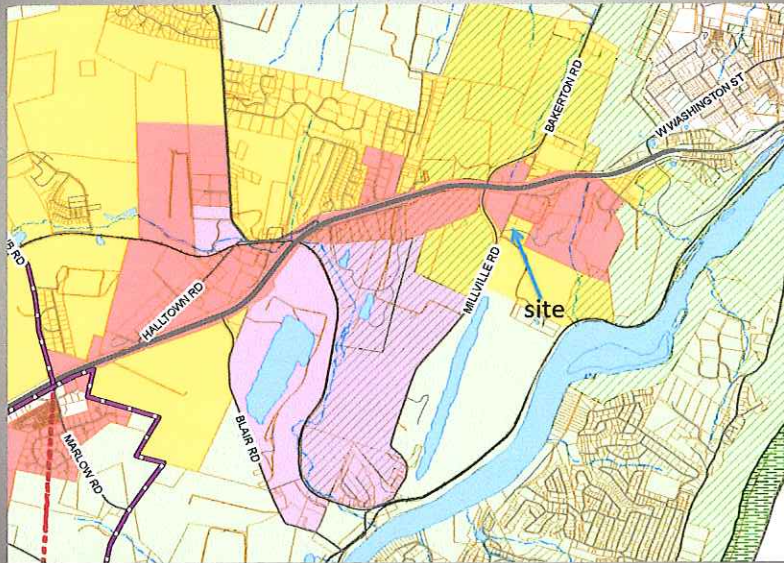
# REQUEST

REZONE FROM RESIDENTIAL GROWTH

TO

RESIDENTIAL / LIGHT INDUSTRIAL / COMMERCIAL

# CURRENT ZONING



## Why rezone?

- Two properties have been rezoned to Residential/Light Industrial/ Commercial, one adjacent to the property within the last year
- Land available for commercial or mixed use development in the 340 Corridor has been significantly reduced by the expansion of Harper's Ferry NHP to include land on either side of 340 & the New Homeland Security Campus
- A sewage treatment plant, water & sewer lines have been constructed that serve the property
- Improvements to 340 include service roads, stop lights & bridge improvements
- Commercial development may not exacerbate current traffic back ups on 340 due to different peak times for most commercial uses.

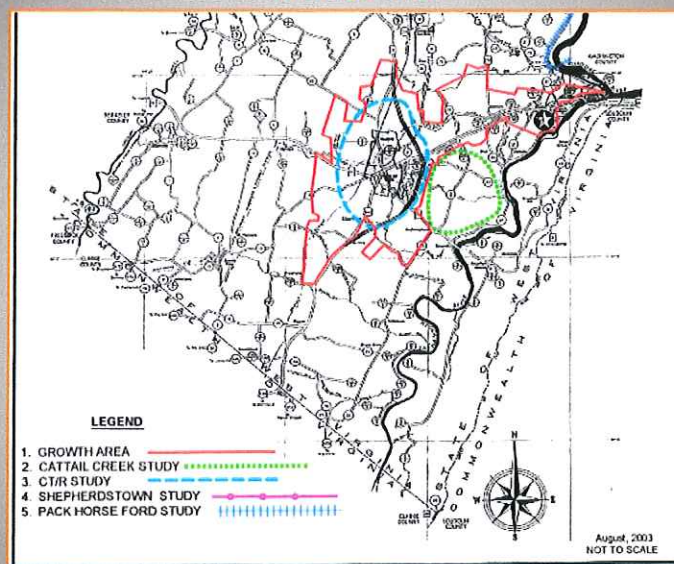
# Comprehensive Plan Support

“County should continue to pursue new industrial & commercial development in order to diversify its economy, increase its tax base...and provide quality employment opportunities”

“It is the vision of this Comprehensive Plan that development will be concentrated within the designated growth areas”

## 340 Growth Area

orange line



# Rezoning Request is supported by the Planning Commission

"Supports efforts of the tourism industry"  
"Excellent opportunity to increase tax  
revenue"

"Consistent with the 2004 Comprehensive  
Plan"

"Commercial history of the area and area  
continue to grow"

*Minutes of the April 24, 2012 Planning Commission meeting*

## CONCLUSION

- This is a rezoning request for a broad category, with a specific use to be determined for the site at a later date.
- The site is practically surrounded by land that is already zoned Residential/Light Industrial/Commercial. It is a prime location for uses that serve the tourist industry, being located just down the hill from the Harper's Ferry NHP & near the one major motel complex in the area.
- Any use proposed for the site will have to conform to the requirements of the Zoning Ordinance and the proposed use and its impacts will be carefully reviewed at the site Plan stage.
- The Planning Commission recommends the rezoning and we urge you to approve the rezoning.

## Debbie Keyser

---

**From:** Annette Van Hilst [annette@vanhilst.net]  
**Sent:** Wednesday, July 11, 2012 9:26 AM  
**To:** dkeyser@jeffersoncountywv.org  
**Subject:** Capriotti rezoning setting date for vote

Ms. Keyser:

I left a phone message yesterday & when i called this morning you were in a meeting. I represent Mr. Capriotti in the rezoning matter & I understand that you will be asking the Commissioners to set a date for their action on the rezoning of the property. I want to be present when the action is taken & since i will be out of town on July 26, 2012 & August 9, 2012, I would appreciate it if the date for action could be either next Thursday, July 19 or August 2. Please inform me of the date the Commissioners will take a vote on the rezoning.

Also in reviewing the material attached to the agenda, I did not see the material that we presented at the County Commissioner's public hearing or a synopsis of the testimony favoring the proposal, however a letter was included from the National Parks Conservation Association that incorrectly stated that the Planning Commission recommended against the request (they cited the staff position which is included in the material, though the Planning commission voted to recommend the rezoning). I believe that material presented at the public hearing held by the County commission should have been included in the information you are presenting to the Commission since it is the only record of the Public Hearing held by the Commission that the public might read. If you need copies of the material I presented, please contact me.

I would appreciate your cooperation in this matter

Annette van Hilst R.A.  
The Crossroads Group  
[agvh@frontiernet.net](mailto:agvh@frontiernet.net)



11

JEFFERSON COUNTY COMMISSION  
PUBLIC HEARING NOTICE

The Jefferson County Commission has scheduled a public hearing on a Zoning Map Amendment (Rezoning) for property designated as Tax District: Harpers Ferry, Map: 9-2, Parcel: 58. This property is located on the south side of Route 340 (William L. Wilson Freeway) and to the east side of Route 27/2 (Alstadt's Hill Road) and is a total of 8.98 acres. This property is currently zoned Residential Growth and a request has been made by the owner, Gene Capriotti to change the zoning to Residential/Light Industrial/Commercial.

You may provide oral or written comments at the hearing, **7:00 p.m., Thursday, June 14, 2012, in the County Commission meeting room located in the Old Charles Town Library lower level at 200 East Washington Street**, at the side entrance on Samuel Street. In addition, you may also provide written comments to [info@jeffersoncountywv.org](mailto:info@jeffersoncountywv.org) or mail to P.O. Box 250, Charles Town, WV 25414, or fax (304) 725-7916.

By Order of the Jefferson County Commission  
Patsy Noland, President

712-01

PETITION FOR MAP AMENDMENT

Gene P. Capriotti

January 10, 2012

Owner/Applicant:

Gene P. Capriotti  
P.O. Box 335  
Harpers Ferry, WV 25425

Ordinance Citation:

Article 12 of the Jefferson County Zoning and Development Review Ordinance as amended on November 10, 2011. Also, the newly adopted amendment to the definitions in Article 2, Section 2.2 defines a map amendment as:

“An amendment to the Zoning Map which is adopted by reference in the Zoning Ordinance that consists of a change that only applies to a specific property, changing from one existing zoning designation to another existing zoning designation. A map amendment does not permit changes, conditions or alterations to uses permitted within an existing zoning designation as all zoning designations must be uniformly applied to all property which are subject to said designation.”

Substantiation for the Request:

1. The property is currently zoned Residential Growth and the Applicant is seeking a map amendment for the Residential/Light Industrial/Commercial District. The Applicant believes that this change is consistent and compatible with the 2004 Jefferson County Comprehensive Plan, as illustrated in this application; and,
2. There has been a significant change in the neighborhood, since the Jefferson County Zoning Ordinance was adopted in 1988 (most notably in the past 4 years), as explained in this application.

Tax District, Map and Parcel Number:

Harpers Ferry Tax District, Map 9, Parcel 58

Deed Book Reference:

Deed Book 584 at Page 587

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JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
APRIL 24, 2012

The Jefferson County Planning Commission met on Tuesday, April 24, 2012 with the following Commission members present: Paul Taylor, President; Ed Burns, Gene Taylor, Steve Stolipher and Walt Pellish. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; Steve Barney, Zoning Administrator; Jonathon Saunders, County Engineer; Stephan Groh, Prosecuting Attorney; and Amy Puetz, Planning Clerk.

Mr. Daniel Hayes, Mr. Kelly Baty, Mr. Eric Smith, and Ms. Morgan Etters were absent with notification.

Mr. P. Taylor called the meeting to order at 7:00 PM.

**1. Approval of the minutes for the April 10, 2012 meeting.**

Mr. Stolipher moved to approve the minutes of the April 10, 2012 Planning Commission meeting. Mr. Pellish seconded the motion which carried unanimously.

**2. Citizens Communication.** None.

**3. Request for postponement.** None.

**4. Continued from the 04/10/2012 PC Meeting: Public Hearing regarding Proposed Additional Commercial and Industrial Zoning Categories and related amendments to the Jefferson County Zoning and Land Development Ordinance.**

Ms. Brockman reminded the Planning Commission of written comments by W.H. Gordon Associates that were submitted at the April 10, 2012 meeting. She explained that staff had met with representatives of the company to clarify those comments.

Mr. Barney reviewed the purpose of the amendments and gave a brief overview of the proposed zoning categories. He commented that custom manufacturing would be added as a commercial use based on comments received on April 10<sup>th</sup>. He stated that grammatical and formatting edits would be made by staff.

Mr. Pellish requested that staff provide a written response to the comments given by W.H. Gordon Associates. Mr. Burns requested that staff verbally specify the comments in the Gordon memo that would be incorporated into the amendments. Mr. Barney briefly reviewed those general comments.

Mr. Burns suggested that the Light Industrial category needed a sub-category specifically for assembly type manufacturing. He asked that Section 3.2(K), paragraph 2, be clarified to state which uses are being discussed. He commented that in Section 4.6(A), it was unclear which buildings were being discussed. Ms. Brockman explained that 4.6(A) relates to industrial uses. She stated that moving that section to a more appropriate place in the ordinance would

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help clarify the regulation. Mr. Burns stated that he would like to see all suggestions incorporated into the document before the Planning Commission takes any action.

Mr. Stolipher stated that all the comments should be taken into consideration and that existing text should be clarified to simplify the document.

Mr. P. Taylor opened the floor to public comment.

Mr. J. Michael Cassell, representing the Jefferson County Shorekeepers, stated that his clients' largest concern was the Potomac River between Harpers Ferry and Shepherdstown due to its historic and environmental significance. He commented that the Pack Horse Ford Study, as mentioned in the 2004 Comprehensive Plan, should be completed before the amendments are approved. He suggested that Section 5.16(B) should be changed to specify the growth area as defined in the 2004 Comprehensive Plan. Ms. Brockman added that she would suggest that it state the 2004 Comprehensive Plan or the most current Comprehensive Plan in case there would be a change in the growth area. Mr. Cassell rebutted that the language should specify just the 2004 Comprehensive Plan since the adoption of a new comprehensive plan could not change the Zoning Ordinance. He requested that the tables throughout the document be simplified and graphically easier to read. He commented that the amendment to change the notification days to not less than 20 and not more than 28 should be eliminated and that the requirement of notification should remain 30 days. He also suggested while Section 3.2 allows discretion of the Zoning Administrator to allow similar uses not listed in the ordinance, that adjoining property owners merit some form of notification.

Mr. Chip Dorman, Harpers Ferry resident, raised concern over the discretion allowed by Section 3.2 to the Zoning Administrator and asked what process the Zoning Administrator would have for determining a use. He voiced his opposition to amending the 30 day notices to a shorter time frame. He also requested clarification on what penalties the applicant endures when there is an appeal to the Board of Zoning Appeals. He suggested researching other area governments' regulations and incorporating some of those ideas into the amendments.

Mr. Ted Schiltz, resident of Potomac Terrace, stated that the Comprehensive Plan recommends that lands east of the Shenandoah and all lands and natural conditions within 1,000 feet of the Shenandoah and Potomac Rivers and Opequon Creek remain in their natural state, not to be developed. He recommends distance requirements for each proposed district. He suggested that the proposed Planned Neighborhood Development have a larger minimum lot size to facilitate the Scenic Area Protection. He commented that he feels the Planned Neighborhood Development could be eliminated completely from the amendments.

Mr. Burns moved to close the public hearing. Mr. Pellish seconded the motion which carried unanimously.

Mr. Burns moved to table discussion until the June 12<sup>th</sup> Planning Commission meeting with the understanding that members of the Planning Commission are to receive an updated draft

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3 weeks prior to the meeting. There was unanimous consent to table the discussion until June 12, 2012.

5. **Public Hearing for Zoning Map Amendment (Rezoning) for property designated as Tax District: Harpers Ferry, Map: 9-2, Parcel: 58. This property is currently zoned Residential Growth and Residential/Light Industrial/Commercial zoning is being requested. This property is located south of Route 340 (William L. Wilson Freeway) and to the east side of Route 27/2 (Alstadt's Hill Road) just passed its intersection with Route 27 (Millville Road) and is a total of 8.98 acres. The owner of record is Gene Capriotti.**

Mr. Rivard reviewed the location of the property.

Ms. Annette Van Hilst, representing Mr. Gene Capriotti, gave a presentation of the project including location, purpose of the request, and compliance with the draft US 340 Gateway Plan. She distributed her power point presentation in paper form to the Planning Commissioners and staff. She explained that there was no specific use being proposed and that the request is due to the reduction of land available for commercial or mixed use development. She cited many major changes to the area. She rebutted the staff report stating that concerns regarding traffic, landscaping, and view sheds should be discussed at the site plan stage, not during a rezoning request. She commented that, while the 2004 Comprehensive Plan does not state a need for rezoning along the 340 Corridor, two of the subject parcels neighboring properties have been granted a rezoning by the County Commission within the past year. She addressed staff's concern on the impact of light industrial uses by stating that current regulations would not permit those uses on the property. She stated that the rezoning should not have to wait 6 months until the US 340 Gateway Plan is adopted as recommended by staff since there is no guarantee that the document will be approved or that approval will only take 6 months. She defended the request reminding the Planning Commission that the subject property was surrounded on three sides with properties zoned Residential/Light Industrial/Commercial.

Mr. Rivard presented his staff report and suggested that the Planning Commission forward the request onto the County Commission with a recommendation of denial with the reasoning that the request was not in compliance with the 2004 Comprehensive Plan. He stated that staff recommends that the applicant wait 6 months to allow for the US 340 East Gateway Corridor Study to be finalized which would provide recommendations regarding land use and traffic impacts. He commented that waiting would also allow the possibility of new zoning categories which would provide for a better planning tool for this area.

Mr. Rivard read from a letter provided by Rebecca Harriett of the National Park Service opposing the rezoning request. The letter stated that the request was overly broad and allowed uses that could be out of context with the character of the area creating a negative impact on the area's historic values and uniqueness.

Mr. P. Taylor opened the public hearing.

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Ms. Beth Marrone, adjoining property owner, spoke in opposition of the rezoning stating she believed that area would stay residential when she purchased her home 16 years ago. She raised concern that traffic could potentially become much worse depending on the use that would be placed on the property. She described the easement running through the subject property and explained that easement is used as an access to her home. She also commented that additional traffic could exacerbate already hazardous traffic situations.

Dr. James Gibson, owner of Alstadt property, spoke in support of the rezoning. He stated that the area had been used commercially for many years and that commercial uses are appropriate for that area. He raised concern that the staff referenced the US 340 East Gateway Study in the staff report when that document had not been approved.

Mr. Eric Sokol, area resident, spoke in support of the rezoning request. He stated that the area should be rezoned as an opportunity to allow for outdoor tourism. However, he did confirm traffic issues in the area.

Ms. Mary McGreevy, adjoining property owner, spoke in opposition of the rezoning request. She raised concern that there was no specific use for that property being proposed and that she did not want River Riders to use that property to expand their business. She spoke of existing traffic issues. She commented on the aesthetics of the area and stated that the viewshed should be protected.

Mr. Stolipher moved to close the public hearing. Mr. G. Taylor seconded the motion which carried unanimously.

Ms. Van Hilst addressed public comments. She reiterated that Light Industrial uses would be limited by regulations and standards and would be discussed when a Site Plan is submitted. She commented, in regards to the National Park Service (NPS) letter, that the property is not within the approved park boundaries and should not be a concern to the NPS. She referenced the Alstadt property stating that parcel contains a home on the historic registry and yet had been recently rezoned to the same zoning category her client was requesting. Ms. Van Hilst stated that the easement that runs through the property that Ms. Marrone uses to access her home would remain in place. She commented that traffic was an existing issue and that a change in zoning would not have significant impact on traffic. She stated that current zoning would allow for more than 50 townhomes which would significantly impact the traffic issues whereas the requested zoning would carry a much more limited use.

Mr. Pellish voiced disagreement with the staff report and stated that the rezoning request is in conformance with the Comprehensive Plan. He also voiced his opposition to the US 340 Gateway Plan. He addressed traffic issues and stated that roads need to be widened. He stated that this parcel is ideal to support efforts in the tourist industry. He reported that this request is an excellent opportunity to increase tax revenue. He stated he strongly supported the request.

Mr. Stolipher moved to forward the request to the County Commission recommending approval since the request is consistent with the 2004 Comprehensive Plan. Mr. Pellish seconded the motion.

Mr. Burns commented that the Capriotti family, the owners of the subject property, had a vested interest in the community and for that reason, he believed nothing detrimental to the area would be placed on that property. He voiced support of the rezoning request and felt that the request was consistent with the 2004 Comprehensive Plan.

Mr. G. Taylor commented on the commercial history of that area and stated that area will continue to grow. He voiced support of the request.

Mr. P. Taylor questioned what control the County had regarding what use is allowed there if the rezoning request is approved. Ms. Brockman explained that the zoning category permits a variety of uses. She stated that the County would require a review of the site plan which would ensure that regulations and requirements are met for any use proposed. She reported that the County would not be able to deny a use that is considered a permitted use for that zoning category although regulations, such as setback and distance requirements, may prevent a use from occurring on a particular property.

Mr. Pellish voiced sympathy of Ms. Marrone's concerns and requested that Ms. Van Hilst speak with her client to recommend an agreement from Mr. Capriotti to the Marrones allowing for some sort of compensation such as shielding of the property or improvement of the access.

The motion on the floor passed unanimously.

Mr. P. Taylor called for a break at 8:45 PM. Mr. P. Taylor called the meeting back to order at 8:53 PM.

6. **Final Plat Public Hearing for the Harvest Hills Subdivision (PC File #12-02). The property is to consist of 22 single-family lots on 8.84 acres. The property is located on the east side of Route 17 (Flowing Springs Road) and the south side of the CSX Railroad where the two intersect. The owner of the property is Arcadia Development Co. This property is designated as Tax District: Shepherdstown, Map: 24, Parcels: 12 and 13.**

Mr. Rivard read from his staff report. He explained that the access to the section being reviewed is through a portion of the subdivision that was currently carried a tolled bond. He reported that staff had met with Ms. Carla Coffey, of Arcadia Development, who agreed to several conditions to approval. Mr. Rivard recommended approval of the Final Plat with the following conditions:

- a. No construction would commence and no sale of lots platted in this phase to any outside entities will be allowed until the tolled bond for Phase II, Section 1 and also for this phase has been posted.

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- b. A merger deed will be submitted to the Engineering Department for the lots being final platted to allow for the lots of this phase to be merged and for this phase and the previous phase to be merged if the applicant defaults on the tolling agreement.
- c. A Department of Highways (DOH) entrance permit is obtained.
- d. The Conditional Use Permit (CUP) conditions and how and when those conditions are to be met will be required with each phase upon Final Plat submission.

Mr. Barney explained the responsibility of staff to address how and when the CUP conditions will be met. He stated that, for Harvest Hills, a letter from the DOH stating that improvements to the curve on Flowing Springs Road and a traffic light at the entrance of the subdivision are not necessary at this time would be sufficient.

Mr. Randy Keppler, of Greenway Engineering, confirmed that his client, Arcadia Development, had agreed to the conditions regarding the tolled phase. He stated that he could provide a copy of the DOH entrance permit that was submitted during the Preliminary Plat review. He addressed the conditions of the CUP. He stated that the Highway Department had not yet notified the developer that any improvement to the curve on Flowing Springs Road or that a traffic light was presently necessary and that the DOH had been monitoring the traffic situation. He reported that one of the conditions of the CUP included a fence which would be included in the bonding agreement. He requested that the final plat not be stalled due to these conditions.

Mr. Peter Chakmakian, representing Arcadia Development, explained why the developer was submitting another phase of the subdivision when the previous phase is tolled. He reported that a final plat needed to be submitted to keep the project from expiring due to Jefferson County timeframes.

Ms. Carla Coffey, of Arcadia Development, confirmed that Arcadia intended to toll the bond for this phase also.

Mr. Barney stated that an email or letter would be required from the DOH stating that improvement of the curve on Flowing Springs Road and that a traffic light are not necessary at this time. Ms. Coffey asked that this not be a condition of approval. She stated that she has requested a letter from the DOH and that she would provide staff a copy upon her receipt of that letter. However, she raised concern that there would only be 90 days to bond and record the Final Plat and she could not force the DOH to provide a letter within that timeframe.

Mr. P. Taylor opened the public hearing. There was no public comment. Mr. Stolipher moved to close the public hearing. Mr. Burns seconded the motion which carried unanimously.

Mr. Stolipher moved to approve the final plat with two of the conditions: 1) No construction would commence and no sale of lots platted in this phase to any outside entities will be allowed until the tolled bond for Phase II, Section 1 and also for this phase has been posted. 2) A merger deed will be submitted to the Engineering Department for the lots being final

platted to allow for the lots of this phase to be merged and for this phase and the previous phase to be merged if the applicant defaults on the tolling agreement. Mr. Pellish seconded the motion which carried unanimously.

7. **Final Plat Public Hearing for the Cambridge Manufactured Home Development Subdivision (PC File #12-03). The property is to consist of 2 mobile home lots on 27.0671 acres. The property is located on the south side of Route 17/5 (Flowing Acres Road) and 0.31 miles east of its junction with Route 17 (Flowing Springs Road). This property is designated as Tax District: Charles Town, Map: 8, Parcel: 32.13.**

Mr. Rivard read from his staff report and recommended approval.

Mr. Dirk Stansbury, project engineer, gave a short presentation of the project. He requested that a bond tolling system be created for Cambridge. Ms. Brockman explained the tolling system and recommended that Mr. Stansbury speak with Ms. Becky Burns, Engineering Department Office Manager.

Mr. P. Taylor opened the public hearing. There was no public comment. Mr. Burns moved to close the public hearing. Mr. G. Taylor seconded the motion which carried unanimously.

Mr. Burns moved to approve the Final Plat. Mr. Stolipher seconded the motion which carried unanimously.

8. **Reports from Legal Counsel and legal advice to PC.**

**Active Litigation:**

- **Far Away Farms**
- **Cedar Meadows Airpark**

Mr. Groh presented the Planning Commission's Opposition to Summary Judgment and Cross Motion (11-C-325, 326, 327, and 328) in the Far Away Farms case. He explained the case would be heard on May 7, 2012. He stated there were no other issues.

9. **Director's Report.**

Ms. Brockman presented two articles regarding the planning of road improvements to US 340 between the Shenandoah and Potomac River bridges. She stated that a tri-state (WV, VA, and MD) committee had been formed to begin discussions.

Ms. Brockman reported that she would be presenting the quarterly report to the County Commission and requesting clarification on the priorities of staff regarding the 2014 Comprehensive Plan and the suggested US 340 South Corridor Study. She stated that a summer intern had been hired to assist in research for the 2014 Comprehensive Plan.

Ms. Brockman presented a letter from the Jefferson County Citizens for Economic Preservation (JCCEP) which proposed an amendment to the Subdivision Regulations to extend Senate Bill 595 to July 1, 2015. She stated that this amendment would be submitted to the County Commission by a JCCEP representative soon.

10. **County Commission Liaison Report.** None.

11. **Planning Commission Exchange.**

- **Report from the Health Department Meeting Liaison.** None.
- **Report from the Public Service District Meeting Liaison.** None.
- **Report from the Parks and Recreation Meeting Liaison.**  
Mr. G. Taylor stated that Parks and Receptions have been discussing the possibility of purchasing the old 3M property in Middleway for park area.
- **Report from the Jefferson County Development Authority Meeting Liaison.**  
Mr. Burns reported that there had been a meeting with Representative, Shelly Capito that was productive.
- **Report from the Water Advisory Committee Meeting Liaison.** None.

12. **President's Report.** None.

13. **Actionable Correspondence.** None.

14. **Non-Actionable Correspondence.** None.

Mr. G. Taylor moved to adjourn the meeting at 9:45 PM. Mr. Burns seconded the motion which carried unanimously. An audio recording and/or a video recording of the meeting may be found on our website. These minutes were prepared by Amy Puetz, Planning Clerk.

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

### AGENDA REQUEST FORM

Name: Jennifer Brockman

Department or Entity: Planning and Zoning

Estimation of amount of time needed for appointment: 15 minutes

Date Requested – 1<sup>st</sup> Choice: May 3, 2012 June 14, 2012

Date Requested – 2<sup>nd</sup> Choice: May 10, 2012

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

Subject: **Recommendation of Planning Commission to the County Commission on the landowner-initiated petition to amend the County Zoning Map for a 8.98 acre property owned by Gene Capriotti, designated as Tax District: Harpers Ferry, Map: 9-2, Parcel: 58, located south of Route 340 (William L. Wilson Freeway) and east of Route 27/2 (Allstadt's Hill Road) for the purpose of setting a public hearing to be held by the County Commission**

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

**On April 24, 2012, the Jefferson County Planning Commission held a Public Hearing for the purpose of receiving public input regarding a landowner-initiated petition to rezone a 8.98 acre property owned by Gene Capriotti, designated as Tax District: Harpers Ferry, Map: 9-2, Parcel: 58, located south of Route 340 (William L. Wilson Freeway) and east of Route 27/2 (Allstadt's Hill Road) currently occupied an access easement for lots to the east of the property. The rezoning request is from the Residential-Growth zoning classification to the Residential-Light Industrial-Commercial zoning classification. Pursuant to state law, WV Code 8A-7-9(c), the County Commission must receive the advice of the Planning Commission regarding whether such a request is consistent with the County's adopted Comprehensive Plan.**

**To this end, the Planning Commission held a Public Hearing, reviewed the applicant's application (attached), the staff's report on the consistency with the Comprehensive Plan (attached), received public input (attached), and attempted to make a determination regarding consistency with the Comprehensive Plan. Based on a review of the 2004 Comprehensive Plan and consideration of the facts and opinions presented, the Planning Commission moved to forward the petition to the County Commission with a finding that the application was consistent with the Comprehensive Plan. This motion passed with a vote of 5-0.**

**In accordance with Section 12.2(C) of the Jefferson County Zoning Ordinance, subsequent to the recommendation received from the Planning Commission, all recommended map amendments require a Public Hearing before the County Commission prior to a final determination.**

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

**I move to schedule a Public Hearing on the Proposed Zoning Map Amendment for 8.98 acre property owned by Gene Capriotti, designated as Tax District: Harpers Ferry, Map: 9-2, Parcel: 58, located south of Route 340 (William L. Wilson Freeway) and east of Route 27/2 (Allstadt's Hill Road) on \_\_\_\_\_, 2012 at \_\_\_\_\_ pm.**

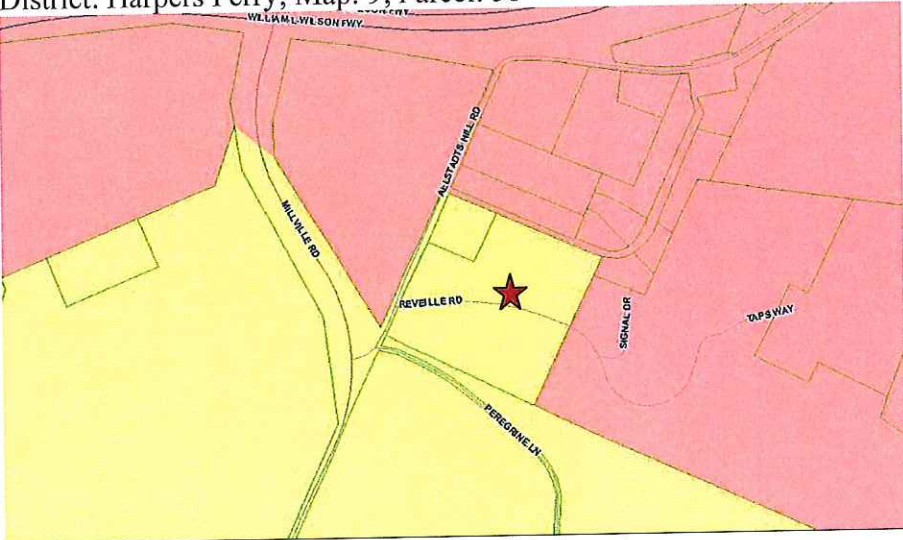
Attachments:

- **Staff Report regarding the Capriotti Rezoning Application to Planning Commission/County Commission (by Seth Rivard date April 24, 2012)**
- **Summary of Public Testimony Received at the April 24, 2012 Planning Commission Hearing and Public Comments received in writing**
- **Rezoning Application**

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 Jefferson County Planning Commission Meeting  
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**Capriotti Rezoning PC File # Z12-01**

Item #5: Request by Gene Capriotti for a zoning map amendment for property designated as Tax District: Harpers Ferry, Map: 9; Parcel, 58. Requested zoning map amendment from Residential-Growth to Residential-Light Industrial-Commercial.

APPLICANT:	Gene Caprotti
OWNER:	Same as above
DEVELOPER:	Same as above
SURVEYOR/ENGINEER:	N/A
PROPERTY LOCATION:	The property is located on the east side of Route 27/2 (Allstadt's Hill Road), near the intersection with Route 27 (Millville Road).
LEGAL DESCRIPTION:	District: Harpers Ferry; Map: 9; Parcel: 58 
ZONING DISTRICT:	2011 Zoning Map Designation: Residential Growth
SURROUNDING PROPERTIES:	2011 Zoning Map: North: R/LI/C and Rural      East: R/L/I/C South: RG                      West: R/L/I/C
LOT AREA:	8.98 acres
PROPOSED ACTIVITY:	To rezone this Residential Growth property to a designation of Residential/Light Industrial/Commercial
Planning Commission Responsibility:	To advise the County Commission as to whether the requested Zoning Map Amendment is consistent with the 2004 Comprehensive Plan

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Staff Finding:	In this report Staff presents the various factors related to this property based on the Comprehensive Plan. Staff does not find the plan to be consistent with the 2004 Comprehensive Plan and also finds there have been changes of major changes of an economic, physical or social nature that do not support the request. The recommendation section of this report is critical in understanding the Staff recommendation.
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## Background

The property on Alstadts Hill Road, Harpers Ferry, WV, is a vacant parcel located near the intersection of Alstadts Hill Road and Millville Road and north of Old Standard Quarry. Image 1, is a location map showing the parcel requested for rezoning.

Image 1



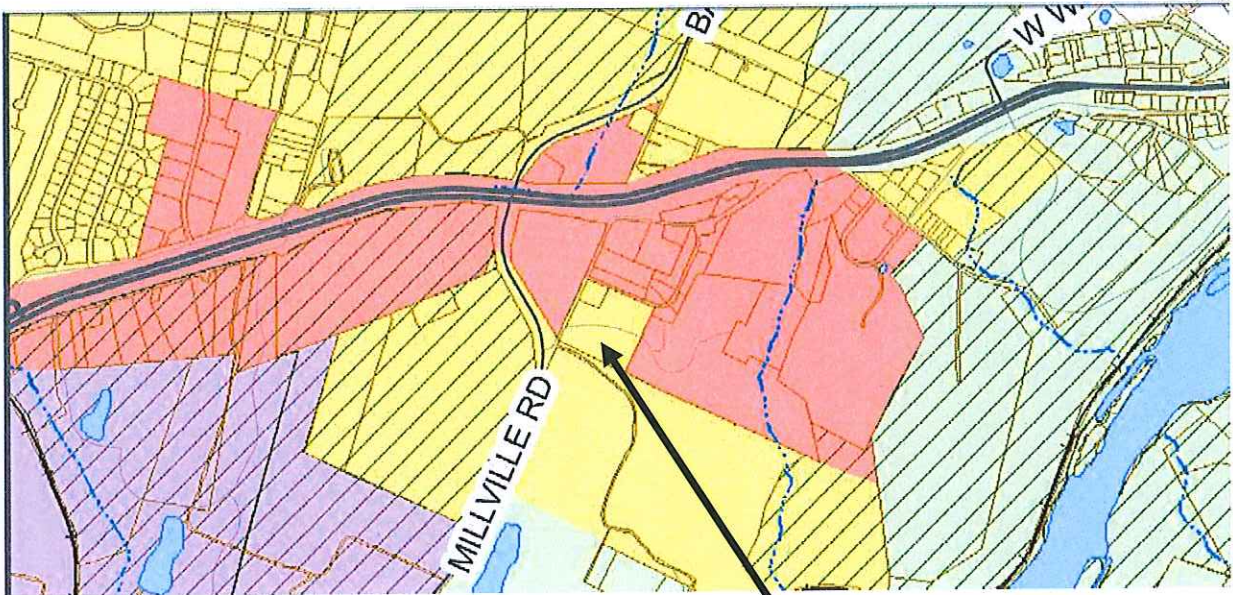
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## **Introduction and Purpose**






The applicant has requested rezoning the 8.98 acre property from Residential-Growth to Residential-Light Industrial-Commercial. Access to the property is from Alstadts Hill Road. Surrounding the subject parcel, the properties to the east and west are zoned Residential-Light Industrial-Commercial, properties to the north are zoned both Residential Growth and Residential-Light Industrial-Commercial, and the property to the south is zoned Residential Growth. Image 2 below shows the current zoning for surrounding parcels and Image 3 and 4 shows the National Park Service Property (Images 3 and 4 are at end of document).

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Image 2



**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

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The applicant has requested rezoning of the entire subject parcel from Residential Growth to Residential-Light Industrial-Commercial. The following report has been prepared to assist the Jefferson County Planning Commission and Jefferson County Commission in making findings regarding the consistency of the proposed rezoning with the 2004 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 concludes that the request is not consistent with Comprehensive Plan and notes that while there are 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, these changes do not support the rezoning request. This assumption is also limited to the proposal to rezone the subject site. Additionally, there has been a detailed study of the US 340 east corridor that has an impact on this request. This will be addressed in the recommendation.

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

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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**

### Existing Zoning District:

The Comprehensive Plan notes that *"This district (Residential Growth) and the 'Residential-Light-Industrial-Commercial' Zoning District, are co-mingled and comprise a strong majority of the 'Designated Growth Area.'"* This statement acknowledges that the Residential Growth district is a growth oriented district. In addition to a broad range of urban density residential uses, the district permits day care centers, hospital, nursing home, and churches. This zoning district should not be considered a limited use district.

### Proposed Zoning District:

The Comprehensive Plan provides the following perspective on 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*

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*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.*

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.

It should be noted that the broadness of this zoning category often raises concerns and is one of the primary reasons that new commercial zoning categories are currently under consideration.

### Natural Resources:

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. 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

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where appropriate. Outlined on page 14 is the US 340 Corridor East Gateway Plan which provides methods to achieved the balance between development and natural resources.

Historic Resources:

The Comprehensive Plan discusses the natural, environmental and historical resources along the US 340 Corridor and this analysis would not be whole if this important component is not addressed.

- *"In terms of environmental resources, Jefferson County suffers from an embarrassment of riches. 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. 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. 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)."*

In addition to the natural resources of the community, the 2004 Plan discusses the County's historic resources in depth. It is summarized here 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*
- *The site of the John Brown Insurrection*
- *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.*

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- *Given its size and population, Jefferson County has been fortunate in the amount of historic preservation projects that have been implemented around the County. 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.*
- *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.*
- *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)."*

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.

It is 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 ventures. Potentially impacting that significant, valuable and irreplaceable part of the county and the affected economic generators is unsystematic.

Staff notes that care should be taken when reviewing rezonings that might jeopardize the efforts to nurture the tourism economy or reduce interest in visitation to tourist offerings. The subject property is an element of a historic battlefield as shown on Image 5.

### Transportation Impacts:

The Comprehensive Plan discusses the critical role of the transportation routes, noting:

- *"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*

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*conditions which probably will be facing the people of Jefferson County indefinitely (pg. 26)."*

As many people are aware, the fact that inadequate funding and increased transportation demands are conditions the County is likely to continue to face indefinitely is ominous. The staff acknowledges that there is an existing bottleneck along US 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. While this development by itself may or may not generate a lot of traffic, without a coordinated transportation planning tool, the cumulative effect will hinder the transportation grid beyond its current condition. It is certainly possible that the intersection of Bakerton/Millville and US 340 would see an increase in traffic pressure from this rezoning, other rezoning's and accumulated development pressures. In this instance, the unsignalized intersection has significant safety issues.

Without a coordinated traffic analysis for this property and surrounding parcels, the dangers of this intersection are difficult to anticipate. Without adequate review and implementation of required improvements, the increased activity in this area will result in a negative decline in safe and convenient access at this intersection.

The Comprehensive Plan reflects the growth in traffic volumes, along the Route 340 Corridor, from 1996 to 2002. It is clearly the most heavily travelled route in the County. The 2008 West Virginia Department of Transportation traffic counts show 38,000 average daily trips (ADT) at WV 26 (Keys Ferry Road) and 29,400 near Bakerton Rd.

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.*

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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).”*

In the past year Staff has undertaken a detailed study of the US 340 East Gateway corridor and the study is addressing the 6 points listed above and providing long term options to address the concerns raised in the Comprehensive Plan. The US 340 study has been done in collaboration with the West Virginia Department of Highways and Hagerstown Eastern Panhandle Metropolitan Planning Organization. Both organizations have the jurisdiction to address these elements and funding mechanisms. More recently, the State of West Virginia has announced a plan to study the traffic movements along the corridor from Charles Town, WV to Frederick, MD. Again, while road improvements may not be in the near future, a study of the traffic is a positive move in the right direction and will begin a priority for future funding.

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. 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. Without a detailed site plan for a specific use, the impact is hard to predict.

Water and Sewer Proximity:

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Water and sewer is located near this property. The Comprehensive Plan encourages urban level developments, such as the current zoning of this property, to be on a central water and sewer system, whether public or privately owned.

**Implications of National Park Service Property:**

Since 2004, there have been substantial acquisitions by the National Park Service surrounding this property that were not anticipated in 2004. If the Commission determines the proposed rezoning is not consistent with the 2004 Comprehensive Plan, it 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."* in order to recommend approval of the request. There have been major changes to the US Route 340 Corridor area that were not anticipated when the Comprehensive Plan was written. The acquisitions by the National Park Service have had major economic, physical or social change in this specific corridor. The amount of property purchased has limited the size of physical development in the area and by extension the amount of traditional economic activity at this intersection. The social change is from development to preservation and a community expectation of historic and open space preservation.

As the Planning Commission determines the merits of this rezoning, the amount of land protected by the NPS in this area, which was not anticipated in the Plan when it was written in 2004 is a factor for consideration, but does not support the rezoning request.

**Changes elsewhere on US 340:**

Any discussion about new development that has occurred along the US 340 corridor toward Charles Town needs to acknowledge that the existing zoning was in place when those areas developed. There were no rezonings along the corridor. As this zoning existed for those properties, the Comprehensive Plan recognized the potential development in those locations and made no recommendations for change in the corridor. On the other hand, the Comprehensive Plan discussed the area surrounding the battlefield as an important County and State resource worthy of protection. Navigating these conflicting values, the US 340 corridor study provided a path from which to provide a balance. If adopted as an amendment to the 2004 Plan, the draft document provides a planning process that would permit the rezoning based on future land use map and along with other considerations in the plan.

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Development Implications:

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)."

Staff concurs with the need for mixed development to provide for a variety of uses when possible. 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. There are a variety of permitted uses in the proposed zoning category which allows for more intense uses. The draft US 340 Plan addresses these two elements, economic growth and the natural features that should be retained. The US 340 plan outlines ways to achieve both features when balanced and provide some picturesque vistas that attract people to Jefferson County.

It is possible to view the requested rezoning as an extension of the existing zoning in the area. Without standards in the current ordinances or regulations for building design standards, there is no assurance that the rezoning will result in structures that appropriately designed for the area and protection of existing natural and historic features on the property. The study undertaken along the corridor in the past year has provided mechanisms for balancing scenic views and economic development. While typically viewed as only able to promote one feature and lose the other feature, there are ways to blend the two and result in a positive development. These goals have been unchanged for over 20 years; there is a common held vision that these elements are important to the County.

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.

- *Promote growth and development that are both economically and environmentally sound.*
- *Encourage and support commercial, industrial, and agriculture activities to provide a diversified and sound local economy.*

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- *Promote the conservation of the natural, cultural, and historical resources and the preservation of its scenic beauty.*
- *Advocate the maintenance and improvements of transportation systems so that people and goods can move safely and efficiently throughout the County.*
- *Promote pedestrian friendly, livable communities.*

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 \$729,0000,000 for the 2008 year (Source 1). The proposed rezoning is within the area that visitors to the State and County acquire their first impression of the scenic views. 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.”*

A well-developed site could fit into the goals of the Comprehensive Plan, particularly for this location. A development that addresses natural features, such as adding concentrated landscaping, would result in some protection of the scenic as well as providing economic opportunities in the County.

#### US 340 Corridor East Gateway Plan:

This segment of US 340 is undergoing a comprehensive and systematic study to address the current and future transportation and land use needs of the corridor. This study is near completion and should be allowed to finalize 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, 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 or right of way dedication to be set aside 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. With a detailed traffic analysis, each development that occurs in the area could assist in improving the intersection without a disproportionate burden

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to anyone applicant or project. The goal is to develop a unified solution to the transportation problems, not limit land use decisions.

The current East US 340 Corridor Plan recommends 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 894 acres that are potentially developable (Image 6). 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. 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. Based on the draft future land use for the study, the rezoning is in keeping with the 340 Plan. It is important to remember the goal of the Plan is more than just allow an increase in zoning, but to plan for transportation improvements and possible design standards for structures. If the US 340 Corridor East Gateway Plan were to be adopted as an amendment to the 2004 Plan, it could play a role in this analysis.

When the US 340 plan was initiated, there were no predetermined findings. As the planning process has unfolded, the future land use map shows support for the requested rezoning. In an area where agreement is often difficult, the planning process shown positive results. This process has shown agreement for property owners to exercise their rights with less controversy that would not benefit anyone. A project built on mutual agreement is more productive than one on disagreement.

Summary:

Finally, the Comprehensive Plan accurately and clearly describes the 340 corridor that this rezoning could affect, as noted below:

- *“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*

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*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 8.98 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."

### ***Staff Recommendation***

Staff does not find the proposed rezoning to be consistent with the 2004 Comprehensive Plan. It also finds there have been changes of major changes of an economic, physical or social nature; however these changes do not support the rezoning. The major changes as it pertains to this request is delineated in greater detail on page 12 (Implications of the National Parks Service Property).

### **Non-conformance with the 2004 Comprehensive Plan:**

Since the 2004 Comprehensive Plan is the only adopted document permitted by state law to assess the requested rezoning, a review of policies, objectives and recommendations provided in the plan, when taken together, provide a compelling argument for denial of this rezoning application. They include:

- The existing zoning, Residential Growth, for the property is growth oriented. This land use designation for the property is in keeping with the Comprehensive Plan. The

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Comprehensive Plan for the 340 corridor does not discuss any need for additional zoning changes along the corridor. The Plan does go into detail that the growth in the corridor should not be "...indistinguishable in character..." from other communities (pg. 73).

- The Comprehensive Plan acknowledges the problems of the transportation network and the possible efforts to amend those problem areas. This intersection is a location that has a high number of traffic counts, is dangerous and there is no coordinated Plan for this to be improved. Each development may only add a limited amount of vehicle trips as a single development, but as a collective of all the developments possible at this intersection, it is a significant impact. If this site were used for light industrial uses, the associated truck traffic would probably overload the capacity of the roads in that location.
- The Comprehensive Plan does discuss that while the Residential-Light Industrial-Commercial District is considered mixed use, it does not require an appropriate mix of uses. The light industrial use is not compatible with residential uses and as such makes it difficult to classify the district as mixed use. While it allows for the option of mixed use, it is generally developed as a single use. There is no assurance that the permitted zoning district will not be used for light industrial uses. Since this eastern most section of 340 is described in detail in the Plan for its natural, historic, and cultural resources, the possibility of light industrial uses, fast food, strip centers or franchise businesses are not in conformance with those elements of the Comprehensive Plan or that specific area of the corridor.
- Page 72 of the Comprehensive Plan identifies the Route 340 Corridor as an area that should be targeted for special study. The Comprehensive Plan 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, viewsapes, 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

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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.

Unanticipated Changes:

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 onto 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. However, these changes do not support the rezoning. Since 2004 the area has experienced a significant shift toward acquisition of historic properties by the National Parks Service. The acquisition has resulted in an economic change in that location where more land will be preserved than developed. 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 near lands that are in public holdings should be reviewed in a different fashion.

US 340 Corridor East Gateway Study:

In March 2011, the Jefferson County Planning Commission and County Commission undertook the 340 corridor plan as recommended in the Comprehensive Plan. As this study nears completion, a community social shift has occurred that has resulted in a proactive development plan for the corridor and growth in this specific area with the guidelines for development standards.

The US 340 East Gateway Study is the result of a highly involved and detailed review of that particular area, whereas the Comprehensive Plan is a broader plan that is now dated. The methodical review of the corridor in the study has resulted in a draft land use map that creates a unified corridor plan and a level of buy in from the community.

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In this specific are the corridor study has provided an opportunity to promote growth in a location that finds itself conflicted by the goals of the Comprehensive Plan. Those goals are to both promote economic opportunities and protect the natural, historic and cultural resources of County.

The US 340 study has addressed this corridor with meticulousness and will allow for land use decisions based on an overall plan, not an ad hoc basis. It is a possibility that the corridor study may have an overlay zone, in this area that allows the applicant more flexibility in uses. In this case it would 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.

The new opportunities on the horizon provide Staff, the applicant, the decision makers and the public with an ability for a better decision. Currently planning in the corridor is ad hoc. In the past year, this has been Staff's position on the requests in this area, and this request is similar in that respect and with the right mechanism in place, could provide for better planning in this area.

**New Zoning Categories:**

Historically, in Jefferson County, the lack of assurance has been a limiting factor in rezoning requests. Unfortunately, that is not productive and quality planning that a community should strive for in developing a predictable land use system. While the Residential-Light-Industrial-Commercial District has been referred to in the past as the "mixed use" district, Staff has always added a caution to this statement. The caution is that the district does not require any mixing of uses, only the possibility of mixing uses. Further, the uses are so broad as to be incompatible if the least and most intense uses of the district were to be mixed. Currently, the County is developing new commercial zoning districts that will provide and facilitate a better planning process.

**Final Recommendation:**

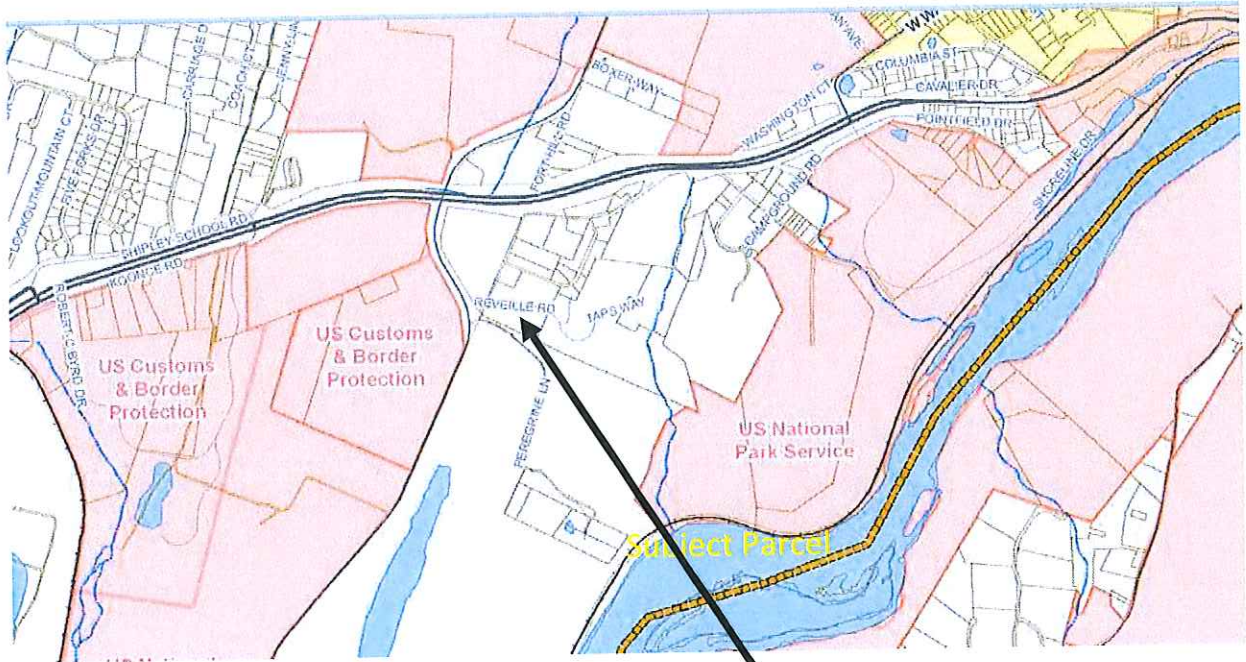
Staff recommends that the applicant wait 6 months. This would allow for the US 340 East Gateway Corridor study to be finalized and provide at a minimum recommendations regarding land use (possible rezoning options) and traffic impacts. Additionally, the new zoning categories currently under underway will provide another option for a more precise and predictable planning tool. This recommendation is not unreasonable. At best, the applicant is able to market the property in a manner that the

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end user can be assured less intense scrutiny and assure a smoother process or approval. At worse, the applicant is in the same position that they are in currently.

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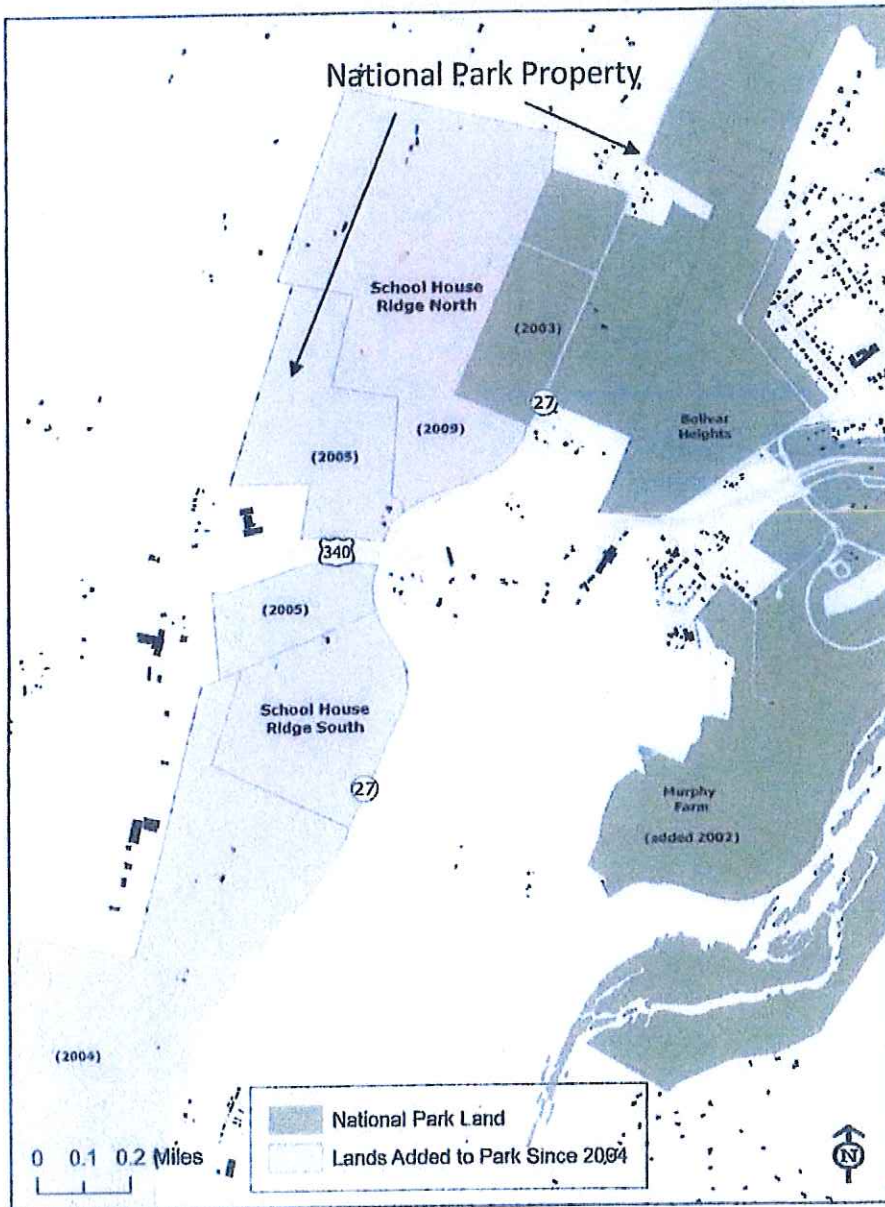
Image 3



Subject Property

Image 4

### Growth of Harpers Ferry NHP Since 2004



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Image 5

School House Ridge and Bolivar Heights

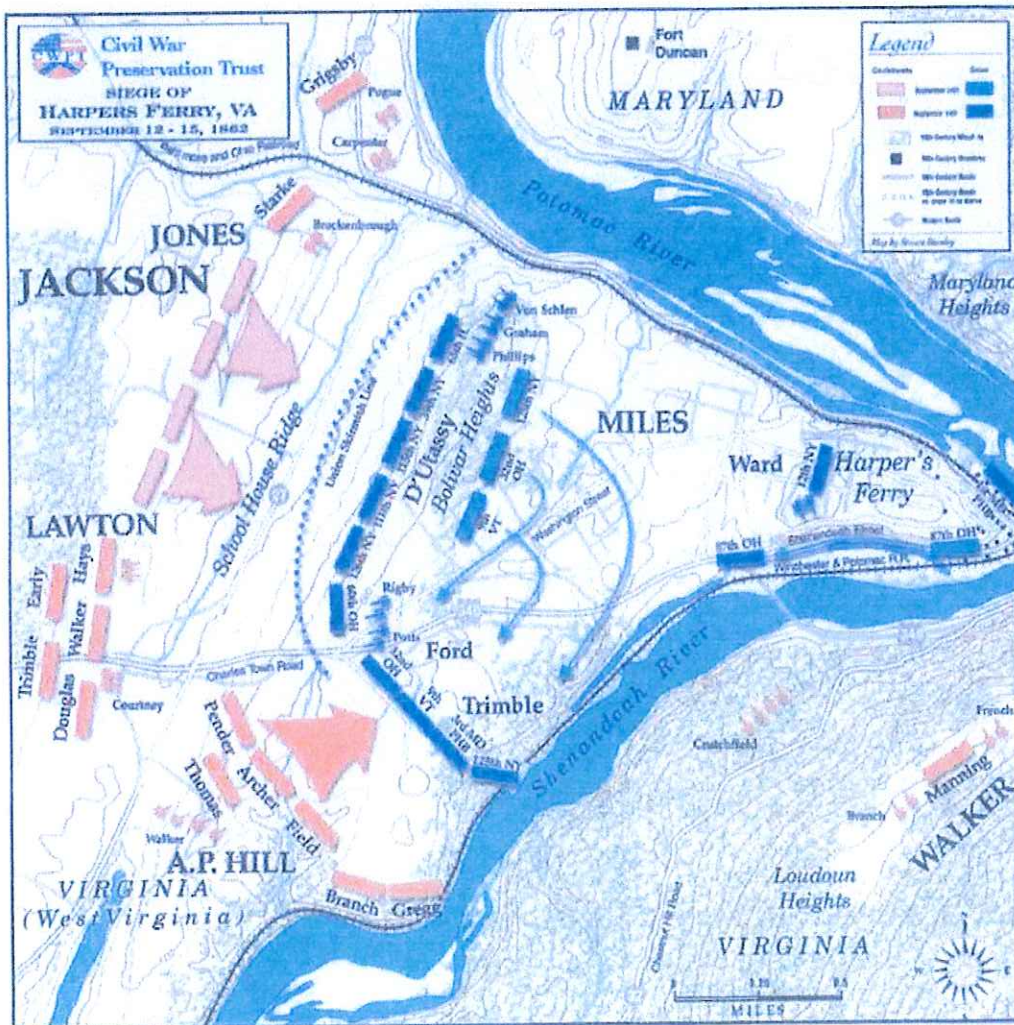
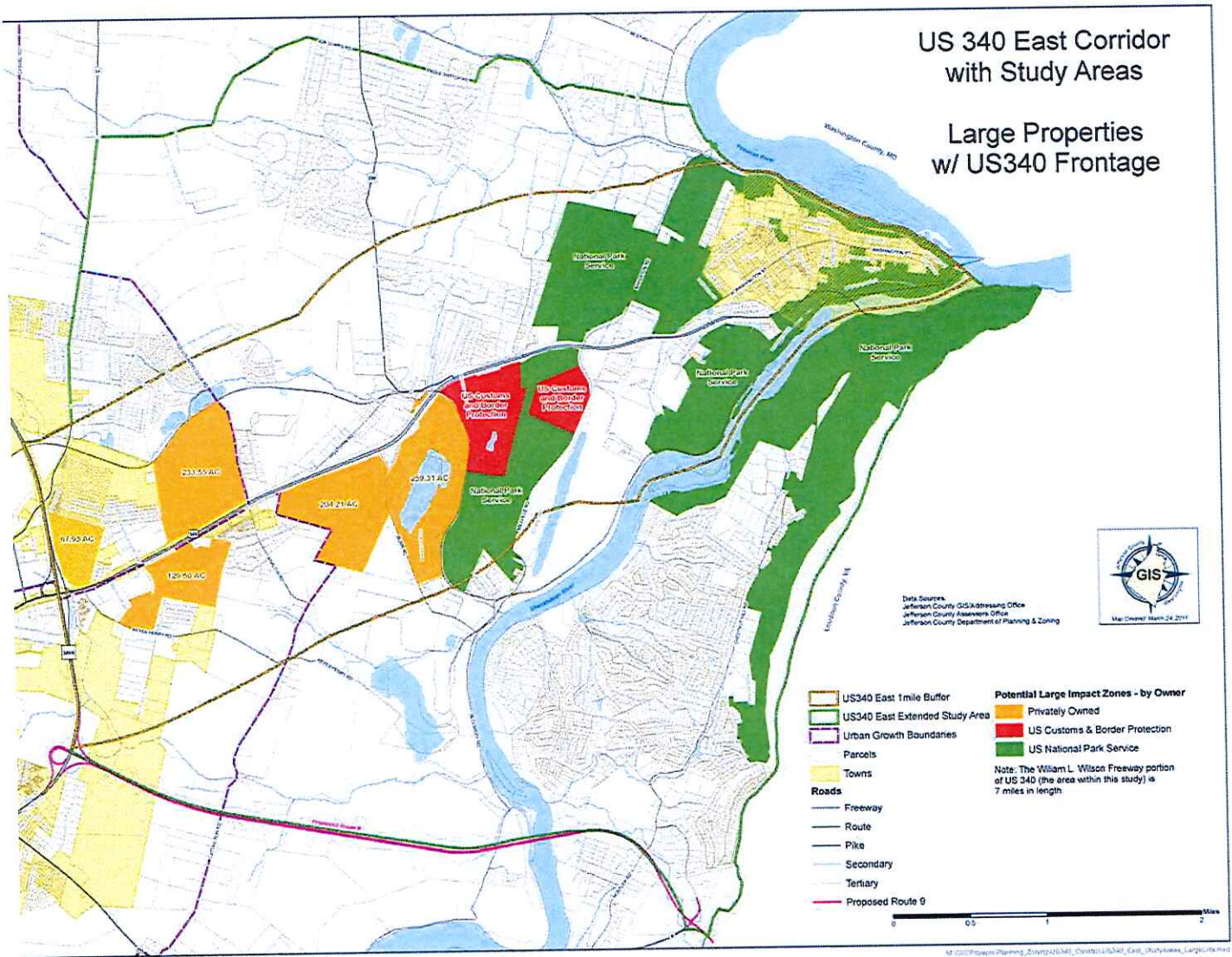


Image 6



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**Source 1**

Economic Impact of Travel on West Virginia 2000-2008 Detailed State and County Estimates  
Prepared for West Virginia Division of Tourism South Charleston, West Virginia

**Public Comments Received at April 24, 2012 Planning Commission Public Hearing  
Regarding the Rezoning Request for the Capriotti Property**

Name	Concerns	Developer's Representative's Response	PC Comments
Beth Marrone, adjoining property owner	<ul style="list-style-type: none"> <li>- Spoke in opposition of rezoning the property.</li> <li>- Believed that area would stay residential when she purchased her home 16 years ago.</li> <li>- Concerned that traffic would potentially become much worse dependent upon the use that would be placed on the property. This is especially important to her since the access to her home is an easement through the Capriotti property.</li> <li>- Concerned that additional traffic could exacerbate already hazardous traffic situations.</li> </ul>	Annette Van Hilst, Consultant, responded that any Light Industrial uses would be limited by regulations and standards. She commented that the area is not within the park boundaries. She assured Ms. Marrone that the easement to her home would remain in place. She informed the Planning Commission that traffic will continue to be a problem even if the property is not rezoned. She explained that, even under the current zoning, the property could consist of many housing units which would lead to more traffic than a business.	Mr. Pellish asked Ms. Van Hilst to confer with her client and draw up a proposal to compensate for Ms. Marrone's inconveniences.
Dr. James Gibson, owner of Alstadt property	<ul style="list-style-type: none"> <li>- Spoke in support of rezoning the property.</li> <li>- Believes the area had been used for many years for commercial uses and that commercial uses make sense for that area.</li> </ul>		
Eric Sokol, adjoining property owner	<ul style="list-style-type: none"> <li>- Spoke in support of rezoning the property.</li> <li>- Confirmed the traffic issues in the area.</li> <li>- Believes the area should be rezoned as an opportunity to allow for outdoor tourism.</li> </ul>		
Mary McGreevy, adjoining property owner	<ul style="list-style-type: none"> <li>- Spoke in opposition of rezoning the property.</li> <li>- Concerned that there is no specific plan for the use that will be on the property. She stated she would like to know what is going in next to her house.</li> <li>- Stated that traffic is a concern.</li> <li>- Does not want River Riders to use the property to expand the business.</li> <li>- Concerned of the aesthetics of the area to visitors and protection of the viewshed.</li> </ul>		
Matt Knott, area property owner (Via email)	<ul style="list-style-type: none"> <li>- Wrote in support of rezoning the property.</li> <li>- Commented that the mixed use request is a common zoning category to the surrounding properties.</li> </ul>		
Rebecca L. Harriett, Superintendent of the NPS (Via letter)	<ul style="list-style-type: none"> <li>- Wrote in opposition of rezoning the property.</li> <li>- Believes the request is overly broad and would allow uses that may be out of context with the character of the area and that there will be a negative impact on historic values and uniqueness.</li> <li>- Believes that the request is not in conformance with the Comprehensive Plan.</li> </ul>		

Sketch Plat:

Attached

Tract Size:

8.98 Acres

Discussion on:

Comprehensive Plan compatibility of the proposed change: Included.

Any Change of transportation characteristics and neighborhood from when the original ordinance was adopted: Included.

*A. Comprehensive Plan Compatibility*

The 2004 Comprehensive Plan includes many recommendations. However, only a few address items that can be helpful when dealing with a rezoning.

These recommendations include the following:

**Recommendation 3.18 on Page 64:**

“The County should continue to pursue new industrial and commercial development in order to diversify its economy, increase the tax base and thereby mitigate the problems of increasing residential growth, and provide quality employment opportunities in the workforce.”

Commentary:

Currently this property is zoned Residential Growth. As such the applicant could design a project that included many apartments, townhouses and condominiums without a commercial component to offset what is raised in this recommendation. If the property were rezoned to the ‘mixed-use’ zone, then it could develop a commercial component that would lessen the residential impact and provide services to the residential traffic created by only a housing development.

Also, due to the recent expansion of River Riders, this property would be a natural expansion to River Riders, or an opportunity to provide commercial services to the patrons of the successful business. This property contains the access to a good portion of the property owned by River Riders.

**Recommendation 3.25 on Page 73:**

“The County should study the US 340 corridor, including the land use, viewscape, economic development and traffic design and management in order to create an effective strategy for the long term management of this important mixed-use corridor”.

**Commentary:**

This study is underway with its original attempt to address economic development and traffic characteristics as the Comprehensive Plan suggests. In the implementation section of the Plan (page 106, attached), to implement Recommendation 3.25, it mandates a ‘cooperative planning effort with the WV DOT to improve the US 340 corridor.’ As the study progressed several interesting findings were presented by the Hagerstown Eastern Panhandle Metropolitan Planning Organization (HEPMPO) and the consultant working on the Route 340 East Corridor Study. First, this study did not address where the traffic on Route 340 originated or where the traffic was going. So, the question remains how much of the traffic on Route 340 is ‘pass through’ traffic versus local traffic. It should be estimated that quite a bit of the Route 340 traffic is pass through traffic, since Route 340 is a major east/west connection to Interstate 81 from the Baltimore/Washington metropolitan area. If so, there may be other alternatives to address the traffic on Route 340 in Jefferson County. These alternatives could include bypasses and improved routes outside the 340 corridor. The second remarkable item was that the Bakerton/Route 340 intersection didn’t appear to be included in HEPMPO’s prioritization of needed improvements in the Eastern Panhandle.

The applicant believes that the 340 study should identify a large portion of the 340 Corridor as key to economic development by proposing to rezone the area to as much commercial, industrial and mixed-use land as possible. This would maximize the land use in an already defined mixed-use area. This area is already indicated as the major ‘growth area’ of Jefferson County in the 2004 Comprehensive Plan. The Federal Government certainly recognized the value of the location with the ongoing construction of the massive U.S. Customs and Border Patrol operation.

Finally, this property is already surrounded by River Riders, the Old Standard Quarry and the Flea Market. All three of these properties are either zoned Residential/Light Industrial/Commercial or already approved by the State for a large commercial and office development. The Route 340 East Corridor Study should recognize this location, as the County Commission has in its recent rezoning actions.

Based on the above, the Applicant believes that this rezoning is consistent with Recommendation 3.25 in the Comprehensive Plan as it relates to the study contemplated by the County Commission in its desire to enhance economic development along this corridor.

**Recommendation 4.01 on Page 78:**

“It is the vision of this Comprehensive Plan that development will be concentrated within the designated growth areas”.

**Commentary:**

The map that shows the designated growth area is found on page 75 of the Comprehensive Plan. This map is included with this petition. The subject parcel is shown within the designated growth area on that map. On page 70 of the Comprehensive Plan, it states that the strong majority of this area is designated as the Residential Growth District and the Residential/Light Industrial/Commercial District. Page 71 goes on to say that there is a need to maximize the ‘potential for commercial development to offset the demands of residential development’ because every property developed entirely for residential use is a lost opportunity for much needed commercial development.

Since the subject property is already zoned Residential Growth and it is located within the designated growth area, the rezoning of this property to mixed use is a perfect opportunity to realize this need for commercial development. As such, this rezoning application is in perfect conformity with the 2004 Comprehensive Plan.

The applicant believes that this rezoning is very much consistent and compatible with the 2004 Jefferson County Comprehensive Plan based on the above recommendations.

**B. Change of Neighborhood**

The zoning designations and changes in use and intensity of uses have significantly changed the neighborhood in the very recent past. Furthermore, the availability of water and wastewater infrastructure has also changed since the original zoning ordinance was adopted in 1988.

The zoning changes and the changes in uses that have recently occurred in the area include:

1. The County Commission rezoned several properties in the immediate area of the subject property. Last year, the County rezoned the property on the north side of Route 340 in this area (Shenandoah Development) from Residential Growth to Residential/Light Industrial/Commercial for most of the same reasons found in this petition. Also, in January 2012, the County Commission rezoned the Gibson Property, which is directly across the road from this property to the 'mixed-use' zone, as well. The Gibson property almost entirely fronts the property in this petition.
2. River Riders has expanded considerably in the recent years and most recently purchased the property that shares most of the eastern property line and some of the northern property line with the Applicant's property. These properties are also already zoned Residential/Light Industrial/Commercial.
3. The Old Standard Quarry shares the entire southern boundary with the subject property. This land has recently been subdivided and effectively rezoned by the State for approximately 40 commercial/office/institutional/industrial lots.

These recent changes almost completely surround this property, which would certainly make it an appropriate candidate to share the zoning designation requested.

Another significant change of use in the neighborhood includes the ongoing development of the U.S. Customs and Border Patrol property along Route 340. The development is not only good for the County, but it is huge and there appears to be no limit to what all will be developed on that site.

There have been other changes in the neighborhood, since the adoption of the zoning ordinance, which would support the requested change from Residential Growth to the Residential/Light Industrial/Commercial District. These include the following:

1. Availability of Public Utilities:

Public Water and Wastewater facilities are now available in this neighborhood. In fact, both central utilities are already available to this subject parcel. One of the major goals of the Comprehensive Plan states that the Plan should:

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

Also, since the property is already zoned Residential Growth, any added commercial portion to the development would lessen any school impact. Plus, since the property already has public water and sewer services, the public would have no costs regarding these utilities.

## 2. Growth in the Corridor:

There have been many commercial additions to this neighborhood, and the Route 340 Corridor in general, since the adoption of the zoning ordinance. These include: the addition of the Casino and table games; the Customs and Border Patrol Development; the funeral home; several landscaping business; the expansion of River Riders; the redevelopment of the Quality Inn; the Shenandoah Professional Building; Windmill Crossing including the Sheetz, Aldi and Tractor Supply Company; and the Sears Professional Building to name a few. This is proof that the Route 340 Corridor is destined to continue to provide economic growth for the County. These commercial projects, along with the also approved residential developments along this corridor is evidence that the corridor's mixed use is consistent with the Comprehensive Plan, since they have been developed under the current Plan. The subject property is a perfect fit to 'square-off' the already zoned adjacent properties for commercial or mixed-use development.

## C. Change of Transportation Characteristics:

There have been significant changes in the transportation and traffic characteristics since the original zoning ordinance was adopted. The Route 340 Bridge was replaced and widened. New signals were added and lane adjustments were made at the Route 230 and Route 24 intersections with Route 340. The school bus improvements were also made at the Shipley School intersection. Also, an entire new intersection with a signal is planned for the U.S. Customs and Border Patrol access to Route 340. All of these intersection improvements have made a significant positive change to the transportation patterns for the betterment of the area:

The Harpers Ferry National Park also contributed to the improvements to traffic in the area by constructing their Parking and Bus Transportation Center near Bolivar. This facility has eliminated a lot of conflicting vehicle movements by providing a centralized mass transit operation.

The Planning Staff also announced during the Route 340 Corridor Study that a new cooperative effort between Maryland, Virginia and West Virginia has begun to address the bottleneck 'between the bridges'. Furthermore, some of the commuter traffic was already addressed when the commuter rail station and parking lot at Duffields were built sometime after the original zoning ordinance was adopted.

These improvements to the transportation network have had a positive effect on the traffic flow in the Route 340 Corridor. More needs to be done, but a traffic signal at the Bakerton/340 intersection would help the situation. It is important that the Comprehensive Plan and the HEPMPO prioritize the upgrade of this intersection.

Please note that this property is already zoned Residential Growth. As such, there should be little significant difference in traffic from this property if it is rezoned to mixed-use. A mixed-use development would have a more favorable outcome regarding traffic since some of the local residents could utilize the commercial services available if the property is rezoned.

#### D. Policy and Goal Statement in the Comprehensive Plan

The Comprehensive Plan contains narrative that supports the rezoning request, but it is most evident in the following policies and goals found in the Plan:

'This Plan encourages new development patterns that foster mixed-use neighborhoods so that a sense of community begins at the subdivision level';

'This Plan encourages economic development so that residents can live and work in the County';

(The Plan should) 'Encourage growth and development in areas where sewer, water, schools, and other public facilities are available or can be provided without unreasonable costs to the community'; and,

(The Plan should) 'Encourage and support commercial, industrial, and agricultural activities to provide a diversified and sound local economy'.

Regarding land use policy, the Growth Area Map appears to be the only land use policy map in the Comprehensive Plan. Therefore, this map should be the biggest key in making the decision to rezone the subject property.

E. Conclusion:

The Applicant is requesting that the County Commission approve a map amendment to the Jefferson County Zoning Map. The 2004 Comprehensive Plan; the recent actions of the County Commission regarding rezoning in this area and adjacent to the site; and, the changes in the neighborhood from when the original zoning ordinance was adopted, all support the requested map amendment. This map amendment will change the zoning classification on the applicant's property from the Residential Growth District to the Residential/Light Industrial/Commercial District.



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Gene P. Capriotti



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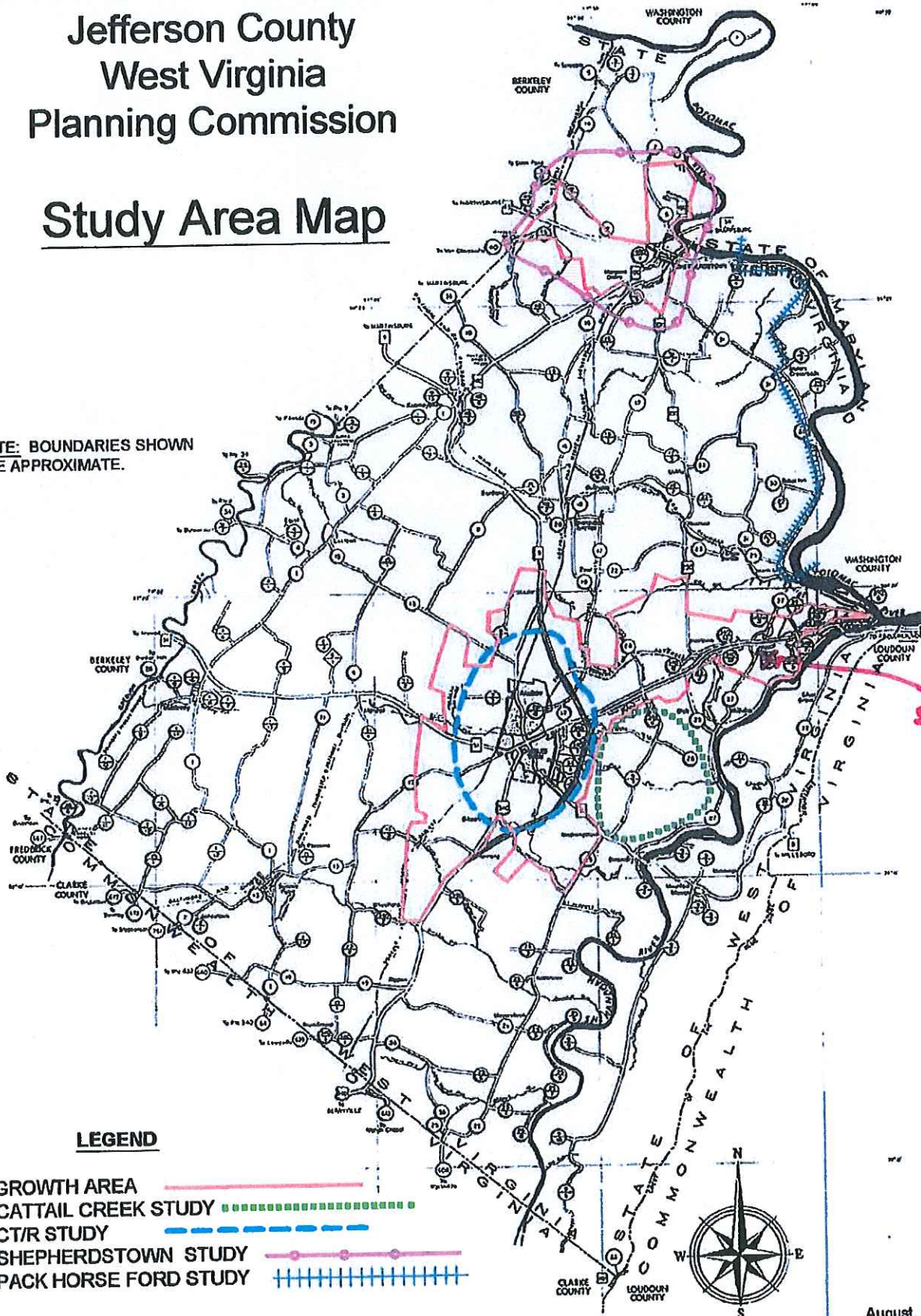
Date



# Jefferson County West Virginia Planning Commission

## Study Area Map

NOTE: BOUNDARIES SHOWN ARE APPROXIMATE.

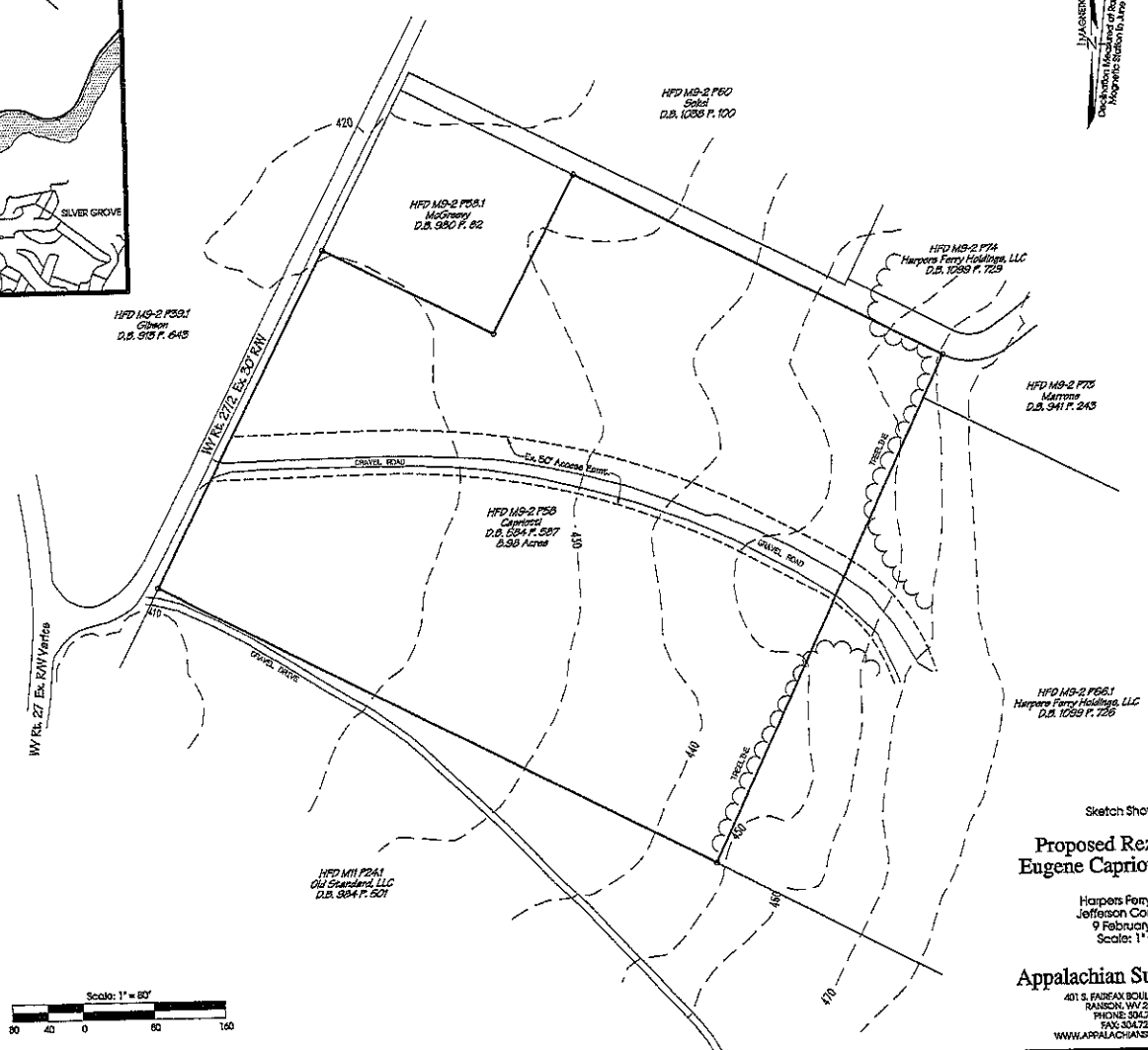
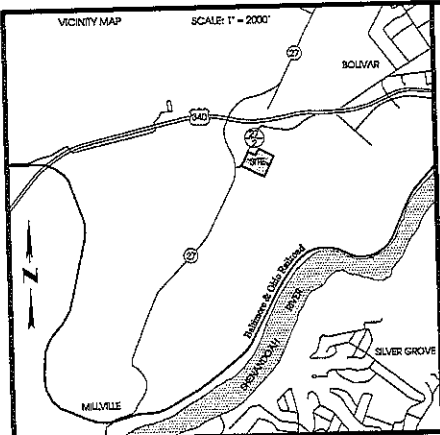


### LEGEND

1. GROWTH AREA —————
2. CATTAIL CREEK STUDY - - - - -
3. CT/R STUDY - - - - -
4. SHEPHERDSTOWN STUDY - - - - -
5. PACK HORSE FORD STUDY + + + + +

August, 2003  
NOT TO SCALE

# 712-01

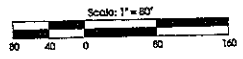


JVAERBIC NORTH  
 7000 W.  
 Charleston, West Virginia 25309  
 Registered Professional Surveyor  
 No. 10000, State of West Virginia

**RECEIVED**  
 FEB 14 2012  
 JEFFERSON COUNTY  
 PLANNING, ZONING AND ENGINEERING

Sketch Showing  
**Proposed Rezoning of**  
**Engene Capriotti Property**  
 Harpers Ferry District  
 Jefferson County, WV  
 9 February 2012  
 Scale: 1" = 80'

**Appalachian Surveys, PLLC**  
 401 S. FAIRBANKS BOULEVARD, SUITE 5  
 RANSON, WV 25425-1611  
 PHONE: 304.724.2008  
 FAX: 304.724.2010  
 WWW.APPALACHIANSURVEYS.COM



#2012007

7/12-01

**the crossroads group**.....

22 van Clevesville Rd. Kearneysville WV, 25430

April 24, 2012

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

Dear Chairperson Taylor, Members Hayes, Stolipher, Taylor, Burns, Baty, Ethers, Smith & Pellish:

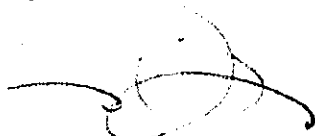
Let me introduce myself, I am Annette van Hilst, an almost life long resident of Kearneysville, having moved to Walper's Crossroads in 1955. I am a registered architect in the State of West Virginia & have worked as a Community Development Director, Planner & Zoning Administrator in Washington & Montgomery County, Maryland & Jefferson County WV. Until early this year, I worked part time as a Senior Land Planner for Dewberry, first out of our Ranson office & then from my home. I previously worked for Appalachian Surveys of WV & for 5 years as the Planner & Zoning Administrator for the City of Charles Town.

Tonight, I am representing Eugene Capriotti in his request for a rezoning of a property he owns in the Harper's Ferry District. Attached to this letter are the following:

- A 14 page presentation that I will be using tonight.
- A 2 page comment on the staff report with additional information for your consideration
- 2 letters submitted by neighbors of the property
  - Jeffrey Carpenter
  - Matt Knott

I ask you to carefully consider all the material presented in making your recommendation to the County Commission regarding the requested rezoning.

Sincerely



Annette G. van Hilst R.A.  
Principal, the crossroads group

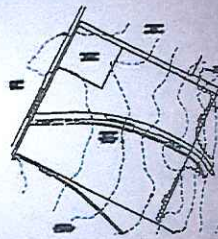
## REZONING REQUEST

Parcel 58 Map 9:2 Harpers Ferry  
District  
April 24, 2012

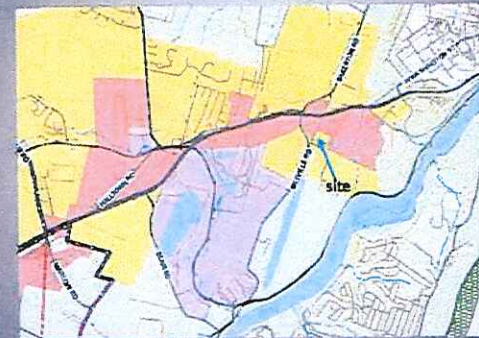
## LOCATION



## CURRENT STATUS

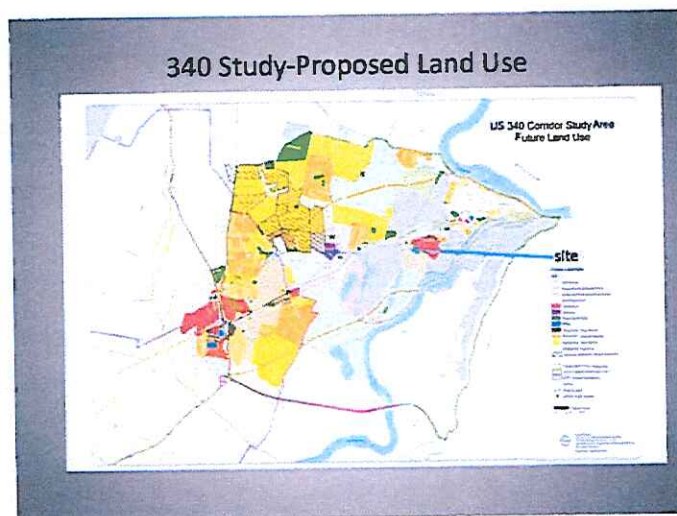
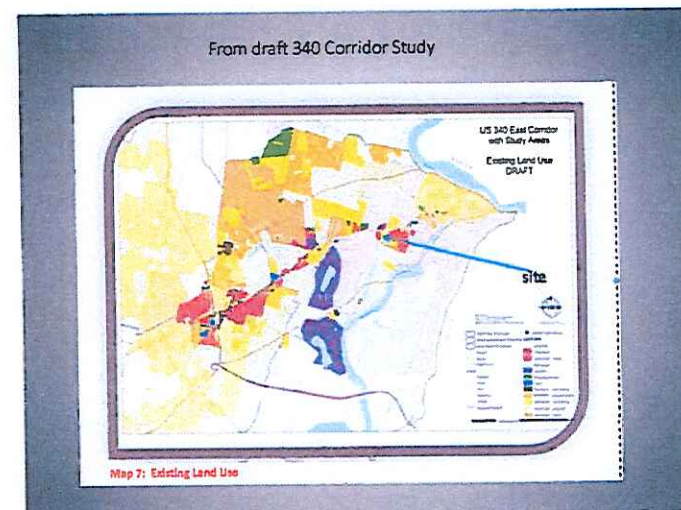


## CURRENT ZONING



**REQUEST**

REZONE FROM RESIDENTIAL GROWTH  
TO  
RESIDENTIAL / LIGHT INDUSTRIAL / COMMERCIAL



**Why Rezone?**

Major change in uses & character along the 340 Corridor since the original zoning was done in 1984

- Original zoning showed most of the area within the 340 Corridor as residential/light industrial/commercial & residential growth.
- The land within the corridor was in private hands
- 340 Corridor was & is the major growth area for the county. Businesses in the Corridor included River Riders, two concrete plants, shopping centers, nurseries, etc
- The Homeland Security Facility & purchase of land by NPS has sharply reduced the amount of land available for mixed use & commercial development.

## Major changes

- Creation of Charles Town Casino & Slots
- Expansion of Harper's Ferry NHP to include land on either side of 340
- New Homeland Security Campus displaced two existing businesses forcing one to relocate to Berkeley County & the other to relocate just above the property being considered for rezoning.
- Improvements to 340 including service roads, stop lights & bridge improvements
- Effective rezoning by the State of the Old Standard Quarry adjacent to the site into a commercial office park development containing 41 lots
- A sewage treatment plant, water & sewer lines have been constructed that serve the property
- Two properties have been rezoned to Residential/Light Industrial/Commercial, one adjacent to the property within the last year
- Land available for commercial or mixed use development has been significantly reduced.

## Proposal is for a rezoning

- Proposal is not for a specific use, but for a zoning category
- Concerns with regards to traffic, landscaping, view sheds etc. are addressed at site plan or at subdivision, not at this stage
- The property meets the requirements for the rezoning

## Response to Staff Concerns

- Non-conformance with 2004 Plan: Because the plan does not state the need for rezoning in the 340 Corridor does not mean that rezoning is not possible due to unanticipated changes within the area. Two rezonings have been approved by the County Commission in the Corridor within the last year.
- Staff is concerned about the impact of a light industrial use, a practical impossibility on this site (except for small craft type uses) on the intersection at 340. No use has been determined & the time to consider traffic impact is when a use has been determined & a site plan is being submitted.
- Staff discusses the requested zoning category & provides an opinion that certain types of development such as fast food (not allowed under the proposed zoning) or strip malls are not suitable for this area. The site is located between an existing river rafting business & a proposed business park. Across the street is the existing flea market that was recently rezoned. Staff admits in the draft 340 Study that the site is proposed for mixed use, but then staff recommends that the rezoning not be approved when the zoning category being requested allows mixed use, while the present zoning does not.

## Continued response to staff concerns

- Though the Comprehensive Plan recommends a special study of the 340 Corridor, the plan was not started until 2011, though the recommendation was made in 2004. If the study was so important, it should have been started soon after adoption of the Comprehensive Plan, not almost 8 years later. The concerns raised can be addressed when a use is known and a site plan has been submitted & should not be a reason to not recommend the rezoning. No moratorium has been put in place to stop development in the corridor.
- When the Comprehensive Plan was adopted in 2004, the Federal Government had not acquired most of the land on the east side of 340 from Millville Road to Halltown Road, land that is zoned for Residential/Light Industrial/Commercial. The expansion of Charles Town along the 340 Corridor had not occurred & water & sewer lines as well as a sewage treatment plant had not been constructed to serve the area in question.
- Staff states that the major change is from development of land to preservation of land. No mention is made of the major decrease in land available for development or of a further decrease the taxable base of the County.

### Continued response to staff concerns

- Staff then proceeds to state that staff support for the requested change might be possible once the 340 Study is adopted. However, changes may occur to the draft study & the date of its adoption is uncertain.
- We note that the study does recommend mixed use for this site.
- Staff appears to want to replace the existing zoning categories with new commercial or mixed use categories prior to revision of the Comprehensive Plan. New zoning categories normally are based on changes in a comprehensive plan. Since our existing plan dates from 2004 & work has not started on updating or revising the Comprehensive Plan, it appears that the cart is being put before the horse!
- FINALLY, the staff recommendation is to wait six months and then resubmit because more information on traffic impacts, land use etc. might be available.

### CONCLUSION

- As stated previously, this is a rezoning request for a broad category, with a use to be determined for the site, though in our original presentation, we suggested several possible uses including expansion of River Riders
- The site is practically surrounded by land that is already zoned Residential/Light Industrial/Commercial. It is a prime location for uses that serve the tourist industry, being located just down the hill from the Harper's Ferry NHP & near the one major motel complex in the area.
- Staff concerns with regards to type of use, traffic impact, screening, landscaping etc. are typically handled at site plan, not during a rezoning request.
- If staff believes as stated in the 340 Study that this site should be mixed use, what harm is done by zoning it as requested at this time.
- We respectfully disagree with staff and urge you to recommend the rezoning to the County Commission.

**Eugene Capriotti Rezoning Request  
Comments on Staff Report  
April 24, 2012**

As the staff points out in the staff report, the Comprehensive Plan contains a lot of narrative that can be interpreted differently by different people. However, there are some statements that deserve consideration. The staff report discusses the Mixed-Use District but leaves out an important paragraph regarding commercial and industrial uses found on page 71:

“Land zoned for commercial and industrial use makes up approximately 5% of the County, which is almost evenly split between the I-C District and the mixed use district. With needing to maximize its potential for commercial development to offset the demands of residential development, every mixed use property developed entirely for residential use is a lost opportunity for much needed commercial development.”

First, it is remarkable that only 5% of the County is zoned for commercial and industrial. Second, the above statement reflects the need to add commercially zoned land in Jefferson County. Since the subject property is already zoned residential, this map amendment can only benefit the need for additional commercial land.

The staff report also points out that the mixed use zone allows unknown industrial uses that may develop on this site. In fact, it would be virtually impossible to put an industrial use on this 9 acre site due to its size. In addition to the small size, the site is bisected by a road and access easement. An industrial use would also need to provide a 200 ft. setback along the north and west property lines. Finally, the mixed use zone requires additional strict standards including: a very restrictive noise limitation; smoke, vibration, ambient air quality and odor limits; fire safety standards: glare and heat standards; and, toxic matter controls. In this location, it is not realistic, as the staff report suggests, that strip malls, fast food restaurants and franchise business could develop on this property. As discussed, it is improbable for industrial and it isn't practical for strip malls. Fast food restaurants shouldn't be an issue since fast food restaurants and convenience stores aren't principal permitted uses in the mixed use zone. And finally, 'franchise business' is a broad category, but the staff report doesn't explain why they would be a bad use.

On page 12, the Staff Report states that the Comprehensive Plan encourages “urban level developments” on this site because of the existing water and sewer service. The applicant would prefer not to turn the entire property into an ‘urban level’ housing development as is permitted by the existing Residential Growth District on this property. The County should not lose sight of the fact that this property can develop residentially, but a map amendment would also allow commercial uses on this property.

Regarding the National Park Service, the County was well aware of the park's expansion plans in 2004 when the Comprehensive Plan was written. Even so, the County didn't make any special allowances for it in the Plan at the time. In the staff report, there also seems to be a lot of emphasis on the concerns of the NPS in this corridor. However, everyone seems to ignore the massive development of the Customs and Border Patrol Complex in the corridor. Whereas the subject 9 acre parcel seems to be a major interest, the hundreds of acres being developed 'down the street' at the Customs Center, doesn't seem to be such a problem. It would seem that much more traffic, etc. would be generated at the Customs development than on the subject 9 acres. As indicated on the map provided on page 21 of the staff report, this property, in fact, does not adjoin the NPS land.

Finally, the staff report suggests that the applicant should wait 6 months to go forward with the map amendment so that the 340 Corridor Study can be completed. This is the same suggestion made for the Shenandoah Professional Building and Gibson rezonings (both approved by the County Commission). However, in this case the Draft 340 Corridor Study is complete. This is a study that has taken the County over a year and a half to complete. It is a Study that carries the full recommendation of the Staff that completed the Staff Report on this map amendment. On page 82 of this staff recommended 340 Corridor Study it states:

"It should be noted that the Future Land Use Map represents an advisory document to be used by Jefferson County's staff, boards, commissions and elected officials in making land use recommendations."

In this case, the subject property is shown as Mixed Use -- Residential/Commercial on that map. It is further supported on Page 81 of that staff recommended study where it states:

"The node at Bakerton/Millville is proposed as a Residential/Commercial Mixed Use area and is buffered by existing residential uses. This future land use category is also shown on northern section of the Old Standard Quarry property."

Even if the Study is not adopted by the County Commission, it still represents what the staff believes that this site should be mixed use.

In conclusion, the County should approve the map amendment for this property, because the Comprehensive Plan supports it just as much as the Plan supported the rezonings of the Shenandoah Professional Building Property and the Gibson property. Both of these map amendments were approved by the County Commission as being consistent and compatible with the Comprehensive Plan. This property is adjacent to the Gibson property and is nearly surrounded by the Residential/Light Industrial/Commercial District and the Old Standard Quarry.

Jeffrey Carpenter  
PO Box 672  
Harpers Ferry, WV 25425

April 16, 2012

Paul G. Taylor, President  
Jefferson County Planning and Zoning Commission  
124 East Washington Street  
Charles Town, WV 25414

Dear Mr. Taylor:

I am a neighbor and owner of a tract of land next to the property owned by Gene Capriotti. It is my understanding that he has requested a rezoning of this property from Residential to Residential/Commercial/Light Industrial.

The purpose of my letter is to express my support for this request and to ask the commission to approve it.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jeffrey A. Carpenter".

Jeffrey Carpenter

Cc: Patsy Noland, President, Jefferson County Commission

Jefferson County Commission  
Department of Planning  
P.O. Box 338  
Charles Town, WV 25414

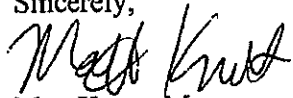
RE: Gene Capriotti Re-zoning Map 9-2 Parcel 58

April 18, 2012

As an adjoining landowner, we support the rezoning of Gene Capriotti's property on Alstadts Hill Road to mixed use residential/commercial/light industrial zoning. Mixed Use Zoning is similar to the zoning category of adjacent properties.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "Matt Knott". The signature is written in a cursive, slightly slanted style.

Matt Knott, Manager  
Harpers Ferry Holdings



# United States Department of the Interior

NATIONAL PARK SERVICE  
Harpers Ferry National Historical Park  
P.O. Box 65  
Harpers Ferry, West Virginia 25425

IN REPLY REFER TO:

L1425 (HAFE)

April 23, 2012

Mr. Paul G. Taylor, President  
Jefferson County Planning Commission  
116 E. Washington St., 2nd floor  
P.O. Box 338  
Charles Town, WV 25414

Dear Mr. Taylor:

This is in response to the petition to rezone the property designated as Harpers Ferry Tax District, Map 9, Parcel 58. The 8.55-acre property is currently zoned Residential Growth and is located south of Rt. 340 on the east side of Allstadt's Hill Road. The owner has requested a change in the zoning to Residential/Light Industrial/Commercial. Due to the overly broad nature of this zoning designation and the potential significant adverse impact on the historic values of this and adjoining properties, the National Park Service (NPS) opposes the rezoning.

It is imperative that the County's zoning categories provide a level of predictability for current and future property owners, business owners, and investors. Equally important is the need to make land-use decisions on a systematic rather than piecemeal basis. Unfortunately, the Residential-Light-Industrial-Commercial category of zoning sought under this petition is poorly construed. If approved, it would allow any number of uses that would be out of scale and context with the character of the historical setting. The NPS urges you to continue your investigation into additional zoning categories that will allow more predictability and result in more thoughtful land use decisions.

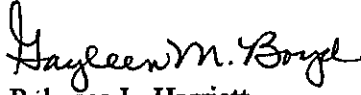
The NPS believes that the subject property and much of the immediate surrounding area are historically and scenically unique. The property is located in the heart of the 1862 School House Ridge Battlefield, site of Major General Thomas J. "Stonewall" Jackson's greatest victory, and a landscape that the NPS and other preservation-minded groups have spent millions of dollars to transform into a premier tourist destination. A recent report estimates that in 2010, Harpers Ferry National Historical Park generated more than \$10 million for the local economy. Inappropriate development at this historical and scenic gateway to Jefferson County will have a negative impact on the local tourism industry with long-lasting implications.

The County's Comprehensive Plan strives to ensure that future development is designed and constructed in such a way that discourages visual blight and does not exacerbate major traffic and transportation problems. The NPS considers this landscape a county, state and national resource, one that deserves careful review and wise judgment. Rezoning this property would run

counter to the Plan's goal to promote growth and development that does not compromise the historic resources and scenic beauty.

Thank you for the opportunity to comment on this important matter.

Sincerely,



for

Rebecca L. Harriett  
Superintendent

cc: Jefferson County Planning Commission Members:

Daniel Hayes

Stephen Stolipher

Clifford Taylor

Ed Burns

Wm. Kelly Baty

Morgan Eppers

Eric Smith

Walt Pellish



*Rec'd  
6-14-12*

James and Barbara Gibson  
201 Needwood Farm Lane  
Harpers Ferry, WV 25425

June 14, 2012

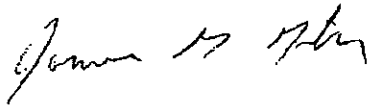
Jefferson County Commission  
Hunter House  
Charles Town, WV 25414

**RE: Capriotti Parcel Rezoning**

Dear Commissioners,

As adjacent property owners we have found Gene Capriotti to be a good and considerate neighbor and we would strongly favor his parcel being rezoned to Mixed Use.

Sincerely,



James and Barbara Gibson  
Owners of the ALLSTADT HOUSE AND ORDINARY  
227-231 Allstadt's Hill Road  
Harpers Ferry, West Virginia 25425

## Debbie Stellato

---

**From:** Nicholas Lund [nlund@npca.org]  
**Sent:** Thursday, June 14, 2012 3:50 PM  
**To:** info@jeffersoncountywv.org  
**Cc:** joewa2@juno.com; bolivarth@frontiernet.net; planningdepartment@jeffersoncountywv.org; Rebecca\_Harriett@nps.gov  
**Subject:** NPCA comments on proposed Zoning Map Amendment for Tax District: Harpers Ferry, Map: 9-2, Parcel 58 (owned by Gene Capriotti)  
**Attachments:** CapriottiRezoneLetter.pdf

President Noland and members of the Jefferson County Commission-

Please find attached comments from the National Parks Conservation Association regarding the proposed Zoning Map Amendment for Tax District: Harpers Ferry, Map: 9-2, Parcel 58.

Thank you,  
Nick Lund

Cc: Mayor Joe Anderson, Harpers Ferry  
Mayor Robert J. Hardy, Bolivar  
Superintendent Rebecca Harriett, Harpers Ferry NHP  
Director Jennifer Brockman, Jefferson County Planning and Zoning Dept.

Nicholas J. Lund  
Civil War Associate

National Parks Conservation Association  
777 6<sup>th</sup> Street NW, Suite 700  
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Office: 202-454-3319  
Cell: 202-578-4251  
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137 1/2 E. Main St  
Oak Hill, WV 25901

June 14, 2012

Ms. Patsy Noland, President  
Jefferson County Commission  
124 E. Washington St.  
Charles Town, WV

Dear President Noland and members of the Commission:

Re: Zoning Map Amendment for property designated as Tax District: Harpers Ferry,  
Map 9-2, Parcel 58 (Capriotti property)

I am writing on behalf of the National Parks Conservation Association, the only national nonprofit dedicated to advocacy for America's national parks. On behalf of NPCA's more than 2,729 members in West Virginia, and our more than 600,000 members and supporters nationwide, I want to thank you for the opportunity to comment on this matter.

In its staff report on the Capriotti rezoning plan dated April 24, 2012, the Jefferson County Planning Commission states that it "does not find the plan to be consistent with the 2004 Comprehensive Plan and also finds there have been changes ... of an economic, physical or social nature that do not support the request." The Planning Commission lists several reasons for its conclusion, including the resultant increase in turning traffic along at an already-dangerous intersection; the incompatibility of potential industrial development on the natural, historic and cultural resources of the immediate area; and, the need to finalize the Route 340 Corridor Study before *ad hoc* rezonings be permitted.

The National Parks Conservation Association fully agrees with the assessment of the Jefferson County Planning Commission. Rezoning this property before finalizing the Route 340 Corridor Study would undermine the hard work undertaken by the Planning Commission and the citizens of Jefferson County in crafting a plan to ensure both prosperity and protection along Route 340. The Route 340 Corridor Plan was developed to ensure that Harpers Ferry is not only a beautiful place to live and work, but remains a true destination, one that brought more than 268,000 visitors to the park in 2010, and puts more than \$9 million annually into the local economy.

The Capriotti property lies in the middle of School House Ridge, the area from which Gen. Stonewall Jackson oversaw the springing of a trap that captured more than 12,000 Union soldiers, the largest such capture in American military history. Visitors to School House Ridge, as well as everyone passing through Harpers Ferry along Route

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340, pass by the property proposed for rezoning.

The National Parks Conservation Association opposes the rezoning of this property because of the harm development of the Capriotti property would have on the experience of visiting the Harpers Ferry National Historical Park and on the historic character that decades of community effort have so successfully cultivated. As shown in the comprehensive Route 340 Corridor Study, commercial and industrial development can be located in many places in Jefferson County. Allowing such uses on the Capriotti property could result in incompatibility with the Comprehensive Plan and the Route 340 Corridor Study for this stretch.

September 2012 is the 150th anniversary of the siege and defense of Harpers Ferry, a key element of the Confederate's Maryland Campaign, the outcome of which led to President Abraham Lincoln issuing the Emancipation Proclamation. We ask you, in this anniversary year, to make your legacy one that protects the history and meaning of Harpers Ferry for the next 150 years.

Sincerely,

Nicholas J. Lund  
Civil War Associate

Cc: Representative Shelley Moore Capito, West Virginia 2<sup>nd</sup>  
Mayor Joe Anderson, Harpers Ferry  
Mayor Robert J. Hardy, Bolivar  
Superintendent Rebecca Harriett, Harpers Ferry NHP  
Director Jennifer Brockman, Jefferson County Planning and Zoning Dept.

**Quarterly Report**  
Jefferson County Historic Landmarks Commission  
July 1, 2012

**1. Projects Undertaken**

- a. Cement Mill Property
  - i. Boundary survey and merger deeds
  - ii. National Register Nomination
- b. Peter Burr Farm
  - i. Site Improvements
  - ii. Activities
- c. Poor House Improvements
- d. WV GeoExplorer project – coordinate and sponsor
- e. Hosting 400 hour Shepherd University Historic Preservation Internship
- f. Site Reviews completed
  - i. cell tower projects
  - ii. Sheetz renovation
  - iii. Briggs Animal Hospital

**2. Projects Completed**

- a. Cement Mill Property
  - i. Boundary survey complete & encroachments identified
- b. Peter Burr Farm
  - i. Improvements
    - 1. Entrance sign installed
    - 2. Period replacement hardware in house
  - ii. Activities
    - 1. Peter Burr Farm Bread bakers
    - 2. 400 fourth graders from JC Schools
    - 3. (2) one week summer camps PVAS
    - 4. 2000 riders from Bike Virginia
- c. Poor House
  - i. Improvements
    - 1. Sealed chimneys, doorways, & windows

**3. Projects Proposed/Underway**

- a. Continuous restoration and improvements at Peter Burr Farm
- b. Mapping of Historic Resources and Prime Soils
- c. Continuous improvements and adaptive reuse of Snow Hill (Poor Farm)
- d. Transfer of Cement Mill Property to National Park Service

**4. Items Requiring County Commission Attention**

- a. None at this time

Submitted by  
Martin Burke  
Chair, JCHLC

# **County Commission of Jefferson County**

## **Work Session**

The County Commission of Jefferson County will meet on Tuesday, July 24, 2012, at 9:30 a.m. in the County Commission meeting room located at the Old Charles Town Library, 200 E. Washington Street, Charles Town, West Virginia 25414.

The purpose of the work session will be to discuss space needs for the county workforce and possible purchase of a downtown Charles Town building.

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

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

Week Ending Date	Week Ending July 7, 2012
<b>To be Deposited on:</b>	July 13, 2012
<b>Amount Played</b>	83,640,882.62
<b>Amount Won</b>	74,942,412.02
<b>Amount Promo</b>	273,885.00
<b>MWAP Contribution</b>	<u>5,944.90</u>
<b>Adjusted Gross Terminal Revenue</b>	<u>8,418,640.70</u>
<b>Administrative Costs @ 4%</b>	336,745.63
<b>Excess Lottery Fund @ 4%</b>	0.00
<b>Net Terminal Revenue</b>	<u>8,081,895.07</u>
<b>Surcharge @ 10%</b>	0.00
<b>State Share Excess @ 58%</b>	0.00
<b>Track Share of Capital Reinvestment @ 42%</b>	0.00
<i>Track Share of Capital Reinvestment @ 42% - 96%</i>	\$ -
<i>Track Share of Capital Reinvestment @ 42% - 4%</i>	\$ -
<b>Adjusted Net Terminal Revenue</b>	<u>8,081,895.07</u>
<b>Racetrack @ 46.50% / 42%</b>	3,758,081.21
<b>Lottery Fund @ 30% / 0%</b>	2,424,568.48
<b>Excess Lottery Fund @ 0% / 41%</b>	0.00
<b>Race Track Purses @ 7% / 14% / 8%</b>	565,732.65
<b>Workers' Compensation Debt Reduction @ 7% / 0%</b>	565,732.65
<b>Employee Pension Fund @ 1% / .5%</b>	80,818.96
<b>Greyhound Development @ .75%</b>	60,614.21
<b>Thoroughbred Development @ .75%</b>	60,614.21
<b>Racing Commission @ 1%</b>	80,818.96
<b>County/Municipality @ 2%</b>	161,637.92
<b>3% Funds:</b>	
<b>Tourism Promotion Fund @ 1.375%</b>	111,126.06
<b>Development Office Promotion Fund @ .375%</b>	30,307.11
<b>Research Challenge Fund @ .5%</b>	40,409.48
<b>Capitol Renovation and Improvement Fund @ .6875%</b>	55,563.03
<b>2004 Capitol Complex Parking Garage Fund @ .0625%</b>	5,051.18
<b>1% Funds:</b>	
<b>State Capitol Complex Parking Garage @ 1%</b>	80,818.96
<b>Cultural Facilities and Capitol Resources @ .5%</b>	0.00
<b>Capitol Dome and Capitol Improvements @ .5% / 1%</b>	<u>0.00</u>
	<u>8,081,895.07</u>

WEST VIRGINIA LOTTERY  
 First Benchmark  
 Charles Town  
 County / City Split  
 Fiscal Year 2013

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

DATE	2% OF ADJ. NET REVENUE	TO JEFFERSON COUNTY	TO FIVE CITIES	BOLIVAR 8.19%	CHARLES TOWN 41.20%	HARPERS FERRY 2.24%	RANSON 34.78%	SHEPHERDS TOWN 13.59%
Week Ending: 07/07/12	\$ 161,637.92	\$ 161,637.92	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Subtotal	\$ 161,637.92	\$ 161,637.92	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Benchmark Goal @ 2%         \$    912,063.48

Remainder until 1% / 1% Split     \$    750,425.56

VIDEO LOTTERY REPORT

FY 2009		FY 2010		FY 2011		FY 2012		FY 2013	
Date	Amount	Date	Amount	Date	Amount	Date	Amount	Date	Amount
7/5/2008 *	169,912.56	7/4/2009 *	128,262.42	7/3/2010	115,402.58	7/1-2/2011	69,824.12	7/7/2012	161,637.92
7/12/2008	176,592.38	7/11/2009	168,815.08	7/10/2010	205,731.64	7/9/2011	171,717.28		
7/19/2008	160,344.08	7/18/2009	160,652.98	7/17/2010	161,386.76	7/16/2011	143,019.52		
7/26/2008	162,982.74	7/25/2009	158,869.08	7/24/2010	160,368.28	7/23/2011	146,508.00		
8/2/2008	178,171.04	8/1/2009	174,493.08	7/31/2010	157,802.08	7/30/2011	144,510.28		
8/9/2008	123,538.04	8/8/2009	138,408.80	8/7/2010	136,494.98	8/6/2011	151,495.28		
8/16/2008	82,482.89	8/15/2009	81,222.14	8/14/2010	78,376.68	8/13/2011	117,350.38		
8/23/2008	76,426.18	8/22/2009	76,260.31	8/21/2010	76,199.02	8/20/2011	71,614.12		
8/30/2008	89,459.86	8/29/2009	80,472.92	8/28/2010	72,460.03	8/27/2011	63,432.14		
9/6/2008	91,644.46	9/5/2009	80,798.15	9/4/2010	76,362.84	9/3/2011	80,837.76		
9/13/2008	79,729.93	9/12/2009	86,286.92	9/11/2010	82,969.36	9/10/2011	84,845.80		
9/20/2008	71,269.36	9/19/2009	70,010.15	9/18/2010	67,638.78	9/17/2011	66,748.62		
9/27/2008	79,735.73	9/26/2009	69,316.87	9/25/2010	70,435.06	9/24/2011	68,929.80		
10/4/2008	75,186.22	10/3/2009	72,286.04	10/2/2010	71,013.86	10/1/2011	68,871.64		
10/11/2008	77,139.04	10/10/2009	69,650.63	10/9/2010	69,311.50	10/8/2011	70,866.90		
10/18/2008	80,668.26	10/17/2009	73,560.21	10/16/2010	75,234.62	10/15/2011	75,262.66		
10/25/2008	64,379.44	10/24/2009	67,581.66	10/23/2010	70,290.80	10/22/2011	68,757.72		
11/1/2008	68,352.42	10/31/2009	64,528.30	10/30/2010	65,615.04	10/29/2011	60,507.98		
11/8/2008	70,823.02	11/7/2009	63,741.59	11/6/2010	61,337.62	11/5/2011	70,673.88		
11/15/2008	65,565.50	11/14/2009	65,959.64	11/13/2010	64,595.28	11/12/2011	67,627.10		
11/22/2008	63,883.80	11/21/2009	59,547.05	11/20/2010	56,010.08	11/19/2011	60,690.60		
11/29/2008	69,850.12	11/28/2009	72,399.98	11/27/2010	71,170.90	11/26/2011	74,140.54		
12/6/2008	55,696.68	12/5/2009	51,006.51	12/4/2010	53,215.08	12/3/2011	59,429.94		
12/13/2008	60,178.04	12/12/2009	52,460.58	12/11/2010	46,944.00	12/10/2011	51,395.44		
12/20/2008	52,189.19	12/19/2009	32,834.39	12/18/2010	42,076.76	12/17/2011	55,981.32		
12/27/2008	72,205.91	12/26/2009	53,406.34	12/25/2010	50,450.28	12/24/2011	54,248.62		
1/3/2009	96,504.65	1/2/2010	92,980.40	1/1/2011	85,152.12	12/31/2011	94,661.00		
1/10/2009	53,286.62	1/9/2010	55,020.46	1/8/2011	54,301.30	1/7/2012	74,863.40		

1/17/2009	56,068.87	1/16/2010	60,551.28	1/15/2011	54,005.90	1/14/2012	58,901.92
1/24/2009	71,474.63	1/23/2010	69,943.53	1/22/2011	60,924.74	1/21/2012	61,819.92
1/31/2009	61,089.80	1/30/2010	48,527.75	1/29/2011	48,036.94	1/28/2012	62,898.78
2/7/2009	83,539.63	2/6/2010	37,155.14	2/5/2011	60,777.44	2/4/2012	72,154.66
2/14/2009	76,054.44	2/13/2010	44,334.00	2/12/2011	67,471.84	2/11/2012	66,429.04
2/21/2009	91,838.41	2/20/2010	76,946.12	2/19/2011	72,018.54	2/18/2012	77,455.88
2/28/2009	80,806.88	2/27/2010	72,024.40	2/26/2011	75,544.02	2/25/2012	77,611.78
3/7/2009	48,837.13	3/6/2010	76,936.85	3/5/2011	74,535.34	3/3/2012	75,963.86
3/14/2009	96,025.39	3/13/2010	71,007.37	3/12/2011	66,979.48	3/10/2012	76,808.62
3/21/2009	79,002.82	3/20/2010	74,335.38	3/19/2011	73,113.26	3/17/2012	76,883.92
3/28/2009	79,250.83	3/27/2010	69,941.88	3/26/2011	68,490.80	3/24/2012	72,108.36
4/4/2009	75,968.30	4/3/2010	70,636.28	4/2/2011	70,846.58	3/31/2012	74,244.22
4/11/2009	75,964.94	4/10/2010	69,692.79	4/9/2011	67,076.78	4/7/2012	75,382.98
4/18/2009	80,598.22	4/17/2010	69,335.92	4/16/2011	64,698.56	4/14/2012	71,065.34
4/25/2009	75,571.46	4/24/2010	68,714.11	4/23/2011	67,674.14	4/21/2012	68,055.08
5/2/2009	73,957.05	5/1/2010	68,799.06	4/30/2011	66,807.50	4/28/2012	72,880.66
5/9/2009	76,697.22	5/8/2010	67,403.54	5/7/2011	66,379.74	5/5/2012	71,582.30
5/16/2009	71,925.70	5/15/2010	70,186.32	5/14/2011	66,699.76	5/12/2012	63,357.92
5/23/2009	81,395.43	5/22/2010	64,695.71	5/21/2011	63,210.44	5/19/2012	78,984.36
5/30/2009	82,161.55	5/29/2010	67,157.40	5/28/2011	64,724.06	5/26/2012	67,396.24
6/6/2009	74,895.74	6/5/2010	77,371.80	6/4/2011	74,952.34	6/2/2012	76,959.44
6/13/2009	67,327.23	6/12/2010	66,106.29	6/11/2011	62,203.12	6/9/2012	63,584.86
6/20/2009	75,500.53	6/19/2010	64,888.48	6/18/2011	61,200.76	6/16/2012	59,436.12
6/27/2009	67,354.10	6/26/2010	63,950.29	6/25/2011	65,470.44	6/23/2012	55,921.30
6/30/2009 ***	32,059.58	6/30/2010	29,667.19	6/30/2011	34,351.16	6/30/2012	58,207.40

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TOTALS **4403564.04**

**4041141.56**

**4016541.01**

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**4124906.8**

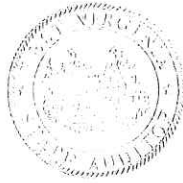
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**161637.92**

Table Game Revenue

<b>Date</b>	<b>Amount</b>
July/August, 2010	154,185.68
September, 2010	94,247.84
October, 2010	105,903.60
November, 2010	108,717.67
December, 2010	118,721.11
January, 2011	106,189.21
February, 2011	105,776.45
March, 2011	120,927.10
April, 2011	130,654.61
May, 2011	130,492.02
June, 2011	121,576.41
<b>Total 2010-2011</b>	<b>1297391.7</b>

<b>Date</b>	<b>Amount</b>
July, 2011	141,718.01
August, 2011	137,473.92
September, 2011	110,375.25
October, 2011	124,273.94
November, 2011	121,118.87
December, 2011	140,509.93
January, 2012	137,812.68
February, 2012	142,770.01
March, 2012	151,845.46
April, 2012	127,862.26
May, 2012	137,905.13
<b>Total 2011-2012</b>	<b>1473665.46</b>



# State of West Virginia

Glen B. Gainer III  
State Auditor and  
Chief Inspector

Stuart T. Stickel, CPA  
Deputy Chief Inspector

Office of the State Auditor  
Chief Inspector Division  
1900 Kanawha Boulevard, East  
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Charleston, West Virginia 25305

Toll-Free: 877-982-9148  
Telephone: (304) 558-2540  
FAX: (304) 205-6033  
www.wvsao.gov

July 3, 2012

**RECEIVED**

JUL 09 2012

The Honorable Steve Canterbury  
Supreme Court Administrator  
1900 Kanawha Blvd., Building 1, E-100  
Charleston, West Virginia 25305

**Jefferson County Commission**

Dear Mr. Canterbury:

Enclosed is a copy of the Report on Applying Agreed-Upon Procedures of the Jefferson County Magistrate Court for the period ending December 31, 2011.

As the recipient, you are required to notify all members of the magistrate court of the receipt of this report and related correspondence and make the contents available for inspection by all such officers. You are also advised that this report, under the provisions of West Virginia Code § 6-9-9a, is considered public information and must be made available for public inspection.

It is the responsibility of all members of the court to review the report and take the necessary actions to remedy all instances of noncompliance and weaknesses in internal control as listed in the Schedule of Comments.

Your cooperation is most appreciated. If I can be of assistance, please do not hesitate to contact this office.

Very truly yours,

Charles K. McKinney  
Assistant Chief Inspector  
Chief Inspector Division

CKM/et  
Enclosure

cc: Hon. David H. Sanders, Chief Judge  
23<sup>rd</sup> Judicial Circuit

Hon. Patsy Noland, President  
Jefferson County Commission ✓

Bonnie L. Seal, Clerk  
Jefferson County Magistrate Court