AGENDA
JEFFERSON COUNTY COMMISSION
THURSDAY, SEPTEMBER 6, 2012
9:30 A.M.

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

- Regular Minutes for August 16, 2012
- Regular Minutes for August 23, 2012

APPROVAL OF PURCHASE ORDERS

APPROVAL OF ACCOUNTS PAYABLE

Approval of Revised Agenda Policy - Discussion/Action

PUBLIC COMMENT

PRESENTATIONS:

1. 9:45 a.m. Angie Banks, Assessor
   - Exonerations - Discussion/Action

2. 10:00 a.m. Robert Shirley, Sheriff
   - Approval to hire new part-time Bailiff - Discussion/Action
   - Approval to hire a new Animal Control Officer - Discussion/Action

3. 10:15 a.m. Jennifer Maghan, County Clerk
   - Approval to remove Ronald "Ronnie" Bell from the General Elections Ballot - Discussion/Action

4. 10:30 a.m. **Break**

5. 10:45 a.m. Elizabeth Wheeler, Farmland Protection Board
   - Approval of one deed of easement for the Farmland Protection Program - Discussion/Action

6. 11:00 a.m. Laura Storm, Circuit Clerk
   - Moving Melinda Maye from part-time to full-time employment - Discussion/Action

7. 11:15 a.m. Ralph Lorenzetti, Prosecuting Attorney & Stephanie Grove, Assistant Prosecuting Attorney
- Review of Civil Counsel job description/ job duties - Possible Executive Session §6-9A-4 - Discussion/Action

UNFINISHED BUSINESS:

8. Decision on hiring of County Commission Civil Counsel - Discussion/Action

9. If applicable, filling of Civil Counsel position - Possible Executive Session §6-9A-4 - Discussion/Action

10. Approval of FY2013 County Commission Community Grants - Discussion/Action

NEW BUSINESS:

11. Amending sign ordinance requirements to allow smaller commercial business signs without added cost of permits, staff review (LW) - Discussion/Action

12. Discussion on the Agriculture Task Force (WP) - Discussion/Action

13. Decision on hiring a County Administrator and review of job duties - Possible Executive Session §6-9A-4 - Discussion/Action

14. Approval of Resolution - Land and Water Conservation fund application - Discussion/Action

DEPARTMENTS, BOARDS, COMMISSIONS AND AGENCY WRITTEN REPORTS

- GIS Department Quarterly Update Report - 2012 3rd Quarter

FINANCIAL DIRECTOR REPORTS

- Approval of Internal Budget Revisions #104 & 105 - Discussion/Action
- Approval of State Budget Revision #6 - Discussion/Action
- Recommendation for account funding for the approved eCivis contract - Discussion/Action
- Discussion on Grant Funds received for the WV Eastern Panhandle Transportation Authority - Discussion/Action

COUNTY ADMINISTRATOR REPORTS

COUNTY COMMISSION REPORTS

15. **Break for Lunch**

~~~~~~~~~~ AFTERNOON SESSION ~~~~~~~~~~

16. 1:30 p.m. Continuation of Work Session on Potential Amendments to the Zoning Ordinance Text regarding the Creation of New Commercial and Industrial Zoning Categories and Related Amendments - Discussion/

17. 7:00 p.m. Public Hearing on a proposed Zoning Ordinance Text Amendment to establish additional commercial and industrial zoning district categories, and related changes to the ordinance. The amendment includes changes to the following sections of the Zoning and Land Development Ordinance: 4.4; 4.6; 4.10; 4.11; 5.1; 5.4; 5.6; 5.7; 5.8; 5.10; 6.3; 6.5; 8.1; 8.9; 8.12; 12.2; 12.3; Appendices A, B, and C; and the addition of new Sections 5.11, 5.12, 5.13, 5.14, 5.15, 5.16 and 5.17 - Discussion

18. **ADJOURN**

CORRESPONDENCE:

Invitation to Meet and Converse with Jefferson County Commission at Skipper's Downtown Dips & Deli on September 27, 2012 between 5:00 p.m. - 7:00 p.m.

Letter received from John C. Allen, Jr. concerning the recommendations from the Courthouse Committee regarding two ongoing courthouse projects.

Letter received from MinSec Companies regarding a decision to not pursue the halfway house.

Weekly Settlement for Hollywood Casinos at Charles Town Races and Slot received for weeks ending August 18 & August 25, 2012 received from the West Virginia Lottery.

Invitation to attend the County Commissioner's Association of WV's Fall Board & Legislative Committee meeting September 16-17, 2012 at the Inn at Charles Town.

Invitation to attend a buffet dinner and Gala Celebration in honor of the 218th wedding anniversary of James Madison and Dolley Payne Todd.

West Virginia Association of Counties, July 2012 issue of the County Line Newsletter received.

August 2012 edition of the West Virginia Ethics Report received.

September 2012 edition of the Valley News received from the Potomac Valley Audubon Society.

Reminder that the Jefferson County Video will begin September 11 - 13, 2012.

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.

Minutes

Jefferson County Commission

Thursday, August 16, 2012

A meeting of the Jefferson County Commission was held on Thursday, August 16, 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, Nichelle Hosby, Executive Assistant and Jimmy Eddie, Bailiff. (An audio tape of the August 16, 2012 meeting is available through the Jefferson County Commission Office.)

PLEDGE OF ALLEGIANCE

Commissioner Pellish led the Pledge of Allegiance.

APPROVAL OF MINUTES

Unanimous consent to holdover the Regular Minutes of the August 9, 2012 meeting until Thursday, August 23, 2012 meeting.

Motion by Ms. Morgan to approve the Bonding Policy Public Hearing Minutes of the August 9, 2012 as presented. Motion seconded by Mr. Manuel and unanimously approved.

Motion by Ms. Morgan to approve the Public Hearing Minutes concerning the potential purchase of the Briel Building of the July 19, 2012 as presented. Motion seconded by Mr. Pellish and unanimously approved.

APPROVAL OF PURCHASE ORDERS

Motion by Ms. Morgan to approve the Purchase Orders in the amount $139,108.00, being purchase order number: 49969, 49906, 50062, 52033, 52038, 52039, 52040, 52032, 49806, 49805, 52042, 52043, 52044, 52045, 49636, 50031, 50797, 52073, 52074, 52075, 51129. Motion seconded by Mr. Pellish and unanimously approved.

APPROVAL OF ACCOUNTS PAYABLE

Motion by Mr. Manuel to approve the accounts payable in the amount of $165,647.89 for August 16, 2012. Motion seconded by Mr. Pellish and unanimously approved.

CHCKNO	DEPT	VENDOR	PONUM	POAMT	NOAMT	CHECK AMOUNT
067957	712	APCO INTERNATIONAL INC	50993	$ 404.00	$ -	$ 404.00
067958	406	ASSESSOR OF JEFFERSON CO	49850	$ 45.03	$ -	$ 45.03
067959	425	ALLIANCE ELECTRIC LLC	52071	$ 90.00	$ -	$ 90.00
067960	PAYROLL	BUREAU F/CHILD SUPPORT		$ -	$ 49.85	$ 49.85
067961	PAYROLL	BUREAU F/CHILD SPPRT ENF		$ -	$ 212.31	$ 212.31
067962	PAYROLL	BUREAU OF CHILD SUPPORT		$ -	$ 461.54	$ 461.54
067963	401	BRWC-BLUE RIDGE WATERSHE		$ -	$ 15,000.00	$ 15,000.00

067964	PAYROLL	CHILD SUPPORT ENFORCE AG		$ -	$ 27.69	$ 27.69
067965	440	CHOICE STAFFING, INC.		$ -	$ 567.00	$ 567.00
067966	425	DAYCON	52046	$ 37.60	$ -	$ 37.60
067967	PAYROLL	DIVERSIFIED COLLECTION		$ -	$ 154.83	$ 154.83
067968	402	SHAKIRA L. FIELDS		$ -	$ 89.00	$ 89.00
067969	424	HASLER INC.	52041	$ 79.98	$ -	$ 79.98
067970	PAYROLL	ING NATIONAL TRUST		$ -	$ 1,135.00	$ 1,135.00
067971	439	JEFFERSON COUNTY HISTORI	49954	$ 200.00	$ -	$ 200.00
067972	425	JEFFERSON UTILITIES INC		$ -	$ 499.76	$ 499.76
067973	PAYROLL	JEFFERSON SECURITY BANK		$ -	$ 40.00	$ 40.00
067973	PAYROLL	JEFFERSON SECURITY BANK		$ -	$ 4,260.48	$ 4,260.48
067974	712	LANGUAGE LINE SERVICES		$ -	$ 40.98	$ 40.98
067975	412	JUDITH A MATLICK		$ -	$ 68.84	$ 68.84
067976	424	VERIZON BUSINESS		$ -	$ 1,131.64	$ 1,131.64
067977	440	MICHAEL MONAGHAN		$ -	$ 97.00	$ 97.00
067978	412	SHAY MCNEIL		$ -	$ 84.36	$ 84.36
067979	PAYROLL	HELEN M. MORRIS, TRUSTEE		$ -	$ 150.00	$ 150.00
067980	PAYROLL	NATIONWIDE RETIREMENT		$ -	$ 774.00	$ 774.00
067981	402	KAREN OLDEN		$ -	$ 89.00	$ 89.00
067982	405	POSTMASTER CHARLES TOWN	50030	$ 86.00	$ -	$ 86.00
067983	712	PROMOS 911,INC.	49810	$ 1,439.60	$ -	$ 1,439.60
067984	425	POTOMAC EDISON/OH		$ -	$ 2,595.47	$ 2,595.47
067985	425	REESE'S NURSERY&LANDSCAP	52064	$ 225.00	$ -	$ 225.00
067986	401	SOFTWARE SYSTEMS, INC		$ -	$ 1,355.70	$ 1,355.70
067986	402	SOFTWARE SYSTEMS, INC		$ -	$ 576.00	$ 576.00
067986	403	SOFTWARE SYSTEMS, INC		$ -	$ 1,361.50	$ 1,361.50
067986	404	SOFTWARE SYSTEMS, INC		$ -	$ 753.00	$ 753.00
067986	406	SOFTWARE SYSTEMS, INC		$ -	$ 70.00	$ 70.00
067986	700	SOFTWARE SYSTEMS, INC		$ -	$ 213.50	$ 213.50
067987	PAYROLL	SHERIFF OF JEFFERSON CO		$ -	$ 85.26	$ 85.26
067987	PAYROLL	SHERIFF OF JEFFERSON CO		$ -	$ 38.72	$ 38.72
067987	PAYROLL	SHERIFF OF JEFFERSON CO		$ -	$ 23.78	$ 23.78
067987	PAYROLL	SHERIFF OF JEFFERSON CO		$ -	$ 36,512.98	$ 36,512.98
067987	PAYROLL	SHERIFF OF JEFFERSON CO		$ -	$ 138.86	$ 138.86
067987	PAYROLL	SHERIFF OF JEFFERSON CO		$ -	$ 10,181.30	$ 10,181.30
067988	PAYROLL	SHERIFF OF JEFFERSON CO		$ -	$ 146.52	$ 146.52
067988	PAYROLL	SHERIFF OF JEFFERSON CO		$ -	$ 43,872.82	$ 43,872.82
067988	PAYROLL	SHERIFF OF JEFFERSON CO		$ -	$ 118.84	$ 118.84
067989	425	CAPITAL TRISTATE	49919	$ 932.18	$ -	$ 932.18
067990	425	UNITED BANKCARD CENTER	51048	$ 210.94	$ -	$ 210.94
067990	428	UNITED BANKCARD CENTER	49905	$ 239.99	$ -	$ 239.99

067990	401	UNITED BANKCARD CENTER		$ -	$ 639.62	$ 639.62
067990	401	UNITED BANKCARD CENTER		$ -	$ 784.00	$ 784.00
067990	401	UNITED BANKCARD CENTER		$ -	$ 465.00	$ 465.00
067990	402	UNITED BANKCARD CENTER		$ -	$ 117.06	$ 117.06
067990	402	UNITED BANKCARD CENTER		$ -	$ 69.90	$ 69.90
067990	402	UNITED BANKCARD CENTER		$ -	$ 119.54	$ 119.54
067990	403	UNITED BANKCARD CENTER		$ -	$ 735.94	$ 735.94
067990	405	UNITED BANKCARD CENTER		$ -	$ 589.97	$ 589.97
067990	412	UNITED BANKCARD CENTER		$ -	$ 444.88	$ 444.88
067990	415	UNITED BANKCARD CENTER		$ -	$ 77.07	$ 77.07
067990	424	UNITED BANKCARD CENTER		$ -	$ 106.98	$ 106.98
067990	424	UNITED BANKCARD CENTER		$ -	$ 25,255.42	$ 25,255.42
067990	425	UNITED BANKCARD CENTER		$ -	$ 43.40	$ 43.40
067990	425	UNITED BANKCARD CENTER		$ -	$ 90.68	$ 90.68
067990	425	UNITED BANKCARD CENTER		$ -	$ 156.95	$ 156.95
067990	425	UNITED BANKCARD CENTER		$ -	$ 13.41	$ 13.41
067990	428	UNITED BANKCARD CENTER		$ -	$ 269.38	$ 269.38
067990	433	UNITED BANKCARD CENTER		$ -	$ 690.07	$ 690.07
067990	433	UNITED BANKCARD CENTER		$ -	$ 21.95	$ 21.95
067990	700	UNITED BANKCARD CENTER		$ -	$ 101.00	$ 101.00
067990	700	UNITED BANKCARD CENTER		$ -	$ 69.94	$ 69.94
067990	700	UNITED BANKCARD CENTER		$ -	$ 91.84	$ 91.84
067990	700	UNITED BANKCARD CENTER		$ -	$ 176.90	$ 176.90
067990	700	UNITED BANKCARD CENTER		$ -	$ 624.32	$ 624.32
067990	711	UNITED BANKCARD CENTER		$ -	$ 213.06	$ 213.06
067990	711	UNITED BANKCARD CENTER		$ -	$ 561.92	$ 561.92
067990	712	UNITED BANKCARD CENTER		$ -	$ 2,815.99	$ 2,815.99
067990	712	UNITED BANKCARD CENTER		$ -	$ 253.39	$ 253.39
067990	716	UNITED BANKCARD CENTER		$ -	$ 80.17	$ 80.17
067990	717	UNITED BANKCARD CENTER		$ -	$ 106.95	$ 106.95
067990	717	UNITED BANKCARD CENTER		$ -	$ 36.68	$ 36.68
067990	717	UNITED BANKCARD CENTER		$ -	$ 770.10	$ 770.10
067990	717	UNITED BANKCARD CENTER		$ -	$ 589.62	$ 589.62
067991	717	WILLIAMS MOTOR PARTS, IN	49918	$ 949.94	$ -	$ 949.94
067992	425	WINCHESTER SECURITY LLC	52063	$ 547.00	$ -	$ 547.00
TOTAL						**$ 165,647.89**
TOTAL				**$ 5,487.26**	**$ 160,160.63**	**$ 165,647.89**

PUBLIC COMMENT:

Comments were made by the following individuals concerning their opposition to MinSec proposal for a "halfway house" on Kabletown Road: Jane Rissler, Robin Huyett Thomas, Linda Kirby, Brian Bellman, Marilyn Harwood, Ken Harwood, David Hammer, Virginia Lynch Graf, Todd & Susan Hough, James Tolbert, Roger Ethier, David Tabb and Janet Tilton.

1. Unanimous consent to amend the agenda and move item number 7 – Approval to send letter concerning the MinSec Companies RFP to Federal Bureau of Prisons for a "halfway house" to the top of the agenda.

Motion by Ms. Morgan to send a letter to oppose the MinSec request for a halfway house. Motion seconded by Mr. Manuel.

Amended motion by Mr. Manuel to send a copy of the opposition letter to Senator Manchin and the legislation. Amendment accepted by Ms. Morgan.

Amendment by Ms. Widmyer to notify the Federal Bureau of Prisons that the local elected officials should be notified when solicitation such as this is sent out for bids. Motion died due to lack of a second.

Motion by Ms. Morgan to have staff draft a letter to the Federal Bureau of Prisons stating there is unanimous consent from the Commission opposing the project, it was inappropriate protocol to not provide the prospective counties with an RFP/formal notice of their intent, that the project violates the zoning ordinance, the project faces citizen opposition and that the letter be copied to legislators, MinSec and the President of all County Commissions affected. Motion seconded by Mr. Manuel and unanimously approved.

PRESENTATIONS:

2. **There were no Exonerations to be presented.**

3. **Jeff Polczynski, Director of Emergency Communication,** gave an update on the Public Safety CAD RFP bid process, Indicating the RFP is ready for distribution.

   Motion by Mr. Manuel to move approval to begin the bid process with regard to the CAD System. Motion seconded by Ms. Morgan and unanimously approved.

4. **Paul Shroyer, Director of Financial Management** gave a follow-up report on financial statistics that are included under County Government accounts and on the Budget Analysis by Governmental Fiscal Year End June 30, 2012.

5. **The Commissioners took a short break at 10:56 a.m.**
   The Commissioners reconvened the meeting at 11:06 a.m.

UNFINISHED BUSINESS

6. **Approval of State Budget Revision #3.**

   Debbie Keyser, Interim County Administrator gave a brief overview of the budget revision request.
   Lieutenant Tom Hansen was present and gave comment.

   Motion by Mr. Pellish to approve an increase of $83,000 to the Sheriff's wages and benefit line from the County Commission budget. Motion seconded by Mr. Manuel and unanimously approved.

7. **Stephanie Grove, Assistant Prosecuting Attorney** gave an update on Affordable Housing.

   Motion by Mr. Manuel to authorize Ms. Grove to construct an ordinance for review on the Affordable Housing component.
   Motion seconded by Ms. Morgan and unanimously approved.

   This item is to be placed on the Thursday, September 6, 2012 agenda.

NEW BUSINESS

1. **Request for approval of Grant Contract, Resolution and Letter of Agreement for the Community Participation Grant in the amount of $4,000 for the Jefferson County Parks and Recreation**

   Motion by Mr. Manuel to approve the Grant Contract, Resolution and Letter of Agreement for the Community Participation Grant in the amount of $4,000 for the Jefferson County Parks and Recreation. Motion seconded by Ms. Morgan and unanimously approved.

   RESOLUTION

The County Commission of Jefferson County, met on August 16th, 2012 with a quorum present and passed the following Resolution:

WHEREAS, The Jefferson County Commission has agreed to assist the Jefferson County Parks and Recreation to grade, level and gravel the entrance road a Leetown Park with funds made available through the Governor's Community Participation Grant program in the amount of $4,000.

NOW, THEREFORE BE IT RESOLVED, that the Jefferson County Commission 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 and to receive and administer grant funds pursuant to provision of the Governor's Community Participation Grant Program.

Signed: _____
COUNTY CLERK

12LEDA0392

2. **Request for approval of Grant Contract, Resolution and Letter of Agreement for the Community Participation**

Grant in the amount of $15,000 for the Harpers Ferry Historic Town Foundation.

Motion by Ms. Morgan to approve the Grant Contract, Resolution and Letter of Agreement for the Community Participation Grant in the amount of $15,000. Motion seconded by Mr. Manuel and unanimously approved.

RESOLUTION

The County Commission of Jefferson County, met on August 16th, 2012 with a quorum present and passed the following Resolution:

WHEREAS, The Jefferson County Commission has agreed to assist the Harpers Ferry Historic Town Foundation to conduct a feasibility study for community development, economic development, and tourism in Jefferson County with funds made available through the Governor's Community Participation Grant program in the amount of $15,000.

NOW, THEREFORE BE IT RESOLVED, that the Jefferson County Commission 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 and to receive and administer grant funds pursuant to provision of the Governor's Community Participation Grant Program.

Signed:_____
COUNTY CLERK

09LEDA0837N

3. **Ratify approval of County application for grant funding under the West Virginia Assistance Grants Program (WVTAGP) and WV Broadband Mapping Program (WVBMP)**

   Motion by Mr. Manuel to approve the County application for grant funding under the West Virginia Assistance Grants Program and WV Broadband Mapping Program. Motion seconded by Ms. Morgan and unanimously approved.

COUNTY ADMINISTRATOR REPORTS

Debbie Keyser, Interim County Administrator:

- Reminded the Commission to review the video that she sent them.
- Reported on the meeting with Jennifer Maghan concerning Bailiff's handling security for the Anvil Play and that the

Sheriff is in favor of this.

- Reported that she had a meeting with Jefferson County Emergency Services regarding their Strategic Plan.
- Reported she is taking articles for the next newsletter.

COUNTY COMMISSIONER REPORTS

Commissioner Widmyer:

- Invited the Commission to the Ranson Football kickoff this weekend.
- Reported on the Parade for the Appalachian Trail in Harpers Ferry.
- Attended the Department of Highways US 340 Gateway meeting.
- Reminder of the Martin Delany Birthday celebration.

Commissioner Manuel:

- Attended a Teen Court meeting.
- Attended the Department of Highways US 340 Gateway meeting.
- Reminder that the Jefferson County Fair begins on Sunday.

Commissioner Morgan

- Attended the Farmland Protection Board meeting.
- Reminded the Commission of the African-American Heritage Festival.
- Reported on the American Conservation Film Festival.
- Attended the Department of Highways meeting on US 340.

Commissioner Pellish:

- Attended a Jefferson County Development Authority Executive Committee meeting.
- Attended a Jefferson County Planning Commission meeting.
- Commented on the video sent by Ms. Keyser concerning safety in an office.
- Commented on the sheet for contribution disbursement.

Commissioner Noland:

- Attended the CVB meeting.
- Attended the Special Session on County Administrator applications.

4. **Ms. Grove requested an Executive Session to discuss a Deputy Claim under West Virginia State Code 6-9A-4.**

   Motion by Mr. Manuel to enter into Executive Session to discuss the Deputy's legal claim. Motion seconded by Ms. Widmyer and unanimously approved.

   Motion by Mr. Manuel to exit Executive Session and to break for lunch. Motion seconded by Ms. Widmyer and unanimously approved.

   The Commission reconvened the meeting at 1:35 p.m.

Work Session on Potential Amendments to the Zoning Ordinance Text regarding the Creation of New Commercial and Industrial Zoning Categories.

Brief overview and presentation by Jennifer Brockman, Director of Planning and Zoning and Steve Barney, Zoning Administrator.

The Commission decided to continue the Work Session on Thursday, September 6, 2012 due to the 2:30 p.m. Special Session.

Decision on potential purchase of the Briel Building.

Paul Shroyer, Director of Financial Management gave a brief overview of a cost analysis concerning options in purchasing the Briel Building.

Ralph Lorenzetti was present and gave comments.
Stephanie Grove, Assistant Prosecuting Attorney gave comments.
Roger Ramey was present and gave comment.

Motion by Mr. Manuel to enter into Executive Session to discuss the potential purchase and offer of the Briel Building. Motion seconded by Ms. Widmyer and unanimously approved.

Motion by Mr. Manuel to exit Executive Session and enter back into regular session. Motion seconded by Ms. Widmyer and unanimously approved.

Motion by Mr. Pellish to authorize Debbie Keyser and Stephanie Grove to begin negotiations for purchasing the Briel Building. Motion seconded by Mr. Manuel and approved 4-1. Ms. Morgan voted no.

There being no further business, motion by Mr. Manuel to adjourn the meeting. Motion seconded by Mr. Pellish and unanimously approved. Upon rising, the meeting was adjourned until Thursday, August 23, 2012 at 9:30 a.m.

PATRICIA A. NOLAND

Minutes

Jefferson County Commission

Thursday, August 23, 2012

A meeting of the Jefferson County Commission was held on Thursday, August 23, 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, Lyn Widmyer, Dale Manuel, Frances Morgan and Walt Pellish. Also present were Debbie Keyser, Interim County Administrator, Debbie Stellato, Administrative Assistant and Charles Ruble, Bailiff. (An audio tape of the August 23, 2012 meeting is available through the Jefferson County Commission Office.)

PLEDGE OF ALLEGIANCE

Commissioner Manuel led the Pledge of Allegiance.

PRESENTATIONS:

1. **Senators Herb Snyder and John Unger and Delegates Tiffany Lawrence and John Doyle** participated in a photo session with Governor's Community Participation Grant recipients. Organizations represented included Jefferson Memorial Hospital, Convention and Visitors Bureau, Eastern Panhandle Trailblazers, Jefferson County Parks and Recreation, Jefferson County Animal Welfare Society, Citizens Fire Company, Contemporary American Theater Festival, Freedom Run, African American Association, African American Preservation Society, Jefferson County Commission and Good Shepherd Interfaith Volunteer Caregivers.

APPROVAL OF MINUTES

Motion by Mr. Manuel to approve the Minutes of the August 9, 2012 regular meeting as presented. Motion seconded by Mr. Pellish and unanimously approved.

Motion by Ms. Morgan to hold over the Minutes of the August 16, 2012 regular meeting and place same on the September 6, 2012 agenda for approval. Motion seconded by Mr. Pellish and unanimously approved.

APPROVAL OF PURCHASE ORDERS

Motion by Mr. Manuel to approve the Purchase Orders in the amount of $2,287.98, being P. O. Nos. 50072, 52047, 49889, 50073 and 52031. Motion seconded by Mr. Pellish and unanimously approved.

APPROVAL OF ACCOUNTS PAYABLE

Motion by Ms. Morgan to approve the accounts payable in the amount of $182,043.24 for August 23, 2012. Motion seconded by Ms. Widmyer and unanimously approved.

CHCKNO	DEPT	VENDOR	PONUM	POAMT	NOAMT	CHECK AMOUNT
067994	425	COMCAST		$ -	$ 346.96	$ 346.96
067995	424	AT&T/IL		$ -	$ 1.27	$ 1.27
067996	425	ABH SERVICES, INC.	50074	$ 90.00	$ -	$ 90.00
067997	425	BIEDLERS ELEC MOTOR REP	50080	$ 14.83	$ -	$ 14.83
067997	425	BIEDLERS ELEC MOTOR REP	52039	$ 191.88	$ -	$ 191.88
067998	425	B-K OFFICE SUPPLY INC	52040	$ 736.12	$ -	$ 736.12
067999	712	BUSINESS TELECOM PRODUCT	51002	$ 132.00	$ -	$ 132.00
068000	440	CHOICE STAFFING, INC.		$ -	$ 1,270.69	$ 1,270.69
068001	717	DONALD B. RICE TIRE CO.	52035	$ 1,383.68	$ -	$ 1,383.68
068002	PAYROLL	HIGHMARK INC		$ -	$ 615.60	$ 615.60
068003	717	FISHER AUTO PARTS	52034	$ 1,380.41	$ -	$ 1,380.41
068004	415	GENERAL COUNTY FUND-J FE		$ -	$ 24,585.08	$ 24,585.08
068005	424	GRAINGER, INC	52045	$ 177.26	$ -	$ 177.26
068005	425	GRAINGER, INC	50082	$ 19.35	$ -	$ 19.35
068006	717	GUTTMAN OIL CO		$ -	$ 18,807.22	$ 18,807.22
068007	412	MICHAEL HARMAN		$ -	$ 158.74	$ 158.74
068008	402	JEFFERSON PUBLISH CO INC	49969	$ 312.08	$ -	$ 312.08
068008	404	JEFFERSON PUBLISH CO INC	52073	$ 104.00	$ -	$ 104.00
068008	406	JEFFERSON PUBLISH CO INC	49848	$ 555.75	$ -	$ 555.75
068009	425	JEFFERSON COUNTY SOLID	53045	$ 16.85	$ -	$ 16.85
068010	717	JASPER ENGINE&TRANSMISSN	52036	$ 1,179.00	$ -	$ 1,179.00
068011	717	JERRY'S FORD/LINCOLN/MER	50075	$ 46.99	$ -	$ 46.99
068012	404	JOYCE A. JOHNS	52074	$ 4,000.00	$ -	$ 4,000.00
068013	424	KONE INC.	52033	$ 409.65	$ -	$ 409.65
068014	425	MILLER & ANDERSON INC.	52042	$ 2,974.88	$ -	$ 2,974.88
068015	717	MILLER'S CHRYSLER JEEP	50076	$ 33.80	$ -	$ 33.80
068016	406	NADA USED CAR GUIDE	49851	$ 30.00	$ -	$ 30.00
068017	439	OLIVIA NOLAN		$ -	$ 10.55	$ 10.55
068018	402	PIFER OFFICE SUPPLY, INC	49706	$ 71.76	$ -	$ 71.76
068018	402	PIFER OFFICE SUPPLY, INC	49968	$ 45.92	$ -	$ 45.92
068018	404	PIFER OFFICE SUPPLY, INC	50797	$ 256.06	$ -	$ 256.06
068018	406	PIFER OFFICE SUPPLY, INC	49849	$ 296.79	$ -	$ 296.79
068019	425	RCS SECURITY	52043	$ 358.50	$ -	$ 358.50
068020	401	RICOH USA, INC./GA		$ -	$ 252.73	$ 252.73
068020	403	RICOH USA, INC./GA		$ -	$ 287.58	$ 287.58
068020	404	RICOH USA, INC./GA		$ -	$ 123.90	$ 123.90
068020	405	RICOH USA, INC./GA		$ -	$ 423.90	$ 423.90
068020	406	RICOH USA, INC./GA		$ -	$ 123.90	$ 123.90
068020	425	RICOH USA, INC./GA		$ -	$ 48.10	$ 48.10
068020	433	RICOH USA, INC./GA		$ -	$ 197.41	$ 197.41

068020	440	RICOH USA, INC./GA		$ -	$ 197.41	$ 197.41
068020	700	RICOH USA, INC./GA		$ -	$ 295.90	$ 295.90
068020	712	RICOH USA, INC./GA		$ -	$ 267.08	$ 267.08
068021	404	SOFTWARE SYSTEMS, INC	52075	$ 3,167.16	$ -	$ 3,167.16
068022	405	SPECIALTY BUS SUPPLIES	50031	$ 2,104.90	$ -	$ 2,104.90
068023	405	STAPLES CREDIT PLAN	49636	$ 366.68	$ -	$ 366.68
068024	704	ST/WV REGIONAL JAIL &	50062	$ 109,848.80	$ -	$ 109,848.80
068025	700	SHERWIN-WILLIAMS	51129	$ 36.90	$ -	$ 36.90
068026	424	*SHANNON BUSINESS SYSTEM	52038	$ 2,375.00	$ -	$ 2,375.00
068027	425	TML COPIERS & DIGITAL		$ -	$ 18.42	$ 18.42
068028	717	TRI STATE TIRES	52048	$ 14.00	$ -	$ 14.00
068029	424	TRENARY SERVICE CO	52037	$ 515.24	$ -	$ 515.24
068030	425	WM OF WEST VIRGINIA, INC		$ -	$ 764.56	$ 764.56
TOTAL						$ 182,043.24
TOTAL				$ 133,246.24	$ 48,797.00	$ 182,043.24

PUBLIC COMMENT:

Kathy Knight endorsed William McLeod to fill the vacant position on the Jefferson County Planning Commission.

David Tabb stated William McLeod's resume was very impressive; inquired as to why nothing was being done by the US 340 Corridor Committee; he felt the cancellation of the August 30, 2012 Commission meeting was not noticed properly; and stated his opinion regarding the performance of an employee.

Commissioner Noland stopped him at this point and advised him Public Comment is not the forum for personal attacks for County employees.

PRESENTATIONS continued:

2. The Commission introduced **Ms. Linda Ott** and commended her for forty-five (45) years of service at CVS providing valuable service and friendship to the residents of Jefferson County. Ms. Ott commented on her years working at the CVS store in the Hillandale Shopping Center, Charles Town. A picture was taken with Mr. and Mrs. Ott and the Commissioners. Commissioner Noland advised her that a Resolution would be sent to her in the mail.

3. **Jennifer Maghan, County Clerk,** provided an update on the cost of a potential purchase of electronic polling machines and an explanation of how they would be faster and more efficient than the system now in use. Mr. Willie G. Wesley, Jr., Senior Customer Service Manager for Election Systems & Software (SS&S) gave a demonstration of polling machines and reviewed their many capabilities providing voter statistics. Mr. Wesley offered to lend two epolling machines and two printers to the County to use in a pilot program during early voting this year at a cost of $750 for poll worker training plus $.025 cents per registered voter, or approximately $850.00.

Motion by Mr. Manuel that the County Clerk take steps to obtain the epoll books for the County. The Clerk should determine when and where is the most efficient place to put the new procedure into effect.

Ms. Morgan amended the motion to state the County would organize a pilot program and utilize a few machines during early voting this year.

Mr. Manuel amended his original motion to authorize a pilot program to be implemented during early voting this year using two epolling machines and two printers at the cost quoted by Mr. Wesley. The amended motion was unanimously approved.

The Commission took a short break at 11:10 a.m.
The Commission reconvened the meeting at 11:17 a.m.

4. **Interviews and Appointments to the (1) Board of Health – one unexpired term ending June 30, 2017, and (2) Planning Commission – one unexpired term ending March 31, 2014.**

Planning Commission:

William McLeod, applicant, spoke about himself to the Commission and his reasons for wanting to be a member of the Planning commission.

James P. Phillips, applicant, also spoke about himself and his reasons for wanting to join the Planning Commission.

Nominations were made. Motion by Ms. Morgan to close nominations. Motion seconded by Mr. Pellish and unanimously approved.

James Phillips was chosen to fill the unexpired seat on the Planning Commission by a vote of 3 to 2.

Board of Health:

Joseph P. Osterman, PhD., applicant, advised the Commission of his qualifications to sit on the Board of Health and his goals, if appointed.

Robert M. Johnson, DDS, MPH, applicant, also spoke about his qualifications and his goals for the Board, if appointed.

Mr. Manuel requested unanimous consent to hold over the nominations for the Board of Health for two weeks should there be others interested in applying. There was unanimous consent to readvertise the vacancy and place applicants on the agenda in three weeks (Sept. 13, 2012).

5. **Work Session to inform the County Commission of the Planning Commission's recommendation regarding the US 340 East Gateway Corridor Plan.**

Jennifer Brockman, Director of Planning and Zoning and Seth Rivard, Planner advised the Commission of the Planning Commission's recommendation with regard to the US 340 East Gateway Corridor Plan. Mr. Rivard explained their proposal via Power Point presentation. Steve Barney, Zoning Administrator, was also present. Ms. Brockman suggested that a public work session be scheduled for sometime during the week of September 17, 2012 and that a public hearing be set for September 27, 2012. She will coordinate the scheduling with Ms.

Keyser.

6. **Approval of a one-time request from the American Conservation Film Festival for funding in the amount of $4,000 for this year's first annual *Producers Campus*, a workshop for conservation filmmakers.**

   Motion by Mr. Manuel to move the request for a $4,000 grant into the County Commission Community grant requests and make a decision within that context. Motion seconded by Ms. Noland.

   During discussion the Commission cited its policy of setting a deadline to receive funding requests and supporting documents The deadline has passed and the request should not be considered. Mr. Manuel agreed and withdrew his motion. This item was deleted from the agenda. A letter will be sent to the American Conservation Film Festival stating this decision and suggesting that since this is a tourism related item they should contact the Jefferson County Convention and Visitors Bureau or AHA! For funding.

7. **Request for approval of contract with eCivis pertaining to researching, maintaining and reporting of grants.**

   Motion by Ms. Noland to enter into a three-year contract with eCivis pertaining to research, maintenance and reporting of grants contingent upon determining the source of funding. Motion seconded by Mr. Manuel and unanimously approved.

8. **Approval of FY2013 budget allocations.**

   By unanimous consent, it was decided that each Commissioner would review the list of proposed allocations, write down his or her suggestions and bring them to the Commission meeting in two weeks (September 6, 2012) for discussion and/or action.

COUNTY ADMINISTRATOR REPORTS:

Interim County Administrator:

- Ms. Keyser presented a proposed Memorandum of Understanding between the County Commission and Jefferson County Emergency Services Agency regarding fiscal responsibility by fire companies. Ms. Keyser asked the Commissioners to review the Memorandum and advise her of any changes.

- Ms. Keyser prepared and submitted a draft of Commissioner's Top Project Listings. Ms. Keyser asked the Commissioners to review the document and submit their changes, additions or comments to her for revision.

- Met with a representative of the Solid Waste Authority.

  Mr. Pellish commented that the Commission should look into holding another recycling event, possibly next year. Ms. Widmyer suggested the County needs a free hazardous waste recycling.

- Ms. Keyser suggested a date of September 27, 2012 to hold a "Meet Your Commissioners" event. The Commission agreed to the date and time as recommended.

COUNTY COMMISSIONER REPORTS:

Commissioner Widmyer:

- Attended a work session with the other Commissioners and representatives of the WVDOT regarding US 340.

- Attended a public meeting with representatives of the WVDOT in Bolivar, WV regarding US 340.

- Coordinated with the NAACP in the Martin Delany celebration. Commented that the County Maintenance Department

did an excellent job assisting with the festival. A formal letter will be sent to the Department.

- Attended the Jefferson County Fair.
- Commented that HEPMPO occasionally amends their Transportation Improvement Program (CHIP) and the next meeting will be regarding a traffic light at the Bakerton Road intersection with US 340. Ms. Widmyer suggested the Commission spread the word to residents as this is a topic they may be interested in.

Commissioner Manuel:

- Participated in the African American Parade and Festival.
- Attended the Jefferson County Fair.
- Attended Senator Rockefeller's tourism meeting.
- Attended the public meeting in Bolivar, WV with representatives of the WVDOT regarding US 340.

Commissioner Pellish:

- Attended the Jefferson County Fair.
- Attended a Jefferson County Development Authority meeting.
- Visited Summit Point with Barbara Scott and saw some of the things she is doing to benefit the area.

Commissioner Morgan:

- Attended the public meeting with representatives of the WVDOT in Bolivar, WV regarding US 340.
- Attended the Martin Delany Birthday Celebration.
- Attended an American Conservation Film Festival film.
- Attended the joint NAACP/National Park Service annual remembrance of the Niagara Movement.
- Attended a Board of Health meeting.
- Attended the Job Corps Community Relations luncheon.

Commissioner Noland:

- Spent most of the week at the Jefferson County Fair.
- Participated in County Administrator applicant interviews.

There being no further business, motion by Mr. Manuel to adjourn the meeting. Motion seconded by Ms. Widmyer and unanimously approved. Upon rising at 1:10 p.m., the meeting was adjourned until Thursday, September 6, 2012.

PATRICIA A. NOLAND, PRESIDENT

PURCHASE ORDERS TO BE APPROVED
September 6, 2012

DEPARTMENT	PURCHASE ORDER	AMOUNT	VENDOR	DESCRIPTION
CENTRAL GARAGE	50084	$ 1,899.00	Jasper Engine & Trans	Transmission
JC431	50091	$ 2,340.00	Spectrum Fire Protection	Drain system, relocatd heads
COUNTY CLERK	49970	$ 264.28	Spirit of Jefferson	Hooe/Hoover, Linton/Morrison, Atherton/Bell & Davis/Dodson
	49972	$ 150.00	ES&S	Minor revision data
	49975	$ 709.00	CSSI	Receipt & Validator printer
COURTHOUSE	50077	$ 225.00	Boland	Service call for cooling
	50090	$ 892.58	Jeff Martin Specialty Adv.	Maint. Pocket t-shirts with logo
EMERGENCY COMMUNICATION	49784	$ 287.50	Acroprint	Repair time clocks (2)
	49807	$ 599.00	Criticall	Service plan (one yr)
OTHER BUILDINGS	50079	$ 564.67	Daycon	Cleaning supplies for Park & Rec
	50078	$ 2,500.00	US Paving	Paving at maint bldg
	50081	$ 674.58	VE Mauck Plumbing Supply	Materials to repair well (Animal Control)

	50086	$ 608.98	BK Office Supply	Paper
	50087	$ 260.00	Dodson Septic Tank Cleaning	Pumping at Poor House Rd
	50089	$ 300.00	City of Charles Town	Alarm Calls
	50092	$ 1,605.65	Daycon	Cleaning supplies
PROSECUTING ATTORNEY	50032	$ 423.00	Maria Chandler, RPR	Transcript (St vs C. Lewis)
GRAND TOTAL		**$ 14,303.24**	Printed at 11:10 a.m. on 8/31/12	

	Jefferson County Policies & Procedures		
Policy Name:	Agenda Policy	Approved:	
Policy Number:	900	Author:	Keyser
Associated:			

PURPOSE:

To provide a comprehensive and uniform process for formulating the agenda of the County Commission of Jefferson County.

POLICY:

The County Commission of Jefferson County is committed to providing open and accessible governmental proceedings and wishes to provide its citizens with information concerning the business of the County Commission and county government.

PROCEDURE:

The Agenda for each County Commission meeting is prepared by the Commission staff.

The County Commission agenda closes at 12:00 noon, two weeks prior to the County Commission meeting. All appointments for the County Commission agenda are made with the County Commission staff prior to the 12:00 noon deadline. Submissions for new business items and information items must be submitted to Commission staff by the same12:00 noon deadline.

An Agenda Request Form and any documentation must be submitted by the 12:00 noon deadline in order to be placed on the Agenda. Ex: If the County Commission meets on Thursday, appointments must be made and new business and informational items submitted by 12:00 noon two weeks preceding Thursday that you are requesting to come before the County Commission. The County Commission requires written documentation and materials for appointments and items of new business. Requests for appointments and items submitted after this time will be carried over for the next agenda.

Appointments shall be 15 minutes unless it is determined that less time is needed.

The last appointment will be 11:30 a.m.

New and old business items shall be reviewed and executed between scheduled appointments or when time permits.

County departments shall submit all materials in both digital and hard copy format to the Commission office

When submitting an item for the agenda, the requesting department, organization or individual shall indicate the desired action of the County Commission i.e., Discussion, Discussion/Action, Introduction, Presentation or Information. All Action Items shall include the Action being requested of the County Commission. Items not indicating the requested action will be withheld from the agenda until the proper information is provided.

Individuals wishing to express their opinions are encouraged to provide their comments during the Public Comment section of the agenda. Individuals wishing to address the Commission outside the Public Comment forum must receive a consensus vote of three Commissioners to be placed on the agenda at a later date.

It is not appropriate for the Commission to publicly discuss personnel matters about an individual employee, and all discussions regarding personnel matters should be conducted in an executive session. Additionally, it is inappropriate to discuss personnel matters, including employee performance issues, with individual citizens either in a public or executive session.

Both the Freedom of Information Act codified at W.Va. Code §29B-1-1 *et seq.* and the Open Governmental Proceedings Act codified at W.Va. Code 6-9A-1 *et seq*. protect an employee's personnel records and performance from disclosure to individual citizens and create an obligation on behalf of the Commission to protect employee records from public disclosure. Because discussions of personnel issues with private citizens violate an employee's privacy, the Commission will decline an agenda request from any member of the public that seeks to discuss any employee evaluation or performance with the Commission, regardless of whether such request is intended to be negative or positive.

The agenda will be available at 12:00 noon, three days preceding the County Commission meeting. Ex: If the County Commission meets on Thursday, the agenda will be available Monday at 12:00 noon. In the event that a holiday falls on a Monday, the agenda will be available at 5:00 p.m. on Friday preceding the meeting.

The agenda is available in the Office of the County Commission and on the County website at www.jeffersoncountywv.org. A PDF formatted file of the agenda packet will be available at this site. Links to specific agenda items will be available when practical.

If you require visual equipment for your appointment with the County Commission, please notify the Commission staff when scheduling your appointment.

At all times, the County Commission reserves the right to deny a topic, rearrange agenda items because of time constraints, and to accommodate the Commission's schedule or the public's schedule.

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

AGENDA REQUEST FORM

Name: **Angie Banks**

Department or Entity: **Assessor**

Estimation of amount of time needed for appointment: **5 minutes**

Date Requested – 1st Choice: **9/6/12**

Date Requested – 2nd 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:

2A

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

AGENDA REQUEST FORM

Name: Robert Shirley

Department or Entity: JCSO

Estimation of amount of time needed for appointment: 5min

Date Requested – 1st Choice: 8/30/12

Date Requested – 2nd Choice: 9/10/12

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

Subject:

Hire New Part-time Bailiff

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

I would like to hire James Cummings as part-time Bailiff. Do to Robbie Roberts promotion at Ranson PD and Richie Barron's departure there is a demand for additional Bailiffs without effecting the budget.

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

I move to approve the hire of James Cummings to the position of part time Bailiff.

Attachments:

Personnel Requisition

JEFFERSON COUNTY

Personnel Requisition

Department Name JCSO Date 8/23/12 Date Needed ASAP

Job Title Bailiff Salary 12.81/hr Criminal History Check ___ Yes ___ No

Suggested Recruitment Source(s) _____

Applicants Interviewed By _____ Position Reports To _____

Minimum Education Required _____

_____

Minimum Experience Required _____

_____

_____

Job Duties _____

_____

_____

Budget Information

Addition ___ Replacement ✓ Explain or For Whom Richard Barron

Position Budgeted ✓ Yes ___ No Proposed Salary 12.81/hr Date of Hire _____

Is Position: Full-Time ___ Regular Part-Time ___ On-Call Occasional ✓ Temporary ___

Safety/Security ✓ Hours Per Week _____

Approvals

Elected Official Approval _____ Date _____

Department Head Approval _____ Date _____

County Commission Approval _____ Date _____

Comments _____

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

AGENDA REQUEST FORM

Name: Robert Shirley

Department or Entity: JCSO/Animal Control

Estimation of amount of time needed for appointment: _____

Date Requested – 1st Choice: 9/6/2012

Date Requested – 2nd Choice: _____

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

Subject:

Hire new Animal Control Officer

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

Daniel Coontz tendered his resignation effective 8/23/2012. I would like to hire Joe Jacobs to replace him.

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

I move to approve the hire of Joe Jacobs as an Animal Control Officer.

Attachments:

Coontz Resignation
Personnel Requisition Form

8/15/2012

TO WHOM IT MAY CONCERN,

I, DANIEL COONTZ, HEREBY SUBMIT MY TWO WEEKS NOTICE FOR RESIGNATION. MY FINAL DAY OF EMPLOYMENT WITH THE ANIMAL CONTROL OFFICE WILL BE 8/23/2012

RECEIVED
8/15/12
1320 hrs

JEFFERSON COUNTY

Personnel Requisition

Department Name Animal Control Date 8/31/2012 Date Needed ASAP

Job Title Animal Control Officer Salary _____ Criminal History Check ___ Yes ✓ No

Suggested Recruitment Source(s) _____

Applicants Interviewed By Colbert/Lambrotte Position Reports To Lambrotte

Minimum Education Required _____

_____

Minimum Experience Required _____

_____

_____

Job Duties _____

_____

_____

Budget Information

Addition ___ Replacement ✓ Explain or For Whom Daniel Coontz

Position Budgeted ✓ Yes __No Proposed Salary _____ Date of Hire _____

Is Position: Full-Time ✓ Regular Part-Time _____ On-Call Occasional _____ Temporary _____

Safety/Security _____ Hours Per Week 40

Approvals

Elected Official Approval _____ Date 8/31/2012

Department Head Approval _____ Date _____

County Commission Approval _____ Date _____

Comments _____

Order to be entered in the Official Election Order Book by recommendation of The Honorable Jennifer S. Maghan, Clerk of the Jefferson County Commission.

ORDER

September 6, 2012

Removal of Ronald A. Bell, also known as Ronald "Ronnie" Bell, Candidate for Magistrate, from the 2012 General Election Ballot

On Thursday, August 23, 2012 the Jefferson County Clerk's office was informed by the chairperson of the Jefferson Republican Executive Committee that Magistrate Candidate Ronald "Ronnie" Bell who appeared on the 2012 Republican Primary Election Ballot "may have moved out of state." No forwarding address was available for Mr. Bell.

Mr. Bell failed to file his campaign financial statement on time, and Prosecuting Attorney Ralph Lorenzetti was notified.

Confirmation that Mr. Bell had moved out of state was made by County Clerk Jennifer Maghan on August 27, 2012, who contacted Mr. Bell via telephone and Facebook to inform him that his financial statement was not filed on time. Mr. Bell responded by saying that he had moved in June of 2012 and was no longer a resident of the State of West Virginia, and would not be returning to complete the election contest.

The County Clerk's office sought advice from attorney Mr. Tim Leach of the West Virginia Secretary of State's office who provided the code reference to the Clerk's office. Attorney Stephanie Grove provided clarification for the County Clerk regarding §50-1-6 *Vacancy in the office of magistrate* and said that if Mr. Bell were to remain on the ballot and win, it would trigger a special election since he is not an eligible candidate. A special election will be avoided as Mr. Bell is no longer eligible to run for office.

The official drawing for order on the ballot took place on Tuesday, August 28, 2012 where Mr. Bell's name was drawn as the third position on the ballot. Therefore, there is no need to have another drawing as his name will be eliminated from the ballot and does not affect other candidates.

The County Clerk's office finally received Mr. Bell's Post Primary Financial Statement on August 28, 2012, seventy days after the June 19, 2012 filing deadline.

Mr. Bell is hereby removed from the 2012 General Election Ballot in compliance with code section:
WV § 3-8-7 (c) *Failure to file statement; delinquent or incomplete filing*

(c) No candidate nominated at a primary election who has failed to file a sworn statement, as required by this article, shall have his or her name placed on the official ballot for the ensuing election, unless there has been filed by or on behalf of such candidate, or by his or her financial agent, if any, the financial statement relating to nominations required by this article. It is unlawful to issue a commission or certificate of election, or to administer the oath of office, to any person elected to any public office who has failed to file a sworn statement as required by this article and no person may enter upon the duties of his or her office until he or she has filed such statement, nor may he or she receive any salary or emolument for any period prior to the filing of such statement.

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

AGENDA REQUEST FORM

Name: **Elizabeth Wheeler**

Department or Entity: **Jefferson County Farmland Protection Board**

Estimation of amount of time needed for appointment: **5 minutes**

Date Requested – 1st Choice: **September 6, 2012**

Date Requested – 2nd Choice:

If a specific date is needed, please provide reason for specific date:
We are scheduled to close the easement before September 26, and have only a small window of opportunity to complete the transactions.

Subject: **Approval of one deed of easement for the Farmland Protection Program.**

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

The attached easement (RR) is ready to close by September 26. Matching funding is provided for all easements through the USDA/NRCS and the Jefferson County Farmland Protection Program. Easement RR contains a significant donation of value by the landowner. The easement is for 147.62 acres with a cost to the JCFPB of $250,000.00. The easement will be co-held by the Land Trust of the Eastern Panhandle.

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **that the Jefferson County Commission approve the purchase by the Jefferson County Farmland Protection Board for the Jefferson County Farmland Protection Program and the USDA/NRCS of one conservation easement on the property in Jefferson County owned by the following persons: Dianna Gray, individually and as Co-Executrix of the Estate of Hugh Hoover, and Steven Helms, individually and as Co-Executor of the Estate of Hugh Hoover.**

Attachments: **Map of easement location; 1 deed of easement**

Deed of Conservation Easement

This **DEED OF CONSERVATION EASEMENT** ("Easement") is made this _____ day of _____, 2012, by Dianna Gray, individually and as Co-Executrix of the Estate of Hugh Hoover, and Steven Helms, individually and as Co-Executor of the Estate of Hugh Hoover ("Grantors"), whose mailing address is 2598 Kabletown Road Charles Town WV 25414 and 771 Ann Lewis Road, Charles Town WV 25414, respectively, to the Jefferson County Farmland Protection Board ("FPB" or "Grantee") having its mailing address at P.O. Box 731, Charles Town, WV 25414, the Land Trust of the Eastern Panhandle ("Trust" or "Co-holder"), having the same rights as conveyed to the Grantee and whose mailing address is P.O. Box 2240, Martinsburg, WV 25402, and the United States of America ("United States"), by and through the United States Department of Agriculture, Natural Resources Conservation Service ("NRCS") with its mailing address is 1550 Earl Core Road, Morgantown, WV 26505, acting on behalf of the Commodity Credit Corporation, as its interest appears herein, for the purpose of forever conserving the agricultural productivity of the Property and its value for resource preservation and as open space For purposes of this agreement, references to the rights, duties and obligations of Grantor and Grantees apply equally and in full force to any successors to the parties to this agreement.

WITNESSETH:

WHEREAS, Dianna Gray and Hugh Hoover, deceased, were the sole owners in fee simple of certain real property in Jefferson County, West Virginia, consisting of 147.62 acres of land (the "Property"), more or less, as described in Exhibit A incorporated herein by reference. Hugh Hoover died testate on November 25, 2011, at which time there was a pending application for sale of the conservation easement and such conservation easement was in the process of settlement. Pursuant to W.Va. Code § 44-1-29, Dianna Gray and Steven Helms, as Co-Executors of the Estate of Hugh Hoover, have the authority to execute this Deed of Conservation Easement.

WHEREAS, the Property possesses agricultural, including prime, unique and significant soils; open space and natural values (collectively, "Conservation Values") of great importance to Grantors, the people of Jefferson County, and the people of the State of West Virginia, and all current and future generations of mankind;

WHEREAS, the Farm and Ranch Lands Protection Program (16 USC 3838h and 3838i) purchases conservation easements to protect prime, unique, and other productive soils from conversion to non-agricultural uses. Under the authority of the Farm and Ranch Lands Protection Program, the United States Department of Agriculture's Natural Resources Conservation Service has provided $250,000.00 to Grantors for the acquisition of this conservation easement, entitling the United States to the rights identified herein;

WHEREAS, Grantee has provided $250,000.00 under the Jefferson County Farmland Protection Program to purchase a conservation easement on 147.62 acres of the Property;

WHEREAS, the specific Conservation Values of the Property are documented in an inventory of relevant features of the Property, on file at the offices of Grantee, and incorporated by reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide an accurate representation of the Property at the time of

this contract and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement;

WHEREAS, Grantors and Grantee have the exclusive common purpose of preserving the agriculture and open space character of the Property;

WHEREAS, Grantors further intend, as owners of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity;

WHEREAS, the Legislature of the State of West Virginia ("Legislature") has recognized the importance and significant public benefit of conservation and preservation easements in its ongoing efforts to protect the natural, historic, agricultural, open-space and scenic resources of the State of West Virginia;

WHEREAS, the Legislature has declared that agriculture is a unique life support industry, and recognizes the need to prevent the irreversible loss of agricultural land. The Legislature authorizes the State of West Virginia and its counties so desiring to protect agricultural land and woodland as open-space land, to develop programs and to accept qualifying properties voluntarily entered into the program;

WHEREAS, the County Commission of Jefferson County, West Virginia ("County Commission") has declared that the agriculture community of Jefferson County provides sources of agricultural products for the citizens of the state; enhances tourism, protects worthwhile community values, institutions and landscapes which are inseparably associated with traditional farming; and controls urban expansion which is consuming land, topsoil and woodland of the county;

WHEREAS, the County Commission has resolved to provide persons of Jefferson County an opportunity to voluntarily protect agricultural land by creating the Jefferson County Farmland Protection Board and authorizing it to create and administer the Jefferson County Farmland Protection Program;

WHEREAS, the Trust is a non-profit corporation incorporated under the laws of the State of West Virginia and a tax-exempt public charity under Section 501(c)(3) of the Internal Revenue Code and qualified under Section 170(h) of the Internal Revenue Code to receive qualified conservation contributions, whose purpose is to preserve land for natural, historic, open space, scenic, recreational, environmental, agricultural, scientific, charitable, educational and aesthetic purposes;

WHEREAS, The Jefferson County Farmland Protection Board is a public agency established to provide landowners with an opportunity to voluntarily protect agricultural land in Jefferson County by the voluntary placement of conservation or preservation easements on eligible Property;

WHEREAS, the Grantee affirms that this Easement represents a unique and valuable asset to the quality of life in Jefferson County and that by the acceptance of this Easement that it will act in good faith to uphold the conservation easement and not seek to benefit from its conversion or elimination. It agrees by accepting this grant to honor the intentions of Grantors stated herein and to

preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come in the future; and,

NOW, THEREFORE, in consideration of the above and the mutual covenants, good and valuable consideration, terms, conditions and restrictions contained herein, and pursuant to the laws of West Virginia, Grantors hereby voluntarily grant, bargain, and convey to Grantee and the United States a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth in this Easement. It is the purpose of this Easement to assure that the Property will be retained forever in its natural, agricultural, and open space condition and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property, including its prime, unique, and important soils.

To achieve these objectives, the terms, conditions, and restrictions of this Easement are hereinafter set forth. The parties agree that the United States is granted the same rights as the Grantee under the terms of this Easement. However, the United States will only exercise its rights set forth below at section II 4 (e). Until such time, if ever, the United States exercises its rights under this Easement, Grantee is the primary manager and enforcer of this Easement.

I. TERMS, CONDITIONS AND RESTRICTIONS

Grantors reserve to themselves, and to their personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. The following terms, conditions and restrictions clarify and govern the intent of Grantors and Grantee:

1. Use and Quiet Enjoyment. Grantors have the right to reside on the Property and to benefit from all aspects of the quiet enjoyment of the Property. Grantors have the right to engage in any and all personal recreational uses of the Property, including but not limited to hiking, touring, swimming, camping, biking, hunting and fishing that require no development of the land and are consistent with the Conservation Values.

2. Agricultural Uses of the Land. Grantors may engage in any and all agricultural uses of the Property. For example, the production of plants and animals useful to man, including, but not limited to, forage, grain and field crops; pasturage, dairy and dairy products; poultry and poultry products; equestrian uses; livestock and fowl uses and livestock and fowl products; bees and apiary products; fruits, nuts and vegetables of all kinds; nursery, floral and greenhouse products; aquaculture; a grain mill; and the processing and storage of the agricultural products produced principally on the Property are permitted. Any secondary agricultural activity, including but not limited to farm mechanics, blacksmithing, riding instruction or related activities, shall be considered an agricultural activity. However, such activities or businesses must be undertaken in the permitted agricultural or residential structures and must be consistent with the Conservation Values.

3. Agricultural Structures. Grantors have the right to maintain, construct, and place agricultural structures contributing to the production, primary processing, direct marketing and

storage of agricultural products produced principally on the Property. Agricultural structures shall be constructed or placed on the Property within the areas described in Exhibit C ("Farmstead Complex Area") and shall be limited by the maximum square footage as described in *Terms, Conditions and Restrictions-Maximum Impervious Surface Coverage*.

4. Retail Sale of Farm Products. Businesses directly related to the retail sale of farm products produced primarily on the Property that are supportive and agriculturally compatible may be established on the Property. Such businesses include roadside stands or structures to facilitate the direct sale to the public of agriculture products, as long as not more than 2,000 square feet of structures are erected to facilitate such retail sales.

5. Activities for Religious, Charitable or Educational Purposes or to Foster Tourism. Activities or businesses undertaken for charitable or educational purposes or to foster tourism may be conducted on the Property in order to foster rural economic uses while protecting the rural character of the Property. Such activities or businesses must be compatible with and supportive of the rural character of the Property, and must remain incidental to the agricultural and open space character of the Property.

(a) Non-agricultural commercial and industrial structures and uses are prohibited. Activities or businesses undertaken for charitable or educational purposes or to foster tourism must be undertaken in the agricultural structures permitted under *Agricultural Structures* or *Residential Dwellings*; no other structures are permitted on the Property.

(b) The stables, horseback riding arenas both within and outside the barn, and supporting pavilion(s) and buildings are considered agricultural buildings. Such buildings shall be located within the Farmstead Complex Area described in Exhibit C, and shall be limited by the maximum square feet as described in *Terms, Conditions and Restrictions-Maximum Impervious Surface Coverage.*

(c) Accommodation of tourists and visitors is permitted but only within permitted residential structures and appurtenances, and/or agricultural structures, except for rural recreational activities such as hayrides, corn mazes, etc.

(d) Accommodation of overnight guests is permitted, but only within permitted residential structures.

(e) Commercial operation of dune buggies, motorcycles, all-terrain vehicles, hang gliders, aircraft, jet skis, motorized boats or any other types of mechanized vehicles whether or not considered to foster tourism is prohibited.

(f) Extensive commitment of land resources as required by golf courses, racetracks, tennis clubs, baseball, soccer and other ball fields and similar uses whether or not considered to foster tourism is prohibited.

6. Home-based Businesses. Any home-based business that does not require a Division of Environmental Protection permit to operate may be conducted on the Property, provided that:

(a) The occupation or business use must be conducted entirely within the single residential dwelling or appurtenances allowable under *Terms, Conditions and Restrictions—Residential Dwellings.*

(b) The use of the dwelling for the home occupation shall be clearly incidental and subordinate to the use of the dwelling for residential purposes.

7. Residential Dwellings. Grantor and Grantee acknowledge that no residential dwelling exists on the property. Grantors may construct 1 (one) single residential dwelling on the Property, to be located within a separate two acre building envelope as indicated in Exhibit D (the "Retained Development Right"). No other single residential dwelling shall be constructed or placed on the Property.

a) The residential dwelling shall be contained in a building envelope ("Residential Area") no greater than two (2) acres. The Retained Development Right may be constructed anywhere within the building envelope described in Exhibit D.
b) The Grantors have the right to maintain, repair, enlarge or replace the single residential dwelling(s) as they so desire, except that the impervious surface of each single residential dwelling is limited to five thousand (5,000) square feet.
c) The Grantors have the right to construct appurtenances such as garages, sheds and recreational facilities within each building envelope except that the total allowed impervious surface within each building envelope, including the single residential dwelling, shall not exceed nine thousand (9,000) square feet.
d) The single residential dwelling may house one or more families or occupants, but shall not be converted to a multi-family dwelling.

8. Transfer of Development Rights.

The Property and any portion thereof shall not be included as part of the gross area of other Property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open spaces requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise; provided, however, that with prior written permission of Grantees, this paragraph shall not preclude such transfer of development rights resulting from the destruction or demolition of any existing residential building on the Property.

9. Subdivision. It is the intention of Grantors to protect the open space values of the Property. Accordingly, subdivision of the Property is prohibited

10. Maximum Impervious Surface Coverage. The total surface coverage of impervious surfaces on the Property shall be subject to the limitations defined below.

(a) Impervious surfaces shall be defined as any material which covers land and inhibits the percolation of stormwater directly into the soil, including, but not limited to, buildings, roofs, the area covered by permanent or nonpermanent structures, macadam and pavement, gravel and stone driveways and parking areas.
(b) The total surface coverage of the Property by all impervious surfaces, including the single residential dwelling, structures considered as an appurtenance to such dwelling, structures associated with agricultural uses, driveways and parking areas, shall not exceed 128,606 square feet, which is less than 2% of the total Conservation Easement area.

11. Removal of Natural Resources. Ditching, draining, diking, filling, excavating, removal of topsoil or sand, gravel or rock on the Property is prohibited, except when such activities

are conducted in order to carry out activities permitted under this Easement, are in accordance with a conservation plan, do not exceed one (1) acre in total area and are restored within a reasonable time period. The exploration, development, mining or extraction of minerals, oil, gas or any other hydrocarbon substance from the Property is prohibited.

12. Management of Woodland Resources. Removal, destruction and cutting or harvesting of trees, shrubs, and other woodland resources is prohibited except:

(a) Non- -commercial forestry activities which include the following: Agriculturally related low-impact timber harvest and sale including the management of the forest for timber, and/or for wildlife and forest health where those activities are conducted in accordance with a Forest Stewardship Plan prepared or reviewed by a licensed, registered West Virginia forester which has been updated no more than ten (10) years prior to the harvest. The Forest Stewardship Plan must be approved by Grantee. This easement allows for the growing and sale of Christmas trees, orchard products and nursery stock; and the growing and sale of ornamental plants and woodland products for human consumption. Only commercial timber harvest shall be prohibited.

(b) To the extent necessary for application of sound disease or insect control practices and removal of non-native invasive species;

(c) To control or prevent fire, damage to improvements, and the endangerment of life;

(d) To cut firewood for use on the property;

(e) For construction or maintenance of permitted structures or landscaping within the Residential Area or for access otherwise permitted in this Easement;

(f) To remove, destroy and cut orchard tree species which may include the cutting thereof for firewood for use on the Property or for sale; the sale of orchard tree species firewood is exempt from the Forest Stewardship Plan if grown within the agricultural operation.

(g) For the maintenance or the improvements of pastures whether existing presently or in the future.

13. Other Construction. Except as specifically permitted above, there shall be no constructing or placing of any buildings; manufactured homes; swimming pools or other recreational facilities; commercial lighting or any other temporary or permanent structure or facility on or above the premises. Existing roads as identified in the Baseline Documentation Report may be maintained and repaired in their current state. New roads may be constructed only if they are necessary for agricultural operations or access to the retained development rights (Exhibit D) on the Property. Paved roads are subject to the impervious surface limitations referenced above.

14. Fences. Existing fences may be repaired and replaced and new fences may be built on the Property as necessary for agricultural operations on the Property, including customary management of livestock and to delineate the boundary of the Property.

15. Signs. Except for no-trespassing signs, for-sale signs, no-hunting signs, signs identifying this Easement, and signs to advertise an on-site activity or business, all other signs, advertisements and billboards of any nature are prohibited. The permitted signs may not exceed 15 square feet per sign.

16. Wastes. Dumping or storage of trash, garbage, hazardous substances, abandoned vehicles or machines or other material on the Property is prohibited. However, composting of biodegradable material used or produced on the Property to improve gardens and pastures on the Property is permitted so long as composting and its application is consistent with a conservation plan.

17. Utilities. Grantors shall not sell, lease or grant an easement covering any portion of the Property where such sale, lease or easement is for the purpose of construction and installation of underground or above-ground utility systems, including, but not limited to, water, sewer, power, fuel, sewerage pumping stations, and cellular telephone or other communication towers. Grantors may install utilities necessary for the permitted residential and agricultural structures.

18. Streams, Wetland and Water Bodies. There shall be no pollution, alteration, or depletion of surface water, natural water courses, lakes, ponds, marshes, wetlands, springs, subsurface water or any other water bodies, nor shall there be activities conducted on the Property which would be detrimental to water purity or which could alter natural water level and/or flow in or over the Property. Nothing in this paragraph shall prohibit the creation or dredging of farm ponds and/or the reasonable use of the available water of the Property for agricultural purposes permitted by this easement. Structures and facilities associated with irrigation, farm pond impoundment, and soil and water conservation on the Property shall be considered an agricultural use. Expansion and construction of ponds and structures outside the Farmstead Complex Area shall be in accordance with the conservation plan. Farm ponds both inside and outside the Farmstead Complex Area shall not exceed one (1) acre in area.

II. GENERAL PROVISIONS

1. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement.

2. Rights of the Grantee. To accomplish the purpose of this Easement the following rights are conveyed to Grantee or its agent by this Easement:

(a) To preserve and protect the Conservation Values of the Property;

(b) To enter upon the Property on a yearly basis (or more frequently if violations are observed or suspected) in order to monitor Grantors compliance with and otherwise enforce the

terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantors, and Grantee shall not unreasonably interfere with Grantors use and quiet enjoyment of the Property; and

(c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to *General Provision—Grantee's Remedies*.

3. Grantee Notification/Approval. Grantors reserves for themselves the right to engage in any and all activities not expressly prohibited herein and not inconsistent with the purpose of this Easement without seeking the approval of the Grantee.

4. Grantee's Remedies.

(a) **Notice of Violation; Corrective Action.** If Grantee determines that Grantors are in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantors of such violation and demand corrective action within 60 days sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

(b) **Injunctive Relief.** The Grantee, its successors or assigns, jointly or severally shall have the right to enforce these restrictions by injunction and other appropriate proceedings, including, but not limited to, the right to require Grantors to restore the Property to the condition existing at the time of this Easement in order to correct any violation(s) of this Easement. The Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantors agree that Grantee shall be entitled to the injunctive relief in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

(c) **Costs of Enforcement.** Any costs incurred by Grantee in enforcing the terms of this Easement against Grantors, including without limitation costs of suit and attorneys' fees, and costs of restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors. If Grantors prevail in action to enforce the terms of this Easement, Grantors' costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee. Costs incurred by Grantee in enforcing the terms of this Easement against third party shall be borne by Grantee. The preceding two sentences shall not apply to the United States should the United States exercise its rights under (e) below.

(d) **Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantors shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

(e) **Rights of Enforcement.** Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. The Secretary of the United States Department of Agriculture (the Secretary) or his assigns, on behalf of the United States, may exercise these rights under the following circumstances: In the event that Grantee fails to enforce any terms of this Conservation Easement, as determined in the sole discretion of the Secretary, the Secretary and his or her successors or assigns may exercise the United States' rights to enforce the terms of this Conservation Easement through any all authorities available under Federal or State Law. The notice will set forth the nature of the noncompliance by the Grantee and a 60-day period to cure. If Grantee fails to cure within the 60-day period, NRCS will take the action specified under the notice. NRCS reserves the right to decline to provide a period to cure if NRCS determines that imminent harm may result to the conservation values or other interest in the land it seeks to protect.

(f) **Conservation Plan.** As required by section 12381 of the Food Security Act of 1985, as amended, the Grantors, their heirs, successors, or assigns, shall conduct all agricultural operations on the highly erodible lands within the Protected Property in a manner consistent with a conservation plan prepared in consultation with the NRCS and approved by the Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12 that are in effect on the date of this Easement. However, the Grantors may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. The NRCS shall have the right to enter upon the Property, with advance notice to the Grantors and Grantee, in order to monitor compliance with the conservation plan.

The United States, acting by and through the Natural Resources Conservation Service its successors or assigns, shall have the right to enter the Property after notifying Grantor for the purposes of ensuring that the Conservation Plan is being implemented appropriately. All notices to the Grantor under this Section may be made either in writing or verbally, at the discretion of the party providing the notice.

In the event of noncompliance with the conservation plan, the NRCS shall work with the Grantors to explore methods of compliance and give the Grantors a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantors do not comply with the conservation plan, the NRCS will inform Grantee of the Grantors' noncompliance. The Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event of circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantors to correct such noncompliance, and (c) Grantors have exhausted their appeal rights under applicable NRCS regulations.

Grantor shall be liable for any costs incurred by NRCS as a result of the Grantor's negligence or failure to comply with the Conservation Easement's requirements as it relates to conservation plan violations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Grant Based on an Act of Congress, NRCS will work cooperatively with the

Grantors to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantors may be or become subject.

The conservation plan described above, and all provisions of this section, apply only to the highly erodible land and wetlands conservation requirements. Such highly erodible land and wetlands, if any, is described in the Baseline Documentation and incorporated here by reference. The Grantors agree that the NRCS shall share, through written communication with the Grantee, information related to monitoring for compliance with the conservation plan; findings of compliance or noncompliance; and any proceedings under appeal rights applicable under NRCS regulations related to a violation of the conservation plan.

In addition, as of the date of this Easement, the Grantors and NRCS certify that the Grantors are in compliance with all highly erodible land and wetland conservation provisions.

5. Grantee and Co-holder's Rights and Obligations. Grantee shall have the primary responsibility of stewardship and monitoring of this easement, determining if a violation has occurred, and for approving any amendments to the Deed of Conservation Easement. These duties may be fulfilled directly by Grantee or its agent, or Grantee may arrange to have the Co-holder fulfill these duties. Grantee will share with the Co-holder monitoring and stewardship information, including but not limited to written notices to Grantee and monitoring reports, in the event that the Co-holder is not acting to complete these duties through an arrangement with Grantee.

The Grantee is responsible for any costs incurred in enforcing the terms of the easement, including any attorney's fees and any costs of the suit. Grantee can recover cost from Grantors or third party as described in the Grantee's Remedies above. The Grantee and Co-holder shall make every good faith effort to determine a unified course of action should a potential or actual violation of the easement arise.

Co-holder shall have the right to enforce the terms of the Easement if Grantee becomes unable or refuses to enforce the Easement, or if Co-holder in its sole discretion finds that the Grantee's enforcement action or consent fails to protect the conservation purposes of the Easement. In such case, the provisions of paragraph 4c above apply equally to the Co-holder.

6. Acts Beyond the Grantors' Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Property resulting from causes beyond Grantors' control including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. In the event the terms of this Easement are violated by acts of trespassers that Grantors could not reasonably have anticipated or prevented, Grantors agree that Grantee has the right to pursue enforcement action against the responsible parties.

7. Costs, Legal Requirements and Liabilities. Grantors, their heirs, successors and assigns retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.

8. Control. Nothing in this Easement shall be construed as giving rise to any right or ability of the Grantee, or the United States to exercise physical or managerial control over the day-to-day operations of the Property, or any responsibility to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (42 U.S.C. §§ 9602 et seq.).

9. Taxes. Grantors shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Property or residences contained thereon by competent authority, including any taxes imposed upon, or incurred as a result of, this Easement.

10. Hold Harmless. Grantors shall hold harmless, indemnify, and defend Grantee and the United States and its members, directors, officers, employees, agents, and contractors (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: an injury to or the death of any person, or physical damage to any Property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties and only that negligent party shall be deprived of this protection.

11. Environmental Warranty. "Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

Grantors warrant that they are in compliance with and shall remain in compliance with, all applicable Environmental Laws. Grantors warrant that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property.

Grantors warrant that they have no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Property exceeding regulatory limits. Moreover, Grantors hereby promise to indemnify and hold harmless the United States against all costs, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantors or any other prior owner of the Property. Grantors' indemnification obligation shall not be affected

by any authorizations provided by Grantee to Grantors with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.

12. Proceeds for Extinguishment. The conveyance of this Easement gives rise to a Property right immediately vested in the Grantee and the United States. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, upon approval by the USDA-NRCS or its successors and by judicial proceedings in a court of competent jurisdiction. The United States shall receive, at the time of the Conservation Easement is extinguished or terminated, its share of the Conservation Easement based on the appraised fair market value of the Conservation Easement at the time the Conservation Easement is extinguished or terminated. The United States' share shall be proportionate to its percentage of its original investment. At the date the Conservation Easement was purchased, the proportionate values were as follows: Grantor(s) is ~~__%~~ 44% of the appraised fair market value of the subject property. Grantee(s) and United States' is ~~__%~~ 56% of the appraised fair market value of the subject property. The Grantee(s) and United States' proportionate investment of the subject property are as follows:

In making this Easement, Grantors have considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. Grantors believe that any such changes in the use of neighboring properties will increase the benefit to the public of continuation of this Easement, and Grantors and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement.

13. Condemnation. Due to the federal interest in this Easement, the United States must consent to any condemnation action. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantors shall be entitled to compensation at not less than the fair market value of the Property determined without regard to the existence of the Easement. Grantor, upon receipt of notification of any pending condemnation action brought by any government entity affecting and/or relating to the Property, shall notify the Grantee and the United States, in writing, within fifteen (15) days of receipt of said notification.

14. Assignment. This Easement is not transferable by the Grantee to any other local, county or state department, board, agency, commission or successor. In the event that the Jefferson County Farmland Protect ion Board ceases to operate or exist, and the United States declines to take sole title as set forth above at under II. 4. (e) herein, the rights of the Grantee under this Easement shall be transferred to an organization that is qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and is a West Virginia-domiciled organization authorized to acquire and hold conservation easements under the West Virginia Conservation and Preservation Easements Act, (WV Code 20-12-1, et seq., 1995). The USDA-NRCS or its successor must approve any such transfer in advance.

This Easement is not transferable by the Grantee to any other local, county or state department, board, agency, commission or successor. The Co-Holders may, upon notice to

Grantor and with approval of USDA-NRCS or the United States, assign their rights under this Conservation Easement to any organization that is qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and is a West Virginia-domiciled organization authorized to acquire and hold conservation easements under the West Virginia Conservation and Preservation Easements Act, (WV Code 20-12-1, et seq., 1995). In the event that the Holder ceases to operate or exist, and the United States declines to take sole title as set forth above at under II. 4. (e) herein, the rights of the Holder under this Easement shall be transferred to Authority and Trust, or an organization that is qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and is a West Virginia-domiciled organization authorized to acquire and hold conservation easements under the West Virginia Conservation and Preservation Easements Act, (WV Code 20-12-1, et seq., 1995). The USDA-NRCS or its successor must approve any such transfer in advance.

The Grantees further covenant and agree the Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the Easement was originally intended to advance. The transfer of the easement to a new or successor transferee or assignee will not create a financial obligation of any kind on the Grantors.

15. Subsequent Transfers. Grantors agree to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest.

16. Estoppel Certificates. Upon request by Grantors, Grantee shall within thirty (30) days execute and deliver to Grantors any document, including an estoppel certificate, which certifies Grantors' compliance with any obligation of Grantors contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantors either served personally or sent by certified mail, return receipt, addressed as follows:

16. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by certified mail, return receipt, addressed as follows:

To Grantors: Dianna Gray and the Estate of Hugh Hoover
2598 Kabletown Road
Charles Town, WV 25414

Steven Helms as Co-Executor of the Estate of Hugh Hoover, Landowner
771 Ann Lewis Road
Charles Town, WV 25414

To Grantee: The Jefferson County Farmland
Protection Board

P. O. Box 731
Charles Town, WV 25414-0731

To Co-Holder: Land Trust of the Eastern Panhandle, Inc.
P.O. Box 2240
Martinsburg, WV 25402

To the United States: Natural Resources Conservation Service
1550 Earl Core Road
Morgantown, WV 26505

or to such other address as either party from time to time shall designate by written notice to the other.

18. Recordation. Grantee shall record this instrument in timely fashion with the Office of the Clerk of Jefferson County, West Virginia and may re-record it at any time as may be required to preserve its rights in this Easement.

19. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantors, Grantee and the United States are free to jointly amend this Easement; provided that no amendment shall be allowed that will invalidate this Easement or be inconsistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded as above specified. No such amendment shall be effective unless in writing and signed by all parties hereto.

20. Other Provisions.

(a) **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of West Virginia and the United States.

(b) **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(c) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of the Grantors' title in any respect.

(d) **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

(e) **Captions.** The captions herein have been inserted solely for convenience of reference and are not a part of this Easement and shall have no effect upon construction or interpretation.

(f) **Subordination.** Any mortgage or lien arising after the date of this Easement shall be subordinated to the terms of this Easement.

(g) **Title Warranties.** Grantors warrant that Grantors have good title to the Property; that Grantors have the right to convey this Easement, and that the Property is free and clear of any encumbrances.

(h) **Merger.** If Grantee at some future time acquires the underlying fee title in the Property, the interest conveyed by this Easement will not merge with fee title but will continue to exist and be managed as a separate estate. The Grantor and Grantee explicitly agree that it is their express intent, forming an part of the consideration hereunder, that the provisions of the conservation easement deed set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Property by or to the local grantee, the United States, or any successor or assignee will be deemed to eliminate these conservation easement terms, or any portion thereof, pursuant to the doctrine of "merger" or any other legal doctrine.

(i) **Boundary Line Adjustments.** Boundary line adjustments are permitted in the case of technical errors made in the survey or legal description. In such cases, boundary line adjustments cannot exceed two (2) acres for the entire Property.

DEED OF CONSERVATION EASEMENT

DECLARATION OF CONSIDERATION OF VALUE. The undersigned hereby declare under penalty of fine and imprisonment as provided by law, that the conveyance made by this document is a transfer of Property right to Federal and county governmental entities, and therefore, is exempt from the West Virginia excise tax due on the transfer of real Property.

IN WITNESS WHEREOF Grantors and Grantee have set their hand:

GRANTORS:

_____ _____

Dianna L. Gray, Landowner Date

_____ _____

Date

Dianna L. Gray as Co-Executor of the Estate of Hugh Hoover, Landowner

_____ _____

Date

Steven Helms as Co-Executor of the Estate of Hugh Hoover, Landowner

GRANTEE:

Jefferson County Farmland Protection Board

_____

Elizabeth D. McDonald, President, JCFPB

_____

Date

CO-HOLDER:

The Land Trust of the Eastern Panhandle, Inc.

_____

Signature

_____

Date

DEED OF CONSERVATION EASEMENT

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2011 Hugh N. Hoover and Dianna L. Gray

My commission expires: _____

_____
Notary Public

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Peter H. Fricke, Chairman, on behalf of the Jefferson County Farmland Protection Board.

My commission expires: _____

_____
Notary Public

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by _____ on behalf of the Land Trust of the Eastern Panhandle, Inc

My commission expires: _____

_____
Notary Public

DEED OF CONSERVATION EASEMENT

ACCEPTANCE OF PROPERTY INTEREST BY THE NATURAL RESOURCES CONSERVATION SERVICE

The Natural Resources Conservation Service, an agency of the United States Government, hereby accepts and approves the foregoing conservation easement deed, and the rights conveyed therein, on behalf of the United States of America.

_____

Authorized Signatory for the NRCS

State of West Virginia
County of _____

On this ___day of , 2012, before me, the undersigned, a Notary Public in and for the State, personally appeared_____ known or proved to me to be the person whose signature appears above, and who being duly sworn by me, did say that s/he is the _____ (title) of the Natural Resources Conservation Service, United States Department of Agriculture, is authorized to sign on behalf of the agency, and acknowledged and accepted the rights conveyed by the deed to be her/his voluntary act and deed.

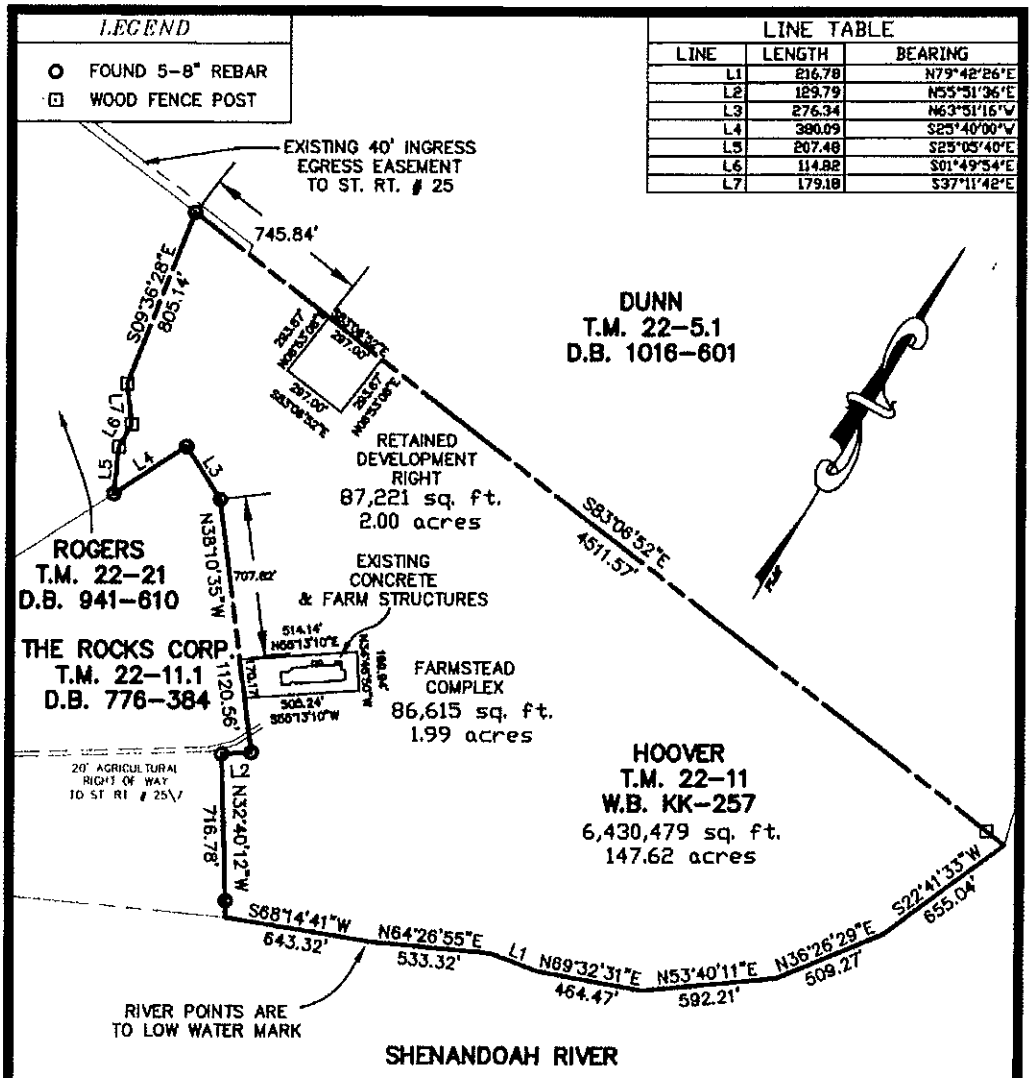
In witness whereof, I have hereunto set my hand and official seal the day and year first above written.

_____
Notary Public for the State of West Virginia
Residing at_____
My Commission Expires_____

DEED OF CONSERVATION EASEMENT

SCHEDULE OF EXHIBITS

A. Legal Description of Property Subject to Easement
B. Residential Dwelling(s) Intentionally Omitted
C. Farmstead Complex Area
D. Retained Development Right



CONSERVATION EASEMENT

PLAT SHOWING CONSERVATION EASEMENT TAX MAP PARCEL 22-11 STANDING IN THE NAME OF HUGH HOOVER ET AL, AS RECORDED IN THE OFFICE OF THE COUNTY CLERK OF JEFFERSON COUNTY IN WILL BOOK KK/257 LOCATED IN KABLETOWN DISTRICT, JEFFERSON COUNTY, WEST VIRGINIA.

DWG # HOOVER

DATE-10/6/11

GRAPHIC SCALE

600 0 300 600 1200 2400

(IN FEET)

1 inch = 600 ft.

SURVEYED BY:

PETER H. LORENZEN P.S.

SUMMIT POINT, W.V. 728-6093

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

AGENDA REQUEST FORM

Name: **Laura Storm**

Department or Entity: **Circuit Clerk**

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

Date Requested – 1st Choice: **September 6, 2012**

Date Requested – 2nd Choice:

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

Subject:

Moving Melinda Maye from part-time employment to full time employment.

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

Due to the departure of a full time employee, I ask that you approve the hiring of Melinda Maye to a full-time position as Deputy Clerk within my office effective August 27, 2012. Her grade will be II G with a salary of $32,958.95 with full benefits afforded to Jefferson County Commission employees. The County Commission has twice approved the part-time hiring status of Melinda and I find her skills to be exceptional and my office would greatly benefit from her employment as a Deputy Clerk. The funds are within my budget and no additional monies are being requested.

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

Approve the hiring Melinda Maye to a full-time position as Deputy Clerk within the Circuit Clerks office. Her grade will be II G with a salary of $32,958.95 with full benefits as afforded to Jefferson County Commission employees effective August 27, 2012.

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

AGENDA REQUEST FORM

Name: **Ralph Lorenzetti, Prosecuting Attorney & Stephanie Grove, Assistant Prosecuting Attorney**

Department or Entity: _____

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

Date Requested – 1st Choice: **9-6-12**

Date Requested – 2nd Choice: _____

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

Subject: Review of Civil Counsel job description/ job duties - Possible Executive Session §6-9A

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:

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

(8)

AGENDA REQUEST FORM

Name: **Debbie Keyser, Acting Administrator**

Department or Entity: **Commission**

Estimation of amount of time needed for appointment: _____

Date Requested – 1st Choice: **7/26/12**

Date Requested – 2nd Choice: _____

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

Subject: Decision on hiring of County Commission Civil Counsel

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:

(19)

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

AGENDA REQUEST FORM

Name: **Debbie Keyser, Acting Administrator**

Department or Entity: **Commission**

Estimation of amount of time needed for appointment: _____

Date Requested – 1st Choice: **7/26/12**

Date Requested – 2nd Choice: _____

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

Subject: If applicable, filling of Civil Counsel position, Possible Executive Session §6-9A-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:

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

10

AGENDA REQUEST FORM

Name: Debbie Keyser, Interim County Administrator

Department or Entity: **County Commission**

Estimation of amount of time needed for appointment: _____

Date Requested – 1st Choice: ~~August 2, 2012~~ 8-23-12

Date Requested – 2nd Choice: _____

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

Subject: FY2013 Budget Allocations - Discussion/Action

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:

Organization	2012 Approved	2013 Requested	60% of Req	Funds will be used for:
Animal Welfare Society of Jefferson County	$15,300	$20,000	$8,000	Operating budget
Arts & Humanities Alliance (AHA!)		$16,000	$6,400	Grants Program
Birthright of Jefferson County		$1,500	$600	Childred Nutrition Program
Blue Ridge Mountain Watershed Coalition		($15,000)		Expansion of water monitoring- ***Approved 7/26/12 unencumbered funds***
Books for Babies				
Boy Scouts of America				
Boys & Girls Club of the Eastern Panhandle	$5,000	$10,000	$4,000	After school & summer programs
CASA(Court Appointed Special Advocates) o/t East. Panhandle	$2,000	$5,000	$2,000	Volunteer recruitment & training
Certified Arts Community Funding (AHA)		$5,000	$2,000	Networking & Partnership building
Charles Town Race Track Chaplaincy	$2,500	$5,000	$2,000	Substance Abuse & Anger Management Programs
Claymont Society for Continuous Education				
Community Alternatives to Violence (CAV)	5,000	$5,000	$2,000	Subsidize class fees
Craft Workers at Cool Springs				
Duffields Station Center (train station)	$1,000	$3,200	$1,280	Balance of fee due for restoration of 1839 B&O railroad stationSaid no more $$ last year
Eastern Panhandle Conservation District	$4,000	$10,000	$4,000	Annual tree sale project
Eastern Panhandle Free Clinic	$16,000	$25,000	$10,000	Provide healthcare and medications
Eastern Panhandle Transit Authority (Pan Tran)		$24,600	$9,840	Public transportation, fuel and maintenance
For the Love of Children/Outdoor Education(FLOC)	$3,000	$5,000	$2,000	Operating expenses
Freedoms Run/Eastern Areas Health Education Center		$5,000.00	$2,000	Advertising national & regional media
Friends in Action of the Eastern Panhandle				
Good Shepherd Interfaith Volunteer Caregivers	$15,000	$20,000	$8,000	Operating expenses
Harpers Ferry Historical Association		$2,500	$1,000	Annual Don Redman Heritage Concert
Hospice of the Panhandle	$10,000	$20,000	$8,000	Furnishing 14 bed inpatient facility
Jefferson County Community Ministries	$4,000	$4,500	$1,800	Help JC residents facing electric termination
Kiwanis Club of Charles Town	$1,500			
Meals on Wheels	$5,000	$10,000	$4,000	Apply dollar for dollar monies toward United Way match
NAACP of Jefferson County	$2,500	$2,500	$1,000	African American Cultural Heritage Festival cost of rental of stage/sound system
Patriot's Path Foundation, Inc.				
Ranson Parks and Recreation		$18,000	$7,200	Hood for concession stand at Ranson Civic Center

Potomac Headwaters RC&D	$1,200	$1,200.00	$480	Administrative Support - project activities
Safe Haven Child Advocacy Ctr./Children's Home Soc.	$5,000	$5,000	$2,000	Grant matching funds
Shepherdstown 250	$3,500			
Shepherdstown Area Independent Living (SAIL)		$20,000	$8,000	Executive Director Salary
Shepherdstown Community Club (Men's club)	$1,000	$20,000	$8,000	Renovation of kitchen -War Memorial Bld; Replace picnic tables Morgans Grove Park
Shepherdstown Day Care	$10,000	$12,000	$4,800	Educational and childcare services
St. Andrews Mountain Community Ctr., LLC	$2,500	$2,500	$1,000	Offset of heating and utility costs to help keep Library operating
United Way				
TOTAL FUNDING	$115,000	$263,500	$111,400	

115,000
6,159 include
121,

PROPERTY_ID	Payee	Holder	Property Type	Date	Amount
262278	Sheriff of Jefferson	OHIO FARMERS INSURANCE COMPANY	Policy Benefits	09/19/1997	$20.00
1048698	Recorder of Jefferson County	UNITED BANK INC	CD Interest Check Acct 4700-1561	02/26/2001	$16.00
1049459	Jefferson County & Jefferson Sheriff	STATE OF UTAH (reported to UT Unclaimed)	Checking	02/16/2001	$288.59
1053825	Recorder of Jefferson County	UNITED BANK INC	cd Interest Check Acct 4700-0118	04/22/2002	$16.00
1053826	Recorder of Jefferson County	UNITED BANK INC	cd Interest Check Acct 4700-0118	05/01/2002	$16.00
1053827	Recorder of Jefferson County	UNITED BANK INC	cd Interest Check Acct 4700-0118	05/21/2002	$16.00
1053828	Recorder of Jefferson County	UNITED BANK INC	cd Interest Check Acct 4700-0118	06/05/2002	$16.00
1053829	Recorder of Jefferson County	UNITED BANK INC	cd Interest Check Acct 4700-0118	06/05/2002	$16.00
1073937	Recorder of Jefferson County	UNITED BANK INC	cd Interest Check Acct 4700-0118		$16.00
1171231	Recorder of Jefferson County	UNITED BANK INC	cd Interest check Acct 4700-0119	02/06/2003	$38.00
1211365	Jefferson County Commission	Jefferson County Magistrate Court	Cort Deposit Restitution 07-M-3446	10/09/2008	$2,000.00
1219230	Jefferson County Commission	STATE OF ALABAMA	check		$2.00
1238479	Jefferson Co Assessor of	Attorney General WV	Warrant 1007332149	08/25/2009	$1.32
1300391	Jefferson Co Sherriff	SERVICELINK	Escrow Accounts	08/19/1999	$14.86
1389595	Sheriff of Jefferson	FREEDOM TITLE SERVICES	Registered checks		$601.80
1390155	Jefferson Co Commission	DHHR	Warrant 1009679766	03/29/2011	$3,118.00
					$6,196.57

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

AGENDA REQUEST FORM

Name: **Lyn Widmyer**

Department or Entity: _____

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

Date Requested – 1st Choice: **Septmber 6**

Date Requested – 2nd Choice: **September 13**

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

Subject: **Amending sign ordinance requirements to allow smaller commercial business signs without added cost of permits, staff review.**

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): **Request staff from the Planning Departments and Engineering Department to brief County Commission on current sign requirements and recommend changes to allow smaller signs for smaller businesses without going through costly approval process.**

Attachments:

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

AGENDA REQUEST FORM

Name: **Walt Pellish, Commissioner**

Department or Entity: **Commission**

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

Date Requested – 1st Choice: **9/6/12**

Date Requested – 2nd Choice:

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

Subject: **Discussion on the Agriculture Task Force**

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:

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

AGENDA REQUEST FORM

Name: **Nichelle Hosby**

Department or Entity: **Commission**

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

Date Requested – 1st Choice: **9/6/12**

Date Requested – 2nd Choice:

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

Subject: **Decision on hiring a County Administrator and review of job duties, Possible Executive Session §6-9A-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:

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

AGENDA REQUEST FORM

Name: Jennifer Myers, Director

Department or Entity: **Parks and Recreation**

Estimation of amount of time needed for appointment: _____

Date Requested – 1st Choice: September 13, 2012

Date Requested – 2nd Choice: _____

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

Subject: **Approval of Resolution – Land and Water Conservation fund application**

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:

RESOLUTION

At a meeting of the Jefferson County Parks & Recreation Commission held on the _____ day of September 2012, the following order was made and entered;

Subject: Land and Water Conservation Fund Application

For: Development & Construction of a Picnic Pavilion located at Sam Michel's Park and Expansion of the Sam Michael's Park playground to include ADA equipment.

In the amount of $80,000.00

Whereby, the Jefferson County Commission authorizes the Jefferson County Parks & Recreation Commission to apply on its behalf and further authorizes Jefferson County Parks & Recreation Commission to submit an application to the State of West Virginia requesting funding for the above-mentioned project out of the Land and Water Conservation Fund.

The Jefferson County Commission authorizes Jefferson County Parks & Recreation Commission and/or Jennifer L. Myers to sign any and all documents and papers which accompany or are part of the application, and any and all documents and papers necessary for the completion of the project should it receive National Park Service Approval.

The Jefferson County Parks & Recreation Commission agrees to abide by all rules and regulations pertaining to the Land and Water Conservation Fund Program, and to operate and maintain the proposed facility for public use under the requirements of the Land and Water Conservation Fund should this project receive Federal Assistance.

The adoption of the foregoing motion having been moved by _____, and duly seconded by _____.

Whereupon _____ declared said motion was unanimously adopted; and it is therefore adjudged and ordered that said motion be, and the same is hereby adopted.

_____
Signature

_____
Signature

_____
Signature

_____
Signature

_____
Signature

Jefferson County GIS/Addressing Office
DEPARTMENTAL MEMORANDUM

TO: Jefferson County Commission
Debbie Keyser, County Administrator

FROM: Todd Fagan, GIS Director

DATE: September 6th, 2012

SUBJECT: GIS Department Quarterly Update Report- 2012, 3rd Quarter

1. PROJECTS COMPLETED
    a. Provided mapping support for September 10th Comprehensive Plan Technical Advisory Committee meeting

2. PROJECTS IN PROGRESS
    a. *Address Compliance Project* Status – map found at http://www.jeffersoncountywv.org/uploads/addressing/maps/BeforeAfter_parcels_EPAN_sec.pdf
        i. project overall 35% complete in unincorporated areas
        ii. 78% compliant on 1st field check, raised to 96% or more after letters, communication and violation notices
        iii. 1,215 homes and businesses newly posted
        iv. Only 18 properties have reached violation or criminal complaint stage
            (5 cases dismissed, 11 active, 2 warrants for failure to appear in court)
        v. **Overwhelming positive results, <1% of non-compliant owners make it to Magistrate Court. 99% post their address accordingly**.
        vi. Additional project benefits include GIS address removals (109), businesses and apartments added (21), gates/obstructions mapped (8), illegal signs removed (11), new road names created (5), road signs replaced or repaired (63) and impervious surfaces documented.
    b. *Internet Mapping Service* –
        i. Long-term project involving full data conversion, training, internet application development and collaborative planning with the Assessor's office
    c. *Resolution of County Boundary Addressing Conflicts*
        i. DMV, USPS, 9-1-1 and Voters Registration all interpret addresses differently

3. COMMISSION SHOULD BE AWARE OF:
    a. *Capital Outlay Request for Content Management System*
        i. Awaiting word on State grant proposals
        ii. Finance (cost/benefit) analysis forthcoming
        iii. Seeking Commission approval to move forward with RFP by end of September

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 – 1st Choice: September 6, 2012

Date Requested – 2nd Choice: _____

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

Subject:

- Approval of Internal Budget Revisions #104 & 105 - Discussion/Action
- Approval of State Budget Revision #6 - Discussion/Action
- Recommendation for account funding for the approved eCivis contract - Discussion/Action
- Discussion on Grant Funds received for the WV Eastern Panhandle Transportation Authority - Discussion/Action

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, West Virginia

Department of Financial Management

Budget Revision for Fiscal Year Ending June 30, 2013

Internal Budget Revision

IBR #104

Narrative:

This is a county level budget revision requesting a redistribution of current budget funding; no additional funding is required. Copier maintenance originally budgeted under Maint/Repair of Equipment is universally taken from Contracted Services. Need to move anticipated funding to accommodate the line item change.

Budget Line No.	Account Name	Approved Budget	Requested Additions	Requested Reduction	Revised Budget
001-433-02-230	GIS Contracted Services	47,500	2,250		49,750
001-433-02-216	GIS Maint/Repair Equip.	3,000		2,250	750
					0
					0
					0
					0
					0
					0
					0
					0
					0
					0
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					0
					0
					0
					0
					0
					0
					0
Totals		50,500	2,250	2,250	50,500

IBR Prepared by: Paul Shroyer, Director, Financial Management

Requesting department: GIS

Date: 8/14/2012

Approved by: Todd Jayne

Date Submitted to County Commission:

Date Approved:

Authorizing Signature:

Jefferson County, West Virginia

Department of Financial Management

Budget Revision for Fiscal Year Ending June 30, 2013

Requested by the Assessor's Office

Internal Budget Revision

IRB #105

Narrative:

This budget revision request is internal to the Assessor Current Budget. This revison is necessary to properly align current year allocation in line with anticipated current year expenditures; no additional funding is required.

Budget Line No.	Account Name	Approved Budget	Requested Additions	Requested Reduction	Revised Budget
001-406-230-000-GG-000	Contracted Services	0.00	3,000.00		3,000.00
001-406-216-000-GG-000	Maintenance Repair-Equipment	9,000.00		3,000.00	6,000.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
Totals		9,000.00	3,000.00	3,000.00	9,000.00

Rquested by Dept: Assessor's Office

Approved by: Angela L. Banks 8/17/12

Reviewed: 8/17/2012

Reviewed by: Paul Shroyer, Director of Financial Management

Reviewed: _____

Reviewed by: Debbie Keyser, Acting County Administrator

Reviewed and approved by: Jefferson County Commission

Date Approved: _____

Authorizing Signature: _____

Patsy Noland, President

LGSD BR (Rev. 2011)

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

215 W. Washington Street
STREET OR PO BOX

Charles Town — CITY — 25414 ZIP CODE

FY

FUND

REV. NO. 6

PG. OF NO.

COUNTY

Government Type

Person To Contact Regarding Budget Revision: **Paul Shroyer**
Phone: **304-728-3283**
Fax: **304-725-7916**

REVENUES: (net each acct.)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				

NET INCREASE/(DECREASE) Revenues (ALL PAGES)

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
711	Emergency Services	259,579	2,500		262,079
986	County Commission	2,989,723		2,500	2,987,223
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				

NET INCREASE/(DECREASE) Expenditures

APPROVED BY THE STATE AUDITOR

BY:
Director, Local Government Services Division — **Date**

AUTHORIZED SIGNATURE OF ENTITY

APPROVAL DATE

RESOLUTION

At a regular session of the Jefferson County Commission, held on the 23rd Day of August, 2013, the following Order was made and entered:

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

RESOLVED: That subject to approval of the State Auditor as ex officio chief inspector of public offices, the Jefferson County Commission does hereby direct that the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists, as shown on budget revision number #6 to the General County Fund, a copy of which is entered as part of this record.

The adoption of the foregoing Resolution having been moved by _____, and duly seconded by _____the vote was as follows:

Dale Manuel _____

Frances Morgan _____

Patsy Noland _____

Walter Pellish _____

Lyn Widmyer _____

Whereupon, Commissioner Noland declared said Resolution duly adopted, and it is therefore ADJUDGED and ORDERED that said Resolution be, and the same is, hereby adopted as so stated above, and Patsy Noland, President of the Jefferson County Commission, is authorized to affix his signature to the attached "Request for Revision to Approved Budget" to be sent to the State Auditor for approval.

_____

Patsy Noland, President

Jefferson County Commission

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

AGENDA REQUEST FORM

APPROVED
AUG 23 2012
The County Commission
of Jefferson County
Charles Town, WV

Name: **Debbie Keyser, Acting Administrator**

Department or Entity: **Commission**

Estimation of amount of time needed for appointment:

Date Requested – 1st Choice: **8/23/12** — 9-6-12

Date Requested – 2nd Choice:

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

Recommendation for eCivis contract

Subject: Approval of contract with eCivics pertaining to researching, maintaining and reporting of Grants

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:

ECIVIS MASTER SUBSCRIPTION AND SERVICE AGREEMENT

Date 8/17/2012
Contract No. 5674

This Agreement is made by and between:

eCivis, Inc., a Delaware corporation ("eCivis")
418 N. Fair Oaks Ave. #301
Pasadena, CA 91103
Fax: (626) 628-3232
Sales Contact:
Heidi Allen

and

County of Jefferson, WV ("Customer")
124 E Washington Street
Charles Town, WV 25414
Phone: 304-728-3284
Principal Contact and Master Access Holder:
Sandy McDonald, Deputy County Administrator

This Agreement, and the Exhibits attached hereto, set forth the business relationship between the parties and the terms and conditions under which the following products are licensed and services are provided to Customer, and supersedes all previous agreements between eCivis and Customer. Please initial all pages of the terms and conditions of this contract.

eCivis Products	Description	Units	Avg Unit Price	Total Price
Grants Research & Management Pack	Grants Network: Research, KnowledgeBase, and Tracking and Reporting - Enterprise Edition	1	$35,500.00	$35,500.00
			Product Sub-Total	$35,500.00
	Bundled Discount			($6,962.00)
	Q3 Incentive Discount			($5,338.00)
	Multi-year Discount			($2,200.00)
	Incentive Discount			($1,200.00)
			TOTAL PRICE	$19,800.00

Subscription Period(s) and Payment Terms

The Subscription Period of this Agreement will conclude 9/09/2015. Payment is due net 30 days from invoice date.

Cycle 1: 9/10/2012 through 9/09/2013 for a price of $ 19,800
Cycle 2: 9/10/2013 through 9/09/2014 for a price of $ 19,800
Cycle 3: 9/10/2014 through 9/09/2015 for a price of $ 19,800

PRICE IS ONLY VALID IF AGREEMENT IS SIGNED ON OR BEFORE: August 31, 2012.

Renewal Terms – Additional extension of this agreement will occur as follows:

This agreement will be eligible for renewal for extended periods through a mutually agreed upon purchasing vehicle executed before the expiration of the subscription period listed above. No guarantees are made as to rate, access, or included services within this agreement. Purchasing vehicles executed after the termination date of this agreement are subject to then-current retail rates for all services provided.

Accepted By:
County of Jefferson, WV

By: _____
(Authorized Signature)

Name: _____
(type or print)

Title: _____

Date: _____

Accepted By:
eCivis, Inc.

By: _____
(Authorized Signature)

Name: Lindsay Mann
(type or print)

Title: Vice President of Sales

Date: _____

O Send invoice to (if different than address above): _____

eCivis Master Subscription and Service Agreement

THIS MASTER SUBSCRIPTION AND SERVICE AGREEMENT ("AGREEMENT") GOVERNS YOUR ACQUISITION AND USE OF ALL OUR SERVICES.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on January 1, 2012. It is effective between You and Us as of the date of You accepting this Agreement.

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1. DEFINITIONS

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"Professional Services" means work performed by Us for You by Our Grants Professional Services division under this Agreement or any relevant Purchase Order. Such work shall include, but not limited to, Grant Writing, Peer Review and/or Training services.

"Purchased Services" means Services that You or Your Affiliates purchase under this Agreement for Grants Network™ or Nonprofit One-Stop™.

"Services" means the products and services that are ordered by You and made available by Us online via the customer login link at http://www.ecivis.com and/or other web pages designated by Us.

"Users" means individuals who are authorized by You to use the Services, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users are limited to Your employees. Non-employees such as Consultants, contractors and agents, and third parties with which You transact business may not be granted access.

"We," "Us" or "Our" means eCivis, a Delaware corporation described in Section 13 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction).

"You" or "Your" means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

"Your Data" means all electronic data or information submitted by You to the Purchased Services.

2. PURCHASED SERVICES

2.1. Provision of Purchased Services. We shall make the Purchased Services available to You pursuant to this Agreement and any relevant Purchase Order during a subscription term. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

2.2. User Subscriptions. Unless otherwise specified in writing, (i) Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users, (ii) additional User subscriptions may be added during the applicable subscription term at the same pricing as that for the pre-existing subscriptions thereunder, prorated for the remainder of the subscription term in effect at the time the additional User subscriptions are added, and (iii) the added User subscriptions shall terminate on the same date as the pre-existing subscriptions. User subscriptions are for designated Users only and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services.

3. USE OF THE SERVICES

3.1. Our Responsibilities. We shall: (i) provide Our basic support for the Purchased Services to You at no additional charge, and/or upgraded support if purchased separately, (ii) use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which We shall give at least 8 hours notice via the Purchased Services and which We shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday Pacific Time), or (b) any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), Internet service provider failures or delays, or denial of service attacks, and (iii) provide the Purchased Services only in accordance with applicable laws and government regulations.

3.2. Our Protection of Your Data. We shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law in accordance with Section 7.3 (Compelled Disclosure) or as expressly permitted in writing by You, or (c) access Your Data except to provide the Services and prevent or address service or technical problems, or at Your request in connection with customer support matters.

3.3. Your Responsibilities. You shall (i) be responsible for Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with the user guide and applicable laws and government regulations. You shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.

3.4. Usage Limitations. Services may be subject to other limitations, such as, for example, limits on the number of grants that can be managed in Our Grants Network™ Tracking & Reporting product, on the number of grant applications, peer reviews and/or trainings provided by Us. Any such limitations are specified in the signature page of this Agreement.

4. PROFESSIONAL SERVICES, COOPERATION: DELAYS

4.1. Should this Agreement include Our Professional Services, each party agrees to cooperate reasonably and in good faith with the other in the performance of such Professional Services and acknowledges that delays may otherwise result. You agree to provide, or provide access to, the following as needed, and when applicable, for services that require Us to be at Your location: office workspace, telephone and other facilities, suitably configured computer equipment with Internet access, complete and accurate information and data from Your employees and agents, continuous administrative access to its ecivis.com account, coordination of onsite, online and telephonic meetings, and other resources as reasonably necessary for satisfactory and timely performance of the Professional Services.

4.2. Each party agrees its respective employees and agents will reasonably and in good faith cooperate with each other in a professional and courteous manner in the performance of their duties under this Agreement. Either party may suspend performance hereunder immediately upon written notice should the other party's employees or agents fail to act accordingly.

4.3. It is understood by You that delays in providing material or information resulting in missed grant application deadlines does not constitute non-delivery of grant writing services by Us. We shall provide a reasonable timeline to ensure the delivery of Our Granting Writing services.

5. FEES AND PAYMENT FOR PURCHASED SERVICES

5.1. Fees. You shall pay all fees specified under this Agreement. Except as otherwise specified herein, (i) fees are based on services purchased and not actual usage for Purchased Services, (ii) payment obligations are non-cancelable and fees paid are non-refundable and will not result in any refund or credit and (iii) the number of User subscriptions purchased cannot be decreased during the relevant subscription term.

5.2. Invoicing and Payment. You will provide Us with valid and updated credit card information, or pay by check. If You provide credit card information to Us, You authorize Us to charge such credit card for all Services listed under this agreement for the initial subscription term and any renewal subscription term(s) as set forth in Section 10.2 (Term of Purchased User Subscriptions). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated under this Agreement. Unless otherwise stated in this Agreement, invoice charge(s) are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

5.3. Overdue Charges. If any charges are not received from You by the due date, then at Our discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) We may condition future subscription renewals on payment terms shorter than those specified in Section 5.2 (Invoicing and Payment).

5.4. Suspension of Service and Acceleration. If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, suspend Our services to You until such amounts are paid in full. We will give You at least 7 days' prior notice that Your account is overdue.

5.5. Taxes. Unless otherwise stated, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against it based on Our income, property and employees.

5.6. Non-Appropriation. Purchased Services provided under the Agreement may be continued in succeeding subscription cycles for the term of this Agreement, contingent upon funds being appropriated by County Commission or otherwise being available for this Service. In the event funds are not appropriated or otherwise available for this Service, the Agreement shall terminate without penalty at the end of each subscription cycle. After that date, the Agreement becomes of no effect and is null and void. However, You agree to use Your best efforts to have the amounts contemplated under the Agreement included in Your budget. Non-appropriation or non-funding shall not be considered an event of default.

6. PROPRIETARY RIGHTS

6.1. Reservation of Rights in Services. Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

6.2. Restrictions. You shall not (i) permit any third party to access the Services except as permitted herein or in an Order Form, (ii) create derivate works based on the Services except as authorized herein, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.

6.3. Your Applications and Code. If You, a third party acting on Your behalf, or a User creates applications or program code using the Services, You authorize Us to host, copy, transmit, display and adapt such applications and program code, solely as necessary for Us to provide the Services in accordance with this Agreement. Subject to the above, We acquire no right, title or interest from You or Your licensors under this Agreement in or to such applications or program code, including any intellectual property rights therein.

6.4. Your Data. Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You or Your licensors under this Agreement in or to Your Data, including any intellectual property rights therein.

6.5. Suggestions. We shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the Services.

7. CONFIDENTIALITY

7.1. Definition of Confidential Information. As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

7.2. Protection of Confidential Information. The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party shall disclose the terms of this Agreement other than its Affiliates and their legal counsel and accountants without the other party's prior written consent.

7.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

8. WARRANTIES AND DISCLAIMERS

8.1. Our Warranties. We warrant that (i) We have validly entered into this Agreement and have the legal power to do so, (ii) the Services shall perform materially in accordance with this Agreement, (iii) We will not transmit Malicious Code to You, provided it is not a breach of this subpart (iv) if You or a User uploads a file containing Malicious Code into the Services and later downloads that file containing Malicious Code. For any breach of a warranty above, Your exclusive remedy shall be as provided in Section 10.3 (Termination for Cause) below.

8.2. Your Warranties. You warrant that You have validly entered into this Agreement and have the legal power to do so.

8.3. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. LIMITATION OF LIABILITY

9.1. Limitation of Liability. NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL EXCEED THE LESSER OF $500,000 OR THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 6 (FEES AND PAYMENT FOR PURCHASED SERVICES).

9.2. Exclusion of Consequential and Related Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

10. TERM AND TERMINATION

10.1. Term of Agreement. This Agreement commences on the date You accept it and continues until all User subscriptions granted in accordance with this Agreement have expired or been terminated.

10.2. Term of Purchased User Subscriptions. User subscriptions purchased by You commence on the start date specified under this Agreement and continue for the subscription term specified herein.

10.3. Termination for Cause. A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

10.4. Return of Your Data. Upon request by You made within 30 days after the effective date of termination of a Purchased Services subscription, We will make available to You for download a file of Your Data in comma separated value (.csv) format along with attachments in their native format. After such 30-day period, We shall have no obligation to maintain or provide any of Your Data and shall thereafter, unless legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control.

10.5. Surviving Provisions. Section 5 (Fees and Payment for Purchased Services), 6 (Proprietary Rights), 7 (Confidentiality), 8.3 (Disclaimer), 9 (Limitation of Liability), 10.4 (Return of Your Data), 11 (Governing Law and Jurisdiction), 12 (General Provisions) and 13 (Mutual Indemnification) shall survive any termination or expiration of this Agreement.

11. GOVERNING LAW AND JURISDICTION

11.1. Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California as it applies to a contract made and performed in such state.

12. GENERAL PROVISIONS

12.1. Anti-Corruption. You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Our Legal Department (legal@ecivis.com).

12.2. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

12.3. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

12.4. Waiver. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

12.5. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

12.6. Attorney Fees. You shall pay on demand all of Our reasonable attorney fees and other costs incurred by Us to collect any fees or charges due Us under this Agreement following Your breach of Section 5.2 (Invoicing and Payment).

12.7. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, We shall refund to You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

12.8. Entire Agreement. This Agreement, including all exhibits and addenda hereto constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted.

13. MUTUAL INDEMNIFICATION

13.1. Indemnification by Us. We shall defend You against any claim, demand, suit, or proceeding made or brought against You by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party (a "Claim Against You"), and shall indemnify You for any damages, attorney fees and costs finally awarded against You as a result of, and for amounts paid by You under a court-approved settlement of, a Claim Against You; provided that You (a) promptly give Us written notice of the Claim Against You; (b) give Us sole control of the defense and settlement of the Claim Against You (provided that We may not settle any Claim Against You unless the settlement unconditionally releases You of all liability); and (c) provide to Us all reasonable assistance, at Our expense. In the event of a Claim Against You, or if We reasonably believe the Services may infringe or misappropriate, We may in Our discretion and at no cost to You (i) modify the Services so that they no longer infringe or misappropriate, without breaching Our warranties under "Our Warranties" above, (ii) obtain a license for Your continued use of the Services in accordance with this Agreement, or (iii) terminate Your User subscriptions for such Services upon 30 days' written notice and refund to You any prepaid fees covering the remainder of the term of such User subscriptions after the effective date of termination.

13.2. Indemnification by You. You shall defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of the Services in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a "Claim Against Us"), and shall indemnify Us for any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us; provided that We (a) promptly give You written notice of the Claim Against Us; (b) give You sole control of the defense and settlement of the Claim Against Us (provided that You may not settle any Claim Against Us unless the settlement unconditionally releases Us of all liability); and (c) provide to You all reasonable assistance, at Your expense.

13.3. Exclusive Remedy. This Section 13 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section.

[Remainder of page intentionally left blank, signature page is on the cover page to this Agreement]

Check Number 000005 Date 08/13/2012
Vendor 6223

Voucher No.	Voucher Date	Invoice No.	Description	Amount
10026626	07/30/2012	072012	GrantDrawdown/10-1045 15644322300	13661.00

RECEIVED
AUG 15 2012
Jefferson County Commission

Total this Check 13661.00

FOR SECURITY PURPOSES, THE FACE OF THIS DOCUMENT CONTAINS A COLORED BACKGROUND AND MICROPRINTING

Berkeley County Council
100 West King Street
Martinsburg WV 25401
Fund#156 State Grant

Void After 90 Days

MVB Inc.
69-459
515

000005

Date	Amount
08/13/2012	$13661.00

THE EXACT AMOUNT OF
THIRTEEN THOUSAND SIX HUNDRED SIXTY-ONE DOLLARS AND NO CENTS

Pay to the Order Of
JEFFERSON CTY COMMISSION
124 E WASHINGTON ST
P.O. BOX 250
CHARLES TOWN WV 25414

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE TO VIEW

⑈000005⑈ ⑆051504597⑆ 0040665⑈

Hagerstown/Eastern Panhandle Metropolitan Planning Organization
33 W. Washington St., 4th Floor, Suite 402, Hagerstown, MD 21740
Phone: 240-313-2080, Fax: 240-313-2084
www.hepmpo.net

Hagerstown/Eastern Panhandle Metropolitan Planning Organization

33 West Washington Street
Hagerstown, MD 21740

Phone: 240-313-2080
Fax: 240-313-2084
E-mail: rgordon@hepmpo.net

Invoice

Invoice No.: EGP-Trans Study 4212011-01

Date: April 21, 2011

BILL TO:

Ms. Jennifer M. Brockman
Director of Planning & Zoning
Jefferson County
116 E. Washinton St.
P.O. Box 338
Charles Town, WV 25414

Description	Total
East Gateway Transportation Analysis Plan - Required Local Match	$ 13, 661

Please Remit to:

Hagerstown/Eastern Panhandle Metropolitan Planning Organization
33 West Washington Street
Hagerstown, MD 21740

THE COUNTY COMMISSION OF JEFFERSON COUNTY

Charles Town, West Virginia 25414

REQUISITION

No. 52927

VENDOR:

HAGERSTOWN/EASTERN PANHANDLE
METROPOLITAN PLANNING ORGANIZATION
33 WEST WASHINGTON STREET
HAGERSTOWN, MARYLAND 21740
(240) 313-2080

DELIVER TO:

JEFFERSON COUNTY DEPARTMENT OF PLANNING
116 EAST WASHINGTON STREET
P.O. BOX 338
CHARLESTOWN, WEST VIRGINIA 25414
(304) 728-3228

QUANTITY	DESCRIPTION - BUDGET LINE - ITEM NUMBER	PRICE	UNIT	AMOUNT
	INVOICE NO: EGP-TRANS STUDY 4212011-01			
	RE: HEPMPO			
	TOTAL COST →			$13,661.00
	ATTENTION — FROM:			
1.	LINE ITEM NUMBER: 4010223	DEDUCT	—	5,000.00
2.	LINE ITEM NUMBER: #001-439-02-223-000-GG-000	DEDUCT	—	8,661.00

FAXED 5-12-11

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.

Julie Pudalo — MAY 6, 2011
Signature — *Date*

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

T. C. Byrd — 5-12-11
Signature — *Date*

304-267-5049

OF JEFFERSON COUNTY
K'S OFFICE
WN, WV 25414

CHECK NUMBER 064432
VENDOR 17119

DATE 05/19/2011

VOUCHER NO.	VOUCHER DATE	INVOICE NO.	DESCRIPTION	AMOUNT
2011	04/21/2011	4210111A	EGP TRANS STUDY	5000.00
2111	04/21/2011	4210111B	EGP TRANS STUDY	8661.00

COPY

TOTAL THIS CHECK 13661.00

Please Detach Here and Retain Top Portion For Your Records

FOR SECURITY PURPOSES THE FACE OF THIS DOCUMENT CONTAINS A COLORED BACKGROUND AND MICROPRINTING

064432

THE SHERIFF OF JEFFERSON COUNTY
COUNTY CLERK'S OFFICE
CHARLES TOWN, WV 25414

BANK OF CHARLES TOWN
Charles Town, WV
69-141
570

DATE 05/19/2011 AMOUNT $13661.00

THE EXACT AMOUNT OF
THIRTEEN THOUSAND SIX HUNDRED SIXTY-ONE DOLLARS AND NO CENTS DISBURSEMENT FUND

PAY THE ORDER OF

HAGERSTOWN EASTERN
PANHANDLE METRO PLNNG ORG
33 WEST WASHINGTON ST
HAGERSTOWN MD 21740

PRESIDENT

CLERK

SHERIFF

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIBOJA C/W ATERMARK - HOLD AT AN ANGLE TO VIEW

⑈064432⑈ ⑆057001418⑆ 00021532897⑈

COPY

County Commission of Jefferson County
Charles Town, West Virginia

RESOLUTION

Whereas, the Eastern Panhandle Transportation Authority has been awarded funding from the Fiscal Year 2004 Governor's Community Participation Grant Program for $50,000 to develop a comprehensive plan to improve transportation in Berkeley, Jefferson and Morgan Counties; and

Whereas, the Jefferson County Commission would be pleased to accept the designation of $15,000 from the Eastern Panhandle Transportation Authority toward the upcoming transportation plan for the entire US 340; and

Whereas, the funds we receive from the organization will help provide the local match for a $100,000 transportation study plan for the entire US 340 Corridor; and

Whereas, one of the critical elements of this plan will be to look at intersections along US 340 and explore ways to make them safer;

Whereas, according to regional traffic projections, the US 340 Corridor will become increasingly congested and movement on the highways will be reduced to stop and go traffic by 2035; and

Therefore Be It Resolved, the Jefferson County Commission is in support of this grant program and recognizes the importance of the entire US 340 Corridor to the future of Jefferson County and helping us make sure it remains safe.

August 18th, 2011

County Commission of Jefferson County

Patricia A. Noland

Patricia A. Noland, President

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

16d-17

AGENDA REQUEST FORM

Name: **Jennifer Brockman**

Department or Entity: **Planning and Zoning**

Estimation of amount of time needed for appointment: **1 hour**

Date Requested – 1st Choice: **August 16, 2012**

Date Requested – 2nd Choice:

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

Subject: **Work Session on Potential Amendments to the Zoning Ordinance Text regarding the Creation of New Commercial and Industrial Zoning Categories and Related Amendments**

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

The FY 2012 Work Plan for the Departments of Planning and Zoning includes a proposal to consider a series of text amendments to improve the usability and reliability of the locally adopted Zoning Ordinance and Subdivision Regulations. In recent months, a number of amendments underway have been approved.

A high priority set by both the Planning Commission and County Commission this Fiscal Year is the expansion of the number and variety of commercial zoning districts in the Zoning Ordinance. The ordinance currently has only two commercial districts: the Residential-Light Industrial-Commercial and Industrial - Commercial District. The overly broad nature of these districts has led to concern by members of the public when property owners have proposed to rezone land to these districts in new locations throughout the County. Accordingly, staff has undertaken an effort to develop additional commercial and industrial zoning categories, including districts that would allow appropriate limited commercial ventures in appropriate locations.

The Planning Commission has reviewed the draft recommendations during five of its meetings, solicited public input during a February 14th workshop, and conducted a public hearing that spanned two meetings in April. Following the public hearing, the Planning Commission directed staff to develop recommendations regarding possible changes to the ordinance amendments as a result of the comments received at the public hearing. At its June 12th meeting, the Planning Commission considered the revised draft of the amendments – including proposed changes as a result of public comment – and voted to recommend the draft ordinance amendments to the County Commission for adoption.

As such, the draft amendments are ready for County Commission consideration. A County Commission public hearing for the amendments has been scheduled for Thursday, September 6, 2012 at 7:00 p.m.

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

N/A – This item is for a work session only at the August 16th meeting.

Attachments:

- **August 9, 2012 Memo to the County Commission from Steve Barney, "Draft Zoning Ordinance Amendments – Proposed Commercial and Industrial Districts and Related Changes"**
- **A brief description of each proposed district, including a list of permitted and conditional uses for each district.**
- **List of Related Zoning Ordinance Amendments, Draft, 8/9/12**
- **Draft Zoning Ordinance amendments, including Appendices A, B, and C**
- **Proposed New Commercial Zoning Districts and Related Amendments to the Zoning and Land Development Ordinance - Section 2.2: Definitions**
- **June 12, 2012 Memo to the Planning Commission from Steve Barney, "Comprehensive Plan Consistency - Draft Zoning Ordinance Amendments – New Zoning Districts"**
- **Map from the 2004 Comprehensive Plan – Study Area Map**
- **Map from the 2004 Comprehensive Plan – Roadway Classification Map**

NOTICE OF PUBLIC HEARING
COUNTY COMMISSION OF JEFFERSON COUNTY
Thursday, September 6, 2012 at 7:00 p.m.

The County Commission of Jefferson County has scheduled a Public Hearing on a proposed Zoning Ordinance Text Amendment to establish additional commercial and industrial zoning district categories, and related changes to the ordinance. The amendment includes changes to the following sections of the Zoning and Land Development Ordinance: 4.4; 4.6; 4.10; 4.11; 5.1; 5.4; 5.6; 5.7; 5.8; 5.10; 6.3; 6.5; 8.1; 8.9; 8.12; 12.2; 12.3; Appendices A, B, and C; and the addition of new Sections 5.11, 5.12, 5.13, 5.14, 5.15, 5.16 and 5.17.

Oral or written comments can be provided at the public hearing scheduled for **7:00 p.m., Thursday, September 6, 2012 in the County Commission meeting room located at the Old Charles Town Library at 200 East Washington Street, at the side entrance on Samuel Street, Charles Town, West Virginia.**

Copies of the proposed text amendment can be found at the Departments of Planning and Zoning office located at 116 East Washington Street in Charles Town, the County Commission office located at 124 E. Washington Street in Charles Town, and on the County's website at:
http://www.jeffersoncountywv.org/government/departments/planning-and-zoning-department/ordinances-regulations-3.html.

If you have any questions, please call the Departments of Planning and Zoning office at (304) 728-3228.

You may also provide written comments to info@jeffersoncountywv.org.

A decision may be made on the same date.

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

Class II Legal - 8-23d 8-30-12

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

Email: **planningdepartment@jeffersoncountywv.org**
zoning@jeffersoncountywv.org
Phone: (304) 728-3228
Fax: (304) 728-8126

MEMO

TO: Jefferson County Commission

FROM: Steve Barney, Zoning Administrator

DATE: August 9, 2012

RE: Draft Zoning Ordinance Amendments – Proposed Commercial and Industrial Districts and Related Changes

Background

The FY 2012 Work Plan for the Departments of Planning and Zoning included a proposal to consider a series of text amendments to improve the usability and reliability of the locally adopted Zoning Ordinance and Subdivision Regulations. In recent months, a number of amendments underway have been approved.

A high priority set by both the Planning Commission and County Commission is the expansion of the number and variety of commercial zoning districts in the Zoning Ordinance. The ordinance currently has only two commercial districts: the Residential-Light Industrial-Commercial and Industrial - Commercial District. The overly broad nature of these districts has led to concern by members of the public when property owners have proposed to rezone land to these districts in new locations throughout the County.

Accordingly, staff has undertaken an effort to develop additional commercial and industrial zoning categories, including districts that would allow appropriate limited commercial ventures in suitable locations.

Proposed New Zoning Districts

Recommended additional zoning categories are as follows:

1. Neighborhood Commercial (NC) – Neighborhood serving shops and services, compatible with adjacent residential areas.
2. General Commercial (GC) – Retail stores, shopping centers, gas stations, and other general-purpose commercial uses.

3. Highway Commercial (HC) – Land uses appropriate for major highways, including larger retail stores and large gas stations.
4. Light Industrial (LI) – Warehousing, light manufacturing and other land uses that do not produce significant externalities (noise, odors, etc).
5. Major Industrial (MI) – Uses of a more intense nature than would otherwise be permitted in the Light Industrial district.
6. Planned Neighborhood Development (PND) – A district that allows customization of standards in order to provide a better fit for a particular development or piece of property. This district would allow implementation of conditions or restrictions offered by a property owner or developer.
7. Office/Commercial Mixed Use (OC) – A district intended to allow for well-designed employment centers that may also include residential uses.

Attached is a summary sheet that describes each of the districts under consideration. Each summary sheet includes information that would be made a part of the new zoning district if it were approved, such as the "Purpose" of the district; "Location" describing where this zoning category is intended to be used; the types of permitted uses; as well as "Special Standards" that may apply in the proposed district. Also included is a full list of the permitted and conditional uses for each district.

Proposed New Land Use Categories

In tandem with the establishment of new districts, the list of permitted, conditional, and prohibited land uses in the ordinance should also be revised in order to effectively make distinctions between the new districts. As such, several new land uses are proposed. These new uses are predominantly commercial. The establishment of additional commercial land uses allows for the removal of the overly broad term "commercial uses" as a named land use in the ordinance. Definitions are proposed for several of these new land uses whose meaning may be debatable.

In the draft amendments, the proposed new land uses are also reflected in the County's five existing zoning districts, as shown in Appendix C, Permitted Uses Table. In recommending the permitted use status of the proposed new uses in the existing districts, staff has made every effort to reflect the character of the existing zoning districts. For example, new land uses of an overall commercial character are shown as permitted in the Residential - Light Industrial - Commercial district, but not permitted in the Rural, Residential Growth, or Village Districts, consistent with the intent of these districts.

Other Associated Amendments

In addition to the proposed new districts, staff has recommended other associated amendments to the Zoning Ordinance. These amendments are described in the attached document entitled "List of Related Zoning Ordinance Amendments." All

amendments are reflected in the body of the Zoning Ordinance text included with this memo, as well as Appendices A, B, and C and the list of use definitions (Section 2.2).

At a recent meeting, the Board of Zoning Appeals has identified a possible addition to the amendments, as a result of a significant number of variance requests for decks in a particular subdivision. The proposed amendment would permit shorter setbacks, only for decks built in townhome subdivisions with small lot sizes in the Residential - Light Industrial - Commercial district. This proposed change is included in the draft amendments.

Status of Draft Amendments

The Planning Commission has reviewed the draft recommendations during five of its meetings, solicited public input during a February 14th workshop, and conducted a public hearing that spanned two meetings in April. Following the public hearing, the Planning Commission directed staff to develop recommendations regarding possible changes to the ordinance amendments as a result of the comments received at the public hearing. At its June 12th meeting, the Planning Commission considered the revised draft of the amendments – including proposed changes as a result of public comment – and voted to recommend the draft ordinance amendments to the County Commission for adoption.

As such, the draft amendments are ready for County Commission consideration.

Attached Information

In addition to this memo, the agenda packet for this item includes the following components:

1. A brief description of each proposed district, including a list of permitted and conditional uses for each district.
2. A list of other amendments related to the proposed new commercial zoning districts.
3. A revised draft of the ordinance amendments, including Appendices A, B, and C and revisions to Section 2.2 (Definitions).
4. A memo providing staff recommendations regarding consistency of the proposed amendments with the Comprehensive Plan.
5. Maps from the adopted 2004 Comprehensive Plan:
    a. Roadway Classification Map
    b. Study Area Map

For more information, please contact me at zoning@jeffersoncountywv.org.

Neighborhood Commercial (NC)

Purpose:

The purpose of this district is to permit the development of small scale commercial uses which serve the convenience needs of residential neighborhoods immediately adjacent to or within walking distance of the commercial use. Developments in the NC district should be designed, landscaped and buffered so as to be compatible with neighboring development. Uses should be appropriate in scale to the residential character of their context.

Location:

1. Properties located on Primary or Secondary roads as shown on the Highway Classification map in the Jefferson County Comprehensive Plan
2. Locations within ¼ mile of an existing residential subdivision or development of at least 20 dwelling units
3. Locations adjacent to existing non-residential development
4. Locations with safe vehicular access on roads that function as collector roads
5. Properties currently zoned Residential-Light Industrial-Commercial or Industrial-Commercial

Permitted Uses:

Uses permitted include neighborhood-serving commercial uses such as some types of retail shops, services and offices that are compatible with adjacent residential areas. Uses are generally of a smaller scale than those allowed in the GC district. Some residential uses are also permitted. Other uses may be permitted by Conditional Use Permit or Special Exception.

Special Standards include:

1. No side yard setback required for non-residential uses abutting commercial or industrial uses
2. Parking shall be located in rear or on side of building
3. Limitation of 3,500 square feet of building footprint per building
4. Designated 15' pedestrian zone including sidewalk/trail and landscaping.
5. One or more entrances facing principal street



Neighborhood Commercial District Land Uses

Permitted Uses

Residential Uses

Dwelling, Single Family
Dwelling, Single Family, Small Lot
Dwelling, Townhouse
Dwelling, Multi-Family
Day Care Center, Small
Model Homes/Sales Office

Home Uses

Home Occupation, Level 1
Home Occupation, Level 2
Cottage Industry

Institutional Uses

Church
Day Care Center, Large
Electric Vehicle Charging Station
Group Residential Facility
Group Residential Home
Residential Care Home
Cultural Facility
Elementary or Secondary School
Preschool
Vocational and Training Facility for Adults
Public Safety Facility
Publicly Owned Facility
Essential Utility Equipment
Performing Arts Theater
Park

Commercial Uses

Antique Shop
Art Gallery or Artist Studio
ATM
Automobile, light truck and light trailer rentals, indoor
Bank
Barber/Beauty Shop, Limited
Bed and Breakfast
Contractor with no outdoor storage
Convenience Store, Limited
Country Inn
Dry cleaning and laundry pick-up station; laundromat
Florist
Food Preparation
Gas Station, Limited
Grocery Store
Medical/Dental/Optical Office, Small
Non-Profit Commercial Uses
Non-Profit Community Centers
Personal Services
Professional Office
Restaurant, Fast Food, Limited
Restaurant, Limited
Restaurant
Retail Sales Limited
Retail Store
Shipping and Mailing Services
Veterinary Services
Wireless telecommunications facilities

Agricultural Uses

Agricultural Uses as defined in Article 2
Agricultural Tourism
Farm Brewery or Winery
Farm Market
Farm Vacation Enterprise
Horticultural Nurseries and Commercial Greenhouses
Landscaping Business

Conditional Uses

Institutional Uses

Heliport
Nursing or Retirement Home
Recycling Drop-Off Center

Commercial Uses

Bank with drive-through facility
Bar / Nightclub
Business Equipment Sales and Service
Building Maintenance Services
Campground
Convenience Store
Restaurant, Fast Food

Agricultural Uses

Feed and/or Farm Supply Center

General Commercial (GC)

Purpose:

The purpose of this district is to provide for general destination business uses which provide a broad range of commercial products and services necessary for large regions. The uses in this district may be characterized by larger buildings, more intensive commercial activity, and more vehicular traffic than would be permitted for uses in the NC district.

Location:

1. Properties located on four-lane Primary roads as shown on the Roadway Classification map in the Comprehensive Plan.
2. Properties currently zoned Residential-Light Industrial-Commercial or Industrial-Commercial.

Permitted Uses:

The GC District allows uses permitted in the NC District, in addition to a broader variety of retail stores, repair shops, wholesale businesses, and offices. Residential uses are not permitted in the GC District.

Special Standards include:

1. Individual buildings with area over 50,000 sq. ft. require approval as a Special Exception by the Board of Zoning Appeals.





General Commercial District Land Uses

Permitted Uses

Institutional Uses

Church
Convention Center
Day Care Center, Large
Electric Vehicle Charging Station
Hospital
Group Residential Facility
Group Residential Home
Residential Care Home
Nursing or Retirement Home
Cultural Facility
Elementary or Secondary School
Preschool
Vocational and Training Facility for Adults
Public Safety Facility
Publicly Owned Facility
Essential Utility Equipment
Performing Arts Theater
Park, Passive Recreational Uses
Park, Active Recreational Uses
Recycling Drop-Off Center

Commercial Uses

Antique Shop
Appliance Sales
Art Gallery or Artist Studio
ATM
Automobile repair, sales and service
Automobile parts, supplies and tire stores
Automobile, light truck and light trailer rentals, indoor
Automobile, light truck and light trailer rentals, outdoor
Bail Bond Services
Bank
Bank with drive-through facility
Bar / Nightclub
Barber/Beauty Shop, Limited
Business Equipment Sales and Service
Building Maintenance Services
Building Materials and Supplies
Campground
Car Wash
Commercial Blood Plasma Center
Contractor with no outdoor storage
Contractor with outdoor storage
Convenience Store, Limited
Convenience Store
Country Inn
Dry cleaning and laundry pick-up station; laundromat
Dry cleaning and laundry services
Equipment Rental, Sales, or Service
Exterminating Services
Florist
Food Preparation
Hotel/Motel
Gas Station, Limited
Gas Station
Golf Course
Grocery Store
Kennel
Medical/Dental/Optical Office, Small
Medical/Dental/Optical Office
Mobile home, boat and trailer sales
Movie Theater
Non-Profit Commercial Uses
Non-Profit Community Centers
Parking, Commercial Offsite Accessory
Pawn Shop Services
Personal Services
Professional Office
Restaurant, Fast Food, Limited
Restaurant, Fast Food
Restaurant, Fast Food, Drive-Through
Restaurant, Limited
Restaurant
Retail Sales Limited
Retail Store
Shipping and Mailing Services
Storage, Commercial
Veterinary Services
Wireless telecommunications facilities

Industrial Uses

Manufacturing, Limited
Printing and Publishing
Transportation Terminal
Warehousing and Distribution, Limited

Agricultural Uses

Agricultural Uses as defined in Article 2

Agricultural Repair Center

Agricultural Tourism

Farm Brewery or Winery

Farm Market

Farm Vacation Enterprise

Feed and/or Farm Supply Center

Horticultural Nurseries and Commercial Greenhouses

Landscaping Business

Rental of Existing Farm Building for Commercial Storage

Accessory Uses

Accessory Uses

Conditional Uses

Residential Uses

Model Homes/Sales Office

Institutional Uses

Heliport

Commercial Uses

Gas Station, Large

Retail Store, Large

Industrial Uses

Shooting Range, Indoor

Highway Commercial (HC)

Purpose:

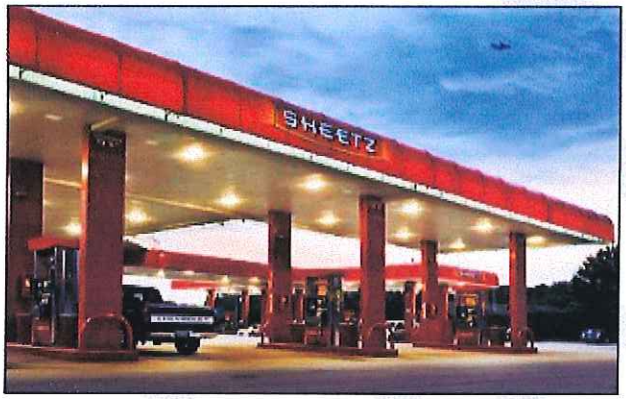
The purpose of this district is to provide appropriate locations for high-intensity, motor-vehicle oriented commercial uses fronting on major roadways. This district may include land uses that are more intensive than other commercial districts and incompatible with nearby adjacent residential uses.

Location:

1. Properties located within 1000' feet of major intersections on four-lane Primary roads as shown on the Roadway Classification map in the Jefferson County Comprehensive Plan.
2. Properties designated for Highway Commercial uses in the Comprehensive Plan.

Permitted Uses:

Uses in the HC District include most uses permitted in the General Commercial (GC) District, in addition to large gas stations and large retail stores.





Highway Commercial District Land Uses

Permitted Uses

Institutional Uses

Church
Convention Center
Cultural Facility
Day Care Center, Large
Electric Vehicle Charging Station
Essential Utility Equipment
Group Residential Facility
Group Residential Home
Hospital
Nursing or Retirement Home
Park
Performing Arts Theater
Public Safety Facility
Publicly Owned Facility
Recycling Drop-Off Center
Residential Care Home
Vocational and Training Facility for Adults

Industrial

Manufacturing, Limited
Printing and Publishing
Transportation Terminal
Warehousing and Distribution, Limited

Commercial Uses

Antique Shop
Appliance Sales
Art Gallery or Artist Studio
ATM
Automobile repair, sales and service
Automobile parts, supplies and tire stores
Automobile, light truck and light trailer rentals, indoor
Automobile, light truck and light trailer rentals, outdoor
Bail Bond Services
Branch Bank
Bank with drive-through facility
Bar / Nightclub
Barber/Beauty Shop, Limited
Business Equipment Sales and Service
Building Maintenance Services
Building Materials and Supplies
Car Wash
Commercial Blood Plasma Center
Contractor with no outdoor storage
Contractor with outdoor storage
Retail Food Convenience Store, Limited
Convenience Store
Country Inn
Dry cleaning and laundry pick-up station; laundromat
Dry cleaning and laundry services
Equipment Rental, Sales, or Service
Exterminating Services
Florist
Food Preparation
Hotel/Motel
Gas Station, Limited
Gas Station
Gas Station, Large
Golf Course
Grocery Store
Kennel
Medical/Dental/Optical Office, Small
Medical/Dental/Optical Office
Mobile home, boat and trailer sales
Movie Theater
Non/Not for-Profit Commercial Uses
Non-Profit Community Centers
Parking, Commercial Offsite Accessory
Pawn Shop Services
Personal Services
Professional Office
Restaurant, Fast Food, Limited
Restaurant, Fast Food
Restaurant, Fast Food, Drive-Through
Restaurant, Limited
Restaurant
Retail Sales Limited
Retail Store
Retail Store, Large
Shipping and Mailing Services
Storage, Commercial
Veterinary Services
Wireless telecommunications facilities

Agricultural Uses

Agricultural Uses as defined in Article 2

Agricultural Repair Center

Agricultural Tourism

Farm Brewery or Winery

Farm Market

Farm Vacation Enterprise

Feed and/or Farm Supply Center

Horticultural Nurseries and Commercial Greenhouses

Landscaping Business

Rental of Existing Farm Building for Commercial Storage

Accessory Uses

Accessory Uses

Conditional Uses

Institutional Uses

Elementary or Secondary School

Heliport

Preschool

Industrial

Shooting Range, Indoor

Light Industrial (LI)

Purpose:

The purpose of this district is to provide locations for lighter manufacturing processes which are not as extensive as those provided in the MI District and can be served with adequate public or community water and sewerage service. In this district, most manufacturing is composed of processing or assembly of previously processed materials.

Location:

1. Properties located in Industrial Parks
2. Properties with Industrial-Commercial zoning
3. Properties designated as appropriate for either Light or Major Industrial land uses in the Comprehensive Plan

Permitted Uses:

Uses in the LI District include most uses permitted in the General Commercial (GC) District, in addition to low impact industrial uses such as light manufacturing, assembling, and fabrication, in addition to warehousing, wholesale, and service uses where little or no nuisance effects are generated.

Special Standards include:

Larger setbacks required for Light Industrial uses located near a dwelling, school, church or institution for human care or a residential zoning district.



Light Industrial District Land Uses

Permitted Uses

Institutional Uses

Airport
Church
Convention Center
Cultural Facility
Day Care Center, Large
Electric Vehicle Charging Station
Essential Utility Equipment
Heliport
Hospital
Nursing or Retirement Home
Park
Performing Arts Theater
Public Safety Facility
Publicly Owned Facility
Recycling Drop-Off Center
Vocational and Training Facility for Adults

Industrial Uses

Light Industrial Uses
Manufacturing, Limited
Printing and Publishing
Shooting Range, Indoor
Transportation Terminal
Vehicle Storage
Warehousing and Distribution, Limited

Adult Uses

Adult Uses

Commercial Uses

Antique Shop
Appliance Sales
Art Gallery or Artist Studio
ATM
Automobile repair, sales and service
Automobile parts, supplies and tire stores
Automobile, light truck and light trailer rentals, indoor
Automobile, light truck and light trailer rentals, outdoor
Bail Bond Services
Bank
Bank with drive-through facility
Bar / Nightclub
Barber/Beauty Shop, Limited
Business Equipment Sales and Service
Building Maintenance Services
Building Materials and Supplies
Car Wash
Commercial Blood Plasma Center
Contractor with no outdoor storage
Contractor with outdoor storage
Convenience Store, Limited
Convenience Store
Country Inn
Dry cleaning and laundry pick-up station; laundromat
Dry cleaning and laundry services
Equipment Rental, Sales, or Service
Exterminating Services
Florist
Food Preparation
Hotel/Motel
Gambling Facilities
Gas Station, Limited
Gas Station
Gas Station, Large
Golf Course
Grocery Store
Kennel
Medical/Dental/Optical Office, Small
Medical/Dental/Optical Office
Mobile home, boat and trailer sales
Movie Theater
Non-Profit Commercial Uses
Non-Profit Community Centers
Parking, Commercial Offsite Accessory
Pawn Shop Services
Personal Services
Professional Office
Restaurant, Fast Food, Limited
Restaurant, Fast Food
Restaurant, Fast Food, Drive-Through
Restaurant, Limited
Restaurant
Retail Sales Limited
Retail Store
Shipping and Mailing Services

Commercial Uses (continued)

Storage, Commercial

Veterinary Services

Wireless telecommunications facilities

Agricultural Uses

Agricultural Uses as defined in Article 2

Agricultural Repair Center

Agricultural Tourism

Farm Brewery or Winery

Farm Market

Farm Vacation Enterprise

Feed and/or Farm Supply Center

"Horticultural Nurseries and Commercial Greenhouses"

Landscaping Business

Rental of Existing Farm Building for Commercial Storage

Accessory Uses

Accessory Uses

Conditional Uses

Institutional Uses

Elementary or Secondary School

Preschool

Industrial Uses

Heavy Equipment Repair

Manufacturing, Heavy

Shooting Range, Outdoor

Warehousing and Distribution, General

Recreational Uses

Hunting, Shooting, Archery and Fishing Clubs, public or private

Commercial Uses

Retail Store, Large

Major Industrial (MI)

Purpose:

This district is intended to provide sufficient space in appropriate locations for a wide variety of industrial activities, generally located within 1,000 feet of four-lane Primary roads as shown on the Roadway Classification map in the Jefferson County Comprehensive Plan. The uses in this district can be served with adequate public or community water and sewerage service, and may be characterized by extensive warehousing, frequent heavy trucking activity, and broader manufacturing activity than would be permitted in the Light Industrial district.

Location:

The following locations eligible for Major Industrial zoning:

1. Properties located in Industrial Parks
2. Properties with Industrial-Commercial zoning
3. Properties designated as appropriate for Major Industrial land uses in the Comprehensive Plan

Permitted Uses:

Permitted uses include Light Industrial and Major Industrial Uses. Some appropriate commercial uses that do not entail frequent customer traffic may be permitted, or established by Conditional Use Permit or Special Exception.

Special Standards include:

Larger setbacks required for Major Industrial uses located near a dwelling, school, church or institution for human care or a residential zoning district.



Major Industrial District Land Uses

Permitted Uses

Institutional Uses

Airport
Electric Vehicle Charging Station
Essential Utility Equipment
Heliport
Performing Arts Theater
Public Safety Facility
Publicly Owned Facility
Recycling Drop-Off Center
Vocational and Training Facility for Adults

Industrial Uses

Heavy Equipment Repair
Heavy Industrial Uses
Light Industrial Uses
Manufacturing, Heavy
Manufacturing, Limited
Printing and Publishing
Salvage Yards
Shooting Range, Indoor
Slaughterhouses, Stockyards
Transportation Terminal
Vehicle Storage
Warehousing and Distribution, General
Warehousing and Distribution, Limited

Adult Uses

Adult Uses

Commercial Uses

Appliance Sales
Automobile repair, sales and service
Automobile parts, supplies and tire stores
Automobile, light truck and light trailer rentals, indoor
Automobile, light truck and light trailer rentals, outdoor
Bail Bond Services
Business Equipment Sales and Service
Building Maintenance Services
Building Materials and Supplies
Car Wash
Commercial Blood Plasma Center
Contractor with no outdoor storage
Contractor with outdoor storage
Dry cleaning and laundry services
Equipment Rental, Sales, or Service
Exterminating Services
Food Preparation
Gambling Facilities
Gas Station, Limited
Gas Station
Gas Station, Large
Golf Course
Mobile home, boat and trailer sales
Parking, Commercial Offsite Accessory
Pawn Shop Services
Storage, Commercial
Wireless telecommunications facilities

Agricultural Uses

Agricultural Uses as defined in Article 2
Agricultural Repair Center
Agricultural Tourism
Farm Brewery or Winery
Farm Vacation Enterprise
Feed and/or Farm Supply Center
Horticultural Nurseries and Commercial Greenhouses
Landscaping Business
Rental of Existing Farm Building for Commercial Storage

Accessory Uses

Accessory Uses

Conditional Uses

Institutional Uses

Church

Convention Center

Cultural Facility

Day Care Center, Large

Hospital

Preschool

Industrial Uses

Shooting Range, Outdoor

Industrial Manufacturing & Processing Uses

"Acid or heavy chemical manufacturer,
processing or storage"

"Bituminous concrete mixing and
recycling plants"

Cement or Lime Manufacture

Commercial Sawmills

Concrete and ceramic products manufacture, including ready mixed concrete plants

Explosive manufacture or storage

Foundries and/or casting facilities

Garbage or dead animal reduction or processing; Landfills

Jails and Prisons

Mineral extraction, mineral processing

Petroleum products refining or storage

Recreational Uses

Hunting, Shooting, Archery and Fishing Clubs, public or private

Commercial Uses

Bank

Bank with drive-through facility

Convenience Store, Limited

Convenience Store

Dry cleaning and laundry pick-up station; laundromat

Florist

Grocery Store

Kennel

Medical/Dental/Optical Office, Small

Medical/Dental/Optical Office

Movie Theater

Non-Profit Commercial Uses

Non-Profit Community Centers

Personal Services

Professional Office

Restaurant, Fast Food, Limited

Restaurant, Fast Food

Restaurant, Fast Food, Drive-Through

Restaurant, Limited

Restaurant

Retail Sales Limited

Retail Store

Retail Store, Large

Shipping and Mailing Services

Veterinary Services

Agricultural Uses

Farm Market

Planned Neighborhood Development (PND) District

Purpose:

The purpose of the PND District is to:

1. encourage flexibility in the development of land in order to promote its most appropriate use;
2. improve the design, character and quality of new developments;
3. provide and promote redevelopment and reuse opportunities;
4. encourage a harmonious and appropriate mixture of uses and/or housing types;
5. facilitate the adequate and economic provision of streets, utilities and city services;
6. preserve critical natural environmental and scenic features of the site;
7. encourage and provide a mechanism for arranging improvements and sites so as to preserve desirable features and to provide transitions between land uses; and
8. mitigate the problems which may be presented by specific site conditions.

Location:

1. Properties identified as being located in the Growth Area in the Comprehensive Plan

Permitted Uses:

Uses in the PND District include those uses permitted in the General Commercial (GC) District, in addition to multi-family and townhouse residential uses, and small-lot single-family residential uses.

Special Standards include:

1. Planning Commission approval of a PND plan required
2. Mix of Uses Required:
   - 10-30% commercial
   - 10-30% high density residential
   - 20-40% medium density residential
   - 0-60% low density residential
3. Modification of Development Standards Allowed:
   - Height
   - Impervious surface
   - Setbacks
   - Other standards
   - Permitted uses
4. Open Space Requirements
5. Connectivity and Street Network Requirements



Jeffers



Planned Neighborhood Development District Land Uses

Permitted Uses

Residential Uses

Dwelling, Single Family
Dwelling, Single Family, Small Lot
Dwelling, Two Family
Dwelling, Duplex
Dwelling, Townhouse
Dwelling, Multi-Family
Day Care Center, Small
Model Homes/Sales Office

Home Uses

Home Occupation, Level 1
Home Occupation, Level 2
Cottage Industry

Institutional Uses

Church
Convention Center
Cultural Facility
Day Care Center, Large
Electric Vehicle Charging Station
Elementary or Secondary School
Essential Utility Equipment
Group Residential Facility
Group Residential Home
Hospital
Nursing or Retirement Home
Park
Performing Arts Theater
Preschool
Public Safety Facility
Publicly Owned Facility
Recycling Drop-Off Center
Residential Care Home
Vocational and Training Facility for Adults

Industrial Uses

Printing and Publishing
Transportation Terminal

Commercial Uses

Antique Shop
Appliance Sales
Art Gallery or Artist Studio
ATM
Automobile repair, sales and service
Automobile parts, supplies and tire stores
Automobile, light truck and light trailer rentals, indoor
Automobile, light truck and light trailer rentals, outdoor
Bank
Bank with drive-through facility
Bar / Nightclub
Barber/Beauty Shop, Limited
Business Equipment Sales and Service
Building Maintenance Services
Building Materials and Supplies
Campground
Car Wash
Contractor with no outdoor storage
Contractor with outdoor storage
Convenience Store, Limited
Convenience Store
Country Inn
Dry cleaning and laundry pick-up station; laundromat
Dry cleaning and laundry services
Equipment Rental, Sales, or Service
Exterminating Services
Florist
Food Preparation
Hotel/Motel
Gas Station, Limited
Gas Station
Golf Course
Grocery Store
Kennel
Medical/Dental/Optical Office, Small
Medical/Dental/Optical Office
Mobile home, boat and trailer sales
Movie Theater
Non-Profit Commercial Uses
Non-Profit Community Centers
Parking, Commercial Offsite Accessory
Pawn Shop Services
Personal Services
Professional Office
Restaurant, Fast Food, Limited
Restaurant, Fast Food
Restaurant, Limited

Commercial Uses (continued)

Restaurant

Retail Sales Limited

Retail Store

Shipping and Mailing Services

Storage, Commercial

Veterinary Services

Wireless telecommunications facilities

Agricultural Uses

Agricultural Uses as defined in Article 2

Agricultural Repair Center

Agricultural Tourism

Farm Brewery or Winery

Farm Market

Farm Vacation Enterprise

Feed and/or Farm Supply Center

Horticultural Nurseries and Commercial Greenhouses Landscaping Business

Rental of Existing Farm Building for Commercial Storage

Accessory Uses

Accessory Uses

Conditional Uses

Institutional Uses

Heliport

Industrial Uses

Manufacturing, Limited

Warehousing and Distribution, Limited

Commercial Uses

Commercial Blood Plasma Center

Gas Station, Large

Restaurant, Fast Food, Drive-Through

Retail Store, Large

Office / Commercial (OC) Mixed-Use District

Purpose:

The purpose of the OC district is to allow for well-designed employment centers. Developments in the OC district contain a mix of land uses, primarily oriented to commercial, and office uses but also allowing multi-family and attached single-family residential uses. Developments are oriented to principal streets, contain substantial public space and streetscaping, allow for pedestrian movement within the site and between adjacent sites, and meet the design standards provided for this district.

Location:

1. Properties designated by the Comprehensive Plan as appropriate for Office/Commercial development

Permitted Uses:

Uses in the OC District include those uses permitted in the General Commercial (GC) District, in addition to multi-family and townhouse residential uses.

Special Standards include:

1. No side yard setback required for non-residential uses abutting commercial or industrial uses
2. Buildings fronting a principal street must be at least 2 stories in height
3. Minimum of 75% of ground floor commercial space required
4. Parking shall be located in rear or on side of building
5. Designated 15' pedestrian zone including sidewalk/trail and landscaping
6. One or more entrances facing the principal street



Office/Commercial Mixed Use District

Permitted Uses

Residential Uses

Dwelling, Single Family, Small Lot
Dwelling, Townhouse
Dwelling, Multi-Family
Model Homes/Sales Office

Home Uses

Home Occupation, Level 1
Home Occupation, Level 2
Cottage Industry

Institutional Uses

Church
Convention Center
Cultural Facility
Day Care Center, Large
Electric Vehicle Charging Station
Elementary or Secondary School
Essential Utility Equipment
Group Residential Facility
Group Residential Home
Hospital
Nursing or Retirement Home
Park
Performing Arts Theater
Preschool
Public Safety Facility
Publicly Owned Facility
Recycling Drop-Off Center
Residential Care Home
Vocational and Training Facility for Adults

Industrial Uses

Manufacturing, Limited
Printing and Publishing
Transportation Terminal
Warehousing and Distribution, Limited

Commercial Uses

Antique Shop
Appliance Sales
Art Gallery or Artist Studio
ATM
Automobile repair, sales and service
Automobile parts, supplies and tire stores
Automobile, light truck and light trailer rentals, indoor
Automobile, light truck and light trailer rentals, outdoor
Bank
Bank with drive-through facility
Bar / Nightclub
Barber/Beauty Shop, Limited
Business Equipment Sales and Service
Building Maintenance Services
Building Materials and Supplies
Campground
Car Wash
Contractor with no outdoor storage
Contractor with outdoor storage
Convenience Store, Limited
Convenience Store
Country Inn
Dry cleaning and laundry pick-up station; laundromat
Dry cleaning and laundry services
Equipment Rental, Sales, or Service
Exterminating Services
Florist
Food Preparation
Hotel/Motel
Gas Station, Limited
Gas Station
Golf Course
Grocery Store
Kennel
Medical/Dental/Optical Office, Small
Medical/Dental/Optical Office
Mobile home, boat and trailer sales
Movie Theater
Non-Profit Commercial Uses
Non-Profit Community Centers
Parking, Commercial Offsite Accessory
Pawn Shop Services
Personal Services
Professional Office
Restaurant, Fast Food, Limited
Restaurant, Fast Food
Restaurant, Fast Food, Drive-Through
Restaurant, Limited
Restaurant

Commercial Uses (continued)

Retail Sales Limited

Retail Store

Shipping and Mailing Services

Storage, Commercial

Veterinary Services

Wireless telecommunications facilities

Agricultural Uses

Agricultural Uses as defined in Article 2

Agricultural Repair Center

Agricultural Tourism

Farm Brewery or Winery

Farm Market

Farm Vacation Enterprise

Feed and/or Farm Supply Center

Horticultural Nurseries and Commercial Greenhouses

Landscaping Business

Rental of Existing Farm Building for Commercial Storage

Accessory Uses

Accessory Uses

Conditional Uses

Institutional Uses

Heliport

Commercial Uses

Commercial Blood Plasma Center

Gas Station, Large

Retail Store, Large

List of Related Zoning Ordinance Amendments

Draft – 8/9/12

In addition to the creation of new zoning districts as addressed in new sections 5.11 through 5.17, other related amendments to the Zoning Ordinance were identified by staff, members of the public, and the Planning Commission during the development and public review of the draft ordinance. These additional amendments are briefly described below.

Section 4.4, Prohibited Uses

Clarifies the permitted status of certain uses (such as prisons and gambling) in the proposed new zoning districts.

Section 4.6

Clarifies applicability of distance requirements to industrial and commercial uses and to uses in the proposed Neighborhood Commercial District.

Section 4.10

Clarifies that a site plan must not only be submitted but also approved prior to initiation of development.

Section 4.11

Clarifies the landscaping requirements for an industrial use.

Table 4.11-1

Setback requirements are relocated to Appendix B.

Screened buffer requirement added for multi-family development adjacent to commercial or industrial development.

Section 5.1

Addition of new zoning districts to list of districts.

Sections 5.4, 5.6, 5.7, 5.8. 5.10

Lists of permitted uses are replaced with a statement that "uses that are permitted, conditional, and not permitted in this district shall be as indicated in Appendix C, Principal Permitted Uses Table."

These revised sections also state that uses shown as conditional uses shall be subject to the Compatibility Assessment Meeting process pursuant to Article 7, Section 7.6 inclusive.

Section 5.6D

Removal of statement that yard requirements in the Industrial - Commercial District apply to a commercial use in any other district. These yard requirements do not apply to the new districts, each of which has its own set of yard requirements. (Where 5.6D is applicable in the ordinance has been so noted elsewhere.)

This section also includes clarification regarding the applicability of buffer requirements to access drives.

Section 5.8B

Clarifies the impervious surface limit requirements for the Residential - Light Industrial - Commercial district.

Section 5.8C

Clarifies that the Compatibility Assessment Meeting requirement does not apply to a building located within a shopping center shown on an approved site plan for restaurants where the primary mode of food distribution is by pick-up counter or drive in window and convenience stores (food stores not in excess of 10,000 square feet gross floor area).

Section 6.3

Clarifies that the soils component of the LESA scoring process is not applicable when the development is proposed to be located in an existing building, on an existing paved or disturbed area, or entails an expansion of less than 1,000 square feet total of an existing building and/or an existing paved area.

This revised section would also include a sentence relocated from Section 6.5D, in order to improve the clarity of this Article.

Section 6.5

Section 6.5D moved to Section 6.3 to improve the clarity of Article 6.

Section 8.1

Clarifies that the larger setbacks required for Adult Uses do apply when the use is located in the vicinity of the proposed Neighborhood Commercial, Planned Neighborhood Development, or Office/Commercial Mixed Use zoning districts.

Section 8.9

Clarifies the applicability of landscape buffer requirements to commercial and industrial developments.

Section 8.12

Clarifies the permitted status of fireworks sales in the Industrial - Commercial, Residential - Light Industrial - Commercial, General Commercial, Highway Commercial, Light Industrial, and Major Industrial zoning districts.

Section 12.2

Changes the time periods required for posting and adjoiner letters for a zoning map amendment request, from "at least 30 days" to "not less than 20 and not more than 28 days." The reason for this change is that the 30-day requirement does not allow a zoning map amendment case to be scheduled on the next Planning Commission meeting following the applicant's presentation of a map amendment petition. In order to ensure that the public hearing schedule for zoning map amendments remains consistent the timelines established in the West Virginia Code, this change is recommended.

Section 12.3

Clarifies that there are additional requirements for the processing of a zoning map amendment request for the PND District.

Appendix A, Residential Site Development Standards Table

1. New commercial zoning districts and site development standards added to table.
2. Site development standards for "Small lot single-family detached dwelling" added to table.
3. Deletion of statement that table is for reference purposes only, and clarification that table will prevail in the event of a conflict with the ordinance.
4. Adds an allowance for reduced rear setbacks for decks in townhome developments with small lots in the Residential - Light Industrial - Commercial district.

Appendix B, Non-residential Site Development Standards Table

1. New commercial zoning districts and site development standards added to table.
2. Columns showing setbacks for parking and drive aisles are proposed to be relocated from Table 4.11-1 in order to consolidate setback requirements into one table.
3. Establishes maximum building heights for non-residential uses in the Village District (35') and the Residential - Light Industrial - Commercial District (60'). The ordinance does not currently establish height limits in these districts.
4. Street side yard building setbacks added.
5. Amended note regarding maximum building height.
6. Deleted note referencing section 5.6D.
7. Deletion of statement that table is for reference purposes only, and clarification that table will prevail in the event of a conflict with the ordinance.

Appendix C, Permitted Uses Table

1. Addition of various new commercial land use names (please see table).
2. Establishment of Dwelling, Single Family, Small Lot use.
3. Deletion of statement that table is for reference purposes only, and clarification that table will prevail in the event of a conflict with the ordinance.
4. Addition of new zoning districts and permitted/conditional/not permitted status of each land use for the new districts.
5. Addition of permitted/conditional/not permitted status of each land use for the existing zoning districts.
6. Edits to names of some existing land uses, such as Shooting Range; Garbage or dead animal reduction or processing; Branch bank; Retail food store, limited; Dry cleaning; Non/not-for profit commercial uses.
7. Proposed change in status for some land uses as highlighted in yellow on the table.
8. Amendment of footnote regarding conditional uses.
9. Correction of errors regarding the status of Wireless telecommunications facilities, Agricultural Tourism, Farm Brewery or Winery, and Farm Vacation Enterprise.

Draft Zoning and Land Development Ordinance Amendments

1. Ordinance Language

2. Appendices A, B, and C

3. Section 2.2 (Definitions)

Section 4.4 Prohibited Uses

A. Any existing or proposed use which is determined to be in conflict with any existing ordinance or laws of Jefferson County or law or regulation of the State of West Virginia or other governmental agency shall be prohibited even though such use may be allowed under the terms of this ordinance.

B. No land use shall be conducted that creates any injurious, noxious, or otherwise objectionable fire, explosive heat, or other hazard; noise, or vibration; smoke, dust, odor, gases, or other form of air pollution; or emit dangerous radioactivity in such a manner that if permitted would adversely affect the uses of an adjacent property or contaminate the ground water or surface waterways of the County. All land uses generating such conditions shall comply with the appropriate State and Federal Codes. Such compliance with applicable State and Federal laws shall be deemed as compliance with this Ordinance.

C. Any development which would destroy the historical character of a property listed on the West Virginia or National Register of Historic Places shall not be permitted.

D. No materials or waste should be stored on a property in a form that could be transported to adjacent property by wind or water or other natural causes or forces.

E. All methods of industrial waste or sewage treatment and disposal shall be in accordance with County, State and Federal Codes.

F. Jails, prisons and/or penal institutions shall be prohibited in all ~~zones~~ zoning districts except the ~~i~~Industrial~~/-e~~Commercial ~~zone~~ District and the Major Industrial District. The Development Review System does not supersede this prohibition.[5]

G. No gambling or casino type game of chance (video or mechanical) that provides any type of payoff or remuneration shall be permitted anywhere in Jefferson County unless expressly and explicitly permitted and authorized by the West Virginia Code as amended. Provided, however, that such use shall only be permitted in the Industrial~~/-~~Commercial ~~Zone~~ District and the Major Industrial District and shall be processed through the Development Review System (Article 6 and 7).[6, 23]

This prohibition does not apply to betting on horses or pari-mutuel betting on horses. Furthermore, this prohibition does not apply to such uses that existed at the time of the adoption of this ordinance. The Development Review System shall not supersede this prohibition in any zoning district other than the Industrial - Commercial District or the Major Industrial District. ~~the Residential Growth Zone, the Rural Agricultural Zone, the Village Zone, or the Residential/Light Industrial/Commercial Zone.~~[23]

H. For parcels located east of the Shenandoah River or which are in a natural, undisturbed condition within 1000 feet of the Potomac and Shenandoah Rivers and Opequon Creek, no use shall be permitted without adherence to the requirements for retention of land in a natural, undisturbed area as spelled out in Section 22.504 of the Jefferson County Subdivision and Land Development Regulations.[5, 23]

I. No sales of fireworks are permitted outside ~~the commercial zones~~of the Industrial - Commercial, Residential - Light Industrial - Commercial, General Commercial, Highway

Commercial, Light Industrial, and Major Industrial zoning districts, and are subject to the requirements of for such use in Article 8.[8, 23]

J. Vehicle signs left parked or standing on a public right-of-way, public property or private property.[12]

K. Adult arcades, adult bookstores, adult cabarets, adult mini motion picture theaters, adult saunas, adult theaters, sexual encounter establishments, sexual paraphernalia stores, massage parlors and any sign advertising the operation thereof, shall only be permitted in the Industrial-Commercial District and the Major Industrial District~~not be permitted in the Rural, Village, Residential Growth and Residential-Light Industrial-Commercial Districts~~.[23]

No conditional use permit shall be approved for any of these adult uses in a zoning district other than the Industrial - Commercial District or the Major Industrial District. This provision does not apply to any specific existing use that legally qualifies as a nonconforming use.[15, 16]

L. Salvage yards unless established in accordance with the Jefferson County Salvage Yard Ordinance.[23]

M. Heavy industrial uses listed in Section 5.6(B) of this Ordinance are permitted only in the Industrial - Commercial District and the Major Industrial District and require approval via the Development Review System.[23]

Section 4.5 Agricultural Uses Permitted Generally

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

Section 4.6 Distance Requirements

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

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

~~4.~~5.Industrial uses are subject to this section, unless otherwise specified in this ordinance.

B. Adjacent uses or buildings subject to compliance with this section shall be located at least 75 feet from:[7]

1. Any lot in the Residential Growth District;

2. Any lot with a dwelling, school, church, or institution for human care not located on the same lot as said use or building;

3. Any parcel, historic structure, or designated historic district which has been listed on the West Virginia or National Register of Historic Places.[23]

~~3.~~4.Commercial uses are subject to this section, unless otherwise specified in this ordinance.

C. A commercial use located in the Neighborhood Commercial district or the Office/Commercial Mixed Use shall be located at least 25 feet from a land use identified in Section 4.6.B.1-3.

Section 4.7 Essential Utility Equipment

Essential utility equipment, as defined in Section 2.2, shall be permitted in any district, as authorized and regulated by law and ordinances of Jefferson County, it being the intention hereof to exempt such essential utility equipment from the application of this ordinance. Wireless telecommunication towers, however, shall conform to the requirements of Article 4B.[7, 22]

Section 4.8 Buildable Lot

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

Section 4.9 Traffic Visibility Across Corner Lots

On any corner in all districts, there shall be no obstruction to traffic visibility within thirty-five (35) feet of the intersection of the two (2) street property lines of the corner lot. Site plan and subdivision applications must comply with the Intersection Design requirements of the Subdivision and Land Development Regulations.[23]

Section 4.10 Site Plan Requirements

A. ~~A site plan shall be s~~Submittal and approval of a site plan is required~~ed~~ for all commercial, townhouse and multi-family residential, industrial, and institutional development in any district and for all major additions or expansions of existing uses as defined in Article 2, in accordance with the requirements of the Subdivision and Land Development Regulations and this Ordinance.[23]

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

C. The site plan format and informational requirements that must be followed are referenced in the Jefferson County Subdivision and Land Development Regulations, and this Ordinance.[23]

D. The Planning Commission has the authority to waive any site plan standards in accordance with the Subdivision and Land Development Regulations.[10, 17, 21. 23]

Section 4.11 Landscaping, Screening and Buffer Yard Requirements

A. All commercial development adjacent to any Residential district, or any lot with a residence, school, church, or institution of human care shall have a fifty (50) foot or greater unscreened green space buffer or a fifteen (15) foot screened green space buffer along common property lines. The screening may be either vegetative or opaque fencing and may be placed anywhere within the buffer. No structures, materials, or vehicular parking shall be permitted within the side and rear yard buffers. All commercial development adjacent to all other uses must maintain ten (10) foot side and rear yard landscape buffers.[5]

B. All industrial development adjacent to any Residential district, or a residence, school, church, or institution for human care shall ~~have~~meet the following buffer yard requirements:

1. ~~a~~An unscreened buffer yard of no less than two hundred (200) feet; and

2. A screened buffer yard with a minimum width of fifteen (15) feet, which may be included within the 200-foot ~~-~~buffer required in this subsection~~.~~; and

~~1.~~3. No structures, stored materials, or vehicular parking shall be permitted within the buffer yard. ~~All industrial development shall have front yard buffers of no less than one-half (½) the front yard building setback.~~[5, 7]

Table 4.11 – 1 Setbacks, Buffers and Distance Requirements for Non-Residential Uses[23]

ADJACENT USE / PROPOSED USE		BUILDING SETBACKS	PARKING & ACCESS DRIVE SETBACKS	BUFFERS UNSCREENED/SCREENED					DISTANCE REQUIREMENTS
		All Uses	All Uses	Residential Zone	Lot with a Residential Use	Church/School/ Instiution for Human Care	Commercial	Industrial	All Uses
FRONT	Comm'l Lot <=1.5 ac.	See Appendix A and Appendix B	See Appendix A and Appendix B	50' unscreened or 15' screened			N/A	N/A	See Appendix A and Appendix B
	Comm'l Lot > 1.5 ac.			50' unscreened or 15' screened			N/A	N/A	
	Industrial			200' unscreened and 15' screened*			25' screened	N/A	
	Church			50' unscreened or 15' screened			N/A	N/A	
	Multi-family			N/A	~~N/A~~/15' screened				
SIDE	Comm'l Lot <=1.5			50' unscreened or 15' screened			10' screened	10' screened	
	Comm'l Lot > 1.5 ac.			50' unscreened or 15' screened			10' screened	10' screened	
	Industrial			200' unscreened and 15' screened*			20' screened	20' screened	
	Church			50' unscreened or 15' screened			10' screened	10' screened	
	Multi-family			N/A	~~N/A~~/12' screened				
REAR	Comm'l Lot <=1.5			50' unscreened or 15' screened			10' screened	10' screened	
	Comm'l Lot > 1.5 ac.			50' unscreened or 15' screened			10' screened	10' screened	
	Industrial			200' unscreened and 15' screened*			20' screened	20' screened	
	Church			50' unscreened or 15' screened			10' screened	10' screened	
	Multi-family			N/A	~~N/A~~/15' screened				

**15' screened buffer may be included within required 200' unscreened buffer.*

Note: When Table 4.11-1 is in conflict with another section of the Zoning & Development Review Ordinance, this table shall prevail. See Article 8 of the Zoning and Land Development Ordinance for building setbacks for certain land uses.[23]

~~B.~~C. In all buffer yards, the exterior width beyond the vegetative screen shall be planted with grass, seed, sod, or ground cover.

~~C.~~D. All buffer yards shall include a fence or a dense screen planting of trees, shrubs, or other plant materials or both, to the full length of the lot line to serve as a barrier to visibility, air borne particles, glare or noise. Such screen planting shall meet the following requirements.

1. Vegetative screening shall comply with Standard Details M52, M53 or M54, or other applicable Standard Details, depending on the buffer width. At the time of the planting the vegetation shall be at least four (4) feet in height.[7, 23]
2. It will be the responsibility of the landowner to replace any trees that die and shall be so noted on the site plan.
3. Screen planting shall be a minimum of ten (10) feet wide but shall be placed so that it is no closer than four (4) feet at maturity from a property line or from any street.
4. No structure, fence, planting, or other obstruction shall be permitted which would interfere with traffic visibility.

~~D.~~E. In any Commercial, Industrial, Institutional, or Residential development, all dumpsters shall be screened from any residences or from view of a public highway.[23]

~~E.~~F. All buffer yards shall be maintained by the property owner.

~~F.~~G. All development adjacent to a Sensitive Natural Area shall have a buffer of natural vegetation. Environmental standards contained in Section 8.9(A), 1 through 7, will apply. The buffer shall meet the current Federal standard except as required in Table 4.11 -2 below:[23]

Table 4.11 - 2 Wetland Size in Acres[5, 8, 23]

Greater Than	Less Than	Buffer Width in Feet
0.05	0.10	30
0.10	0.16	35
0.15	0.21	40
0.20	0.26	50
0.25	0.31	55
0.30	0.36	60
0.35	0.41	65
0.40	0.46	70
0.45	0.51	75

0.50	0.66	80
0.65	0.81	85
0.80	0.96	90
0.95	1.21	95
1.20	--	100

~~G.~~H. All required landscape plans shall contain the following elements:[7]

1. Deciduous street trees for shade and aesthetics, planted at the following average spacing:[23]
   a. Site with street frontage of up to 200 feet: 1 tree per 50 feet.
   b. Site with street frontage exceeding 200 feet: The greater of 4 trees or 1 tree per 100 feet.
2. Evergreen buffer planting, as required, for full screening.
3. Parking lot and internal drive plantings (mix of evergreen and deciduous) for partial screening and limited shade.
4. Structure plants for aesthetics and limited shade.
5. Schedule of plants including common name, scientific name, minimum size (height, caliper, etc.) quantity and specific limitation notes.

I. Required landscape buffers for a non-residential use are indicated in Table 4.11-1.

Section 4.12 Design Standards for Multi-Family Developments[23]

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

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

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

Section 4.13 Development Adjacent to the Potomac and Shenandoah Rivers[23]

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

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

Section 5.1 Establishment of Districts[1]

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

R-G Residential/Growth District

I-C Industrial/Commercial District

R-A Rural/Agricultural District

R-L-C Residential/Light Industrial/Commercial District

V Village District[23]

NC Neighborhood Commercial

GC General Commercial

HC Highway Commercial

LI Light Industrial

MI Major Industrial

PND Planned Neighborhood Development

OC Office / Commercial Mixed-Use

Section 5.2 Boundaries of Districts

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

Section 5.3 District Maps

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

The Jefferson County zoning layer is parcel-based, maintained in a Geographic Information System (GIS), and shall be the basis for the County's official zoning map. Within 30 days of final County Commission action on a zoning map amendment, GIS/Addressing staff will update the digital zoning layer and make the new data available online.[23]

On an annual basis, in December, and within 30 days of final County Commission action on a zoning map amendment, a new zoning map will be printed which includes the most up to date

base layer data, all approved zoning designations since the last printed map, and an effective date, certified by the President of the County Commission, filed with the County Clerk's office, and a copy provided to the Planning Commission. This annual map update shall not require a public hearing and such certification shall occur administratively.[23]

Section 5.4 Residential-Growth District

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

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

A. Principal Permitted Uses[23]

1. Uses that are permitted, conditional, and not permitted in this district shall be as indicated in Appendix C, Principal Permitted Uses Table.
2. Uses shown as conditional uses for this district in Appendix C, Principal Permitted Uses Table shall be subject to the Compatibility Assessment Meeting process pursuant to Article 7, Section 7.6 inclusive.

~~1. Dwelling, Single Family~~

~~2. Dwelling, Duplex~~

~~3. Dwelling, Two Family~~

~~4. Dwelling, Townhouse~~

~~5. Dwelling, Multi-Family~~

~~6. Mobile Home Parks (Subject to the Jefferson County Subdivision and Land Development Regulations)~~

~~7. Elementary or Secondary school~~

~~8. Hospital~~

~~9. Vocational and/or Training Facility for Adults[12]~~

~~10. Church~~

~~11. Day Care Center, Small~~

~~12. Day Care Center, Large~~

~~13. Essential Utility Equipment~~

~~14. Public Safety Facility~~

~~15. Publicly Owned Facility[23]~~

~~16. Accessory Uses~~

~~17. Group Residential Facility~~

~~18. Home Occupation, Level 1~~[8]

~~19. Home Occupation, Level 2~~[8]

~~20. Nursing or Retirement Home~~

~~21. Model Homes/Sales Office~~[12]

~~22. Preschool~~

~~23.~~1. ~~Wireless Telecommunication Facilities pursuant to Article 4B~~

B. Minimum Lot Area, Height, and Yard Requirements

1. Setbacks, height, and other site development standards shall be as indicated in Appendix A, Residential Site Development Standards, and Appendix B, Non-Residential Site Development Standards, except as provided elsewhere in this ordinance. ~~Minimum Lot Area, Height, and Yard Requirements are as shown in Table 5.4 – 1 below.~~ The minimum lot area requirements are based on the availability of central or public water and sewer facilities and West Virginia Board of Health regulations.[23]

2. When computing the dwelling unit yield for a parcel of land, use the total area of parcel minus (1) lands contained in a wetland and (2) hillside lands to be retained in a natural, undisturbed condition as provided for in the Jefferson County Subdivision and Land Development Regulations. The balance square footage between the ADU (Area per Dwelling Unit) and the MLA (Minimum Lot Area) shall not include land set aside in a Sensitive Natural Area, Buffer to a Sensitive Natural Area, land qualifying as Hillside development or a 100 Year Flood Plain.[5,23]

~~2.~~3. All detached accessory structures under 144 square feet in size shall have a setback of 6'.

~~***Table 5.4 – 1 Residential Growth District – Height and Yard Requirements***~~[5, 19, 23]

	Development Type	Minimum Lot Area (MLA)	Required Yards (ft)				Maximum Building Height (ft)*
		Area per Dwelling Unit (ADU)	Front	Side	Street Side	Rear	
1	Single Family Dwelling	6,000 sq. ft. MLA**	25	12	15	20	40
	Public/Central water and sewer	10,000 sq. ft. ADU	"	"	"	"	"
	Public/Central water or sewer	20,000 sq. ft. MLA	"	"	"	"	"
	No Public/Central water or sewer	40,000. Sq. ft. MLA	"	"	"	"	"
2	Duplex Dwelling		25	15	15	20	40
	Public/Central water and sewer	3,200 sq. ft. MLA	"	"	"	"	"
	Public/Central water and sewer	7,500 sq. ft. ADU	"	"	"	"	"
	Public/Central water or sewer	10,000 sq. ft. ADU	"	"	"	"	"
3	Townhouse Dwelling		25	12	15	20	40
	Public/Central water and sewer	1,400 sq. ft. MLA	"	"	"	"	"
		3,500 sq. ft. ADU	"	"	"	"	"
			"	"	"	"	"
4	Multi Family Dwelling	20,000 sq. ft. MLA	25	12	15	30	40
	Public/Central water and sewer	2,000 sq. ft. ADU	"	"	"	"	"

*Subject to Section 9.2

NOTE: ALL detached accessory structures under 144 square feet in size - 6' setback. *[Note: Deleted text moved to 5.4.B.3]*

**The balance square footage between the ADU and the MLA shall not include land set aside in a Sensitive Natural Area, Buffer to a Sensitive Natural Area, land qualifying as Hillside development or a 100 Year Flood Plain.[5] *[Note: Deleted text moved to 5.4.B.2]*

C. Commercial Services in Residential Developments[23]

1. Commercial services may be included in a residential development providing the commercial uses are intended to serve the residential community proposed and shall relate well to residential areas in terms of pedestrian and vehicular circulation.
2. The gross area for commercial uses shall not exceed 5 acres or 10 percent of the gross tract area, whichever is less.
3. Commercial uses shall not be built or established prior to the residential development unless built in phases consistent with phasing of the residential construction.
4. These uses shall be located within the interior of the project.
5. Commercial uses shall be subject to the Compatibility Assessment Meeting process as outlined in Article 7 of this Ordinance. Any proposed commercial use that is

served from a road that is located on the perimeter of the project or on a State Road shall be subject to the entire Development Review Process.[5]

D. Standards for Commercial or Light Industrial Uses[23]

1. Commercial or Light Industrial uses are subject to the following access requirements:
   a. Such uses will not use adjacent residential roads for through traffic; and
   b. Will connect to principal and major arterial highways as directly as feasible considering access restrictions.[5]
2. Commercial and Light Industrial uses are subject to the requirements of Section 5.6D and the requirements for such standards in Article 8.

Section 5.5 Reserved[23]

Section 5.6 Industrial - Commercial District[23]

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

A. Principal Permitted Uses[23]

1. Uses that are permitted, conditional, and not permitted in this district shall be as indicated in Appendix C, Principal Permitted Uses Table and this section.
2. Uses shown as conditional uses for this district in Appendix C, Principal Permitted Uses Table shall be subject the requirements of this section and to the Compatibility Assessment Meeting process pursuant to Article 7, Section 7.6 inclusive.

~~1. Light Industrial Uses~~

~~2. Heavy Industrial Uses~~

~~3. Commercial Uses~~

~~4. Day Care Center, Small~~

~~5. Day Care Center, Large~~

~~6. Home Occupation, Level 1~~

~~7. Home Occupation, Level 2~~

~~8. Cottage Industry~~

~~9. Medical/Dental/Optical Office, Small~~

~~10. Barber/Beauty Shop, Limited~~

~~11. Antique Shop~~

~~12. ATM~~

~~13. Branch Bank~~

~~14. Kennel (subject to the requirements for such use in Article 8)~~

~~15. Dry Cleaner~~

~~16. Florist~~

~~17. Restaurant, Limited~~

~~18. Restaurant, Fast Food, Limited~~

~~19. Retail Food Store, Limited~~

~~20. Veterinary Services~~

~~21. Video Rental Store~~

~~22. Country Inn~~

~~23. Non/Not for Profit Commercial Uses~~

~~24. Non-profit Community Centers~~

~~25. Publicly Owned Facility~~

~~26. Public Safety Facility~~

~~27. Essential Utility Equipment~~

~~28. Wireless Telecommunications Facilities pursuant to Article 4B~~

~~29. Private or Public Shooting Ranges~~

~~30. Cultural Facility~~

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

~~32.~~1. ~~Adult Uses, subject to requirements set forth for such uses in Article 8.~~

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

1. Bituminous concrete mixing and recycling plants
2. Concrete and ceramic products manufacture, including ready mixed concrete plants
3. Petroleum products refining or storage (subject to the requirements for such standards in Article 8)[23]
4. Commercial sawmills
5. Salvage Yards (subject to the Jefferson County Salvage Yard Ordinance)
6. Garbage or dead animal reduction or processing
7. Slaughterhouses, Stockyards

8. Acid or heavy chemical manufacturer, processing or storage
9. Cement or lime manufacture
10. Explosive manufacture or storage
11. Foundries and/or casting facilities
12. Mineral extraction, mineral processing
13. Jails and Prisons (subject to requirements for this use in Article 8)[23]

C. Height Regulations

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

D. Yard Requirements as follows: ~~(These requirements are also for an approved commercial or industrial use proposed for any other zone.)~~[5, 23]

1. Front yard building setback

Commercial sites	25 feet
Industrial sites	50 feet

2. Side yard building setback

Commercial sites greater than 1.5 acres	50 feet
Commercial sites 1.5 acres and smaller	25 feet
Industrial sites	50 feet

3. Rear yard building setback

Commercial sites greater than 1.5 acres	50 feet
Commercial sites 1.5 acres and smaller	25 feet
Industrial sites	50 feet

4. Parking, Driveway and Internal Access Drive Front Setbacks

Commercial sites greater than 1.5 acres	15 feet
Commercial sites 1.5 acres and smaller	15 feet
Industrial sites	25 feet

5. Parking, Driveway and Internal Access Drive Side and Rear Setbacks

Commercial sites greater than 1.5 acres	10 feet
Commercial sites 1.5 acres and smaller	4 feet
Industrial sites*	25 feet

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

6. Compliance with Sections 4.11 and 8.9(A)(1-9)[7, 23]
7. Distance Requirements
   a. Commercial shall comply with Section 4.6(b)
   b. Industrial shall comply with Section 4.6(a)[7, 23]

E. Lot Area

A minimum lot size of three acres shall be required for any industrial use unless the site is located in an approved Industrial Park.[23]

F. Commercial and Industrial Design Standards

1. Commercial Design Standards[23]

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

~~Impervious site coverage (parking areas, building areas and other paved surfaces) shall not be greater than 80% of the gross area of the site.~~

~~b.~~a. Adequate provision shall be made for storage and collection of refuse. Refuse containers are subject to Section 4.11e.

~~c.~~b. Permeable areas of the site shall be planted with ground cover, shrubs and trees.

~~d.~~c. Lighting shall be provided for all parking areas which will receive night use. Such lighting shall be directed to the parking area and be shielded to prevent adverse glare on adjacent public highways, streets and properties.

2. Industrial Design Standards

~~a. Impervious site coverage (parking areas, building areas and other paved surfaces) shall not be greater than 90% of the gross area of the site.[23]~~

~~b.~~a. Adequate provision shall be made for storage and collection of refuse, subject to Section 4.11e.

~~c.~~b. Permeable areas of the site shall be planted with ground cover, shrubs or trees if subject to Section 4.6.

Section 5.7 Rural District[23]

The purpose of this district is to provide a location for low density single family residential development in conjunction with providing continued farming activities. This district is generally not intended to be served with public water or sewer facilities, although in situations where the Development Review System is utilized, it may be. A primary function of the low density residential development permitted within this section is to preserve the rural character of the County and the agricultural community. All lots subdivided in the Rural District are subject to Section 5.7d. The Development Review System does allow for higher density by issuance of a Conditional Use Permit.[8, 23]

A. Principal Permitted Uses[23]

1. Uses that are permitted, conditional, and not permitted in this district shall be as indicated in Appendix C, Principal Permitted Uses Table.
2. Uses shown as conditional uses for this district in Appendix C, Principal Permitted Uses Table shall be subject to the Compatibility Assessment Meeting process pursuant to Article 7, Section 7.6 inclusive.

~~1. Agricultural uses as defined in Article 2[7]~~

~~2. Church~~

~~3. Elementary or Secondary School~~

~~4. Vocational and/or Training Facility for Adults[12, 20]~~

~~5. Dwelling, Single Family~~

~~6. Mobile Home (subject to the Jefferson County Subdivision and Land Development Regulations)~~

~~7. Dwelling, Two-Family[8]~~

~~8. Cottage Industry[8]~~

~~9. Home Occupation, Level 1[8]~~

~~10. Home Occupation, Level 2[8]~~

~~11. Day Care Center, Small[12, 11, 15]~~

~~12. Public Safety Facility~~

~~13. Cultural Facility~~

~~14. Farm Market (subject to the requirements for such a use in Article 8)[8]~~

~~15. Horticultural nurseries and commercial greenhouses~~

~~16. Hospital~~

~~17. Essential Utility Equipment~~

~~18. Accessory uses~~

~~19. Group Residential Facility~~

~~20. Bed and Breakfast (subject to the requirements for such a use in Article 8)~~[7,15]

~~21. Publicly Owned Facility~~[8]

~~22. Wireless Telecommunications Facilities pursuant to Article 4B.~~[10]

~~23. Model Homes/Sales Office (subject to the requirements for such a use in Article 8)~~[12]

~~24. Non-profit Community Centers~~[15]

~~25. Landscaping business outside of Planning Commission approved subdivisions~~[15]

~~26. Veterinary services outside of Planning Commission approved subdivisions~~[15]

~~27. Feed and/or Farm Supply Center~~

~~28. Agricultural Repair Center~~[15]

~~29. Kennels (subject to the requirements for such a use in Article 8)~~[15]

~~30. Hunting, Shooting, Archery and Fishing Clubs (subject to the requirements for such a use in Article 8)~~[20]

~~31. Agricultural Tourism~~

~~32. Farm Vacation Enterprise~~

~~33. Farm Brewery or Winery~~

~~34. Rental of Existing Farm Building, for commercial storage (structure must have existed for 5 years)~~

~~35.~~1. ~~Preschool~~

B. Minimum Lot Area, Lot Width and Yard Requirements[23]

1. Setbacks, height, and other site development standards shall be as indicated in Appendix A, Residential Site Development Standards, and Appendix B, Non-Residential Site Development Standards, except as provided elsewhere in this ordinance.~~Minimum lot sizes, lot width, and yard requirements for principal permitted uses are shown in Table 5.7-1~~.

~~2. For any residential use that complies with the Development Review System, the setbacks and lot size shall be as outlined in Article 5.4.~~[5]

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

~~Land Use~~	~~Lot Area~~	~~Lot Width~~	~~Front Yard Depth~~	~~Side Yard Depth~~	~~Rear Yard Depth~~
~~Dwellings~~	~~40,000 sq. ft.~~	~~100~~	~~40~~	~~15~~	~~50~~
~~Churches~~	~~2 acres~~	~~200~~	~~25~~	~~50~~	~~50~~
~~Schools, Grades K-4~~	~~10 acres +~~	~~500~~	~~100~~	~~100~~	~~100~~
~~Schools, Grades 5-8~~	~~20 acres +~~	~~500~~	~~100~~	~~100~~	~~100~~

~~Schools, Grades 9-12~~	~~30 acres +~~	~~500~~	~~100~~	~~100~~	~~100~~
~~Hospitals~~	~~10 acres~~	~~500~~	~~100~~	~~100~~	~~100~~
~~Other permitted uses~~	~~40,000 sq. ft.~~	~~100~~	~~40~~	~~50~~	~~50~~

~~3. Lot area for schools (K-12) as shown in Table 5.7-1 shall be increased by one (1) additional acre for every 100 pupils. Minimum lot size for Vocational Schools shall be based on State of West Virginia Code. If a sewage treatment plant and retention ponds are required, acreage shall be increased accordingly.~~[1, 23]

~~4.~~2. Commercial and Light Industrial uses are subject to the requirements of Section 5.6D and the requirements for such standards in Article 8.[23]

~~5.~~3. Any building or feeding pens in which farm animals are kept shall comply with distance requirements specified in Section 4.6 and the requirements for barns and feeding pens specified in Article 8. Also, any buildings used to store manure shall comply with distance requirements specified in Section 4.6(a).[23]

C. Height Regulations

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

D. Maximum Number of Lots Allowed

All parcels of land that were on record as of October 5, 1988 are entitled to subdivide for single family detached residences based on Subsections 5.7(d)1, 5.7(d)2 or 5.7(d)3 below. A property owner may use a combination of these subsections, provided that the number of lots are prorated by density.[8]

1. A property owner may create one (1) lot for every fifteen (15) acres with a minimum lot size of three (3) acres.[17, 21]
   a. Acreage shall be computed using existing acreage at the time application is submitted. Total acreage does not include acreage which was subdivided off of present parent parcel between October 5, 1988 and time of application.
   b. A property owner may transfer rights to adjacent parcels which are owned by the same entity.[17, 21]
2. Clustering
   a. Purpose and Intent
      i. To encourage the conservation of farmland in the Rural Zoning District by planning the residential development allowed in the zone to provide for the best obtainable siting, access and location of lots on a tract.
      ii. To provide for a well planned development while minimizing the use of prime agricultural land.
   b. Requirements
      i. One (1) lot may be subdivided for every ten (10) acres.[17, 21, 23]

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

ii. Minimum lot size shall be 40,000 square feet for lots that will be served by individual wells and septic systems; 20,000 square feet for lots that will be served by a central water OR central sewerage system; and 10,000 square feet for lots that will be served by both a central water AND central sewerage system.[17, 21]

(a) Setbacks shall be 25' front, 12' sides and 20' rear.
(b) All clusters of three (3) or more lots shall be served by an internal road.[23]

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

(d) A property owner may transfer rights to adjacent parcels which are owned by the same entity.[17, 21]

(e) Maximum lot size shall be 3 acres.[17, 21]

iii. Procedures[23]

(a) Concept Plan. For the subdivision of tracts eligible for cluster lots, a concept plan must be submitted pursuant to the requirements of the Jefferson County Subdivision and Land Development Regulations. All cluster developments must be processed as a Major Subdivision.[17, 21, 23]

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

(1) Soils: The cluster plan should minimize the use of the higher quality soils (class I, II and III as designated in the soils classification study) and maximize the use of steeper sloped areas, areas of poorer soils and areas which are otherwise less productive for agricultural uses.

(2) Surrounding land use and zoning: The cluster plan shall consider the existing land uses and zoning in the vicinity. Generally, new lots which are adjacent to existing development or residential zoning are preferred to creating an isolated cluster of new houses.

(c) If the concept plan is approved by the Planning Commission, the applicant may then proceed with platting of the clustered development in accordance with the Jefferson County Subdivision and Land Development Regulations and the approved concept plan. The plat shall bear a statement indicating "The land lies within an approved rural cluster development and no further subdivision of the remaining land is permitted unless the property is placed in another zone or further subdivision is allowed by ordinance or regulation".[23]

3. Not in addition to subsections 5.7(d)1 and 5.7(d)2 above, any property that was a lot of record as of October 5, 1988 may create 3 total lots (including the residue) during any five year period. Applications which exceed this number during any five year period shall be processed utilizing the Development Review System. Subdivisions involving transfers of land between parent and child shall not be subject to this section. All lots that qualify under this section must meet subdivision requirements. Only the residue or parent parcel may qualify under this provision once the original subdivision takes place. Parent to child or child to parent lots are not entitled to further subdivide except as another parent to child or child to parent transfer.
4. Once the maximum number of lots are created under 5.7(d), the property cannot be further subdivided unless the Ordinance is amended to allow such.

Section 5.8 Residential/Light Industrial/Commercial District[1]

The purpose of this district is to guide high intensity growth into the designated growth area. Light industrial uses are defined in Section 2.2. All other perceived light industrial uses shall be referred to the Jefferson County Development Authority for a recommendation on whether a use is a light industrial or heavy industrial use. The final decision on use classification shall be made by the Zoning Administrator.[23]

A. Principal Permitted Uses[23]

1. Uses that are permitted, conditional, and not permitted in this district shall be as indicated in Appendix C, Principal Permitted Uses Table.
2. Uses shown as conditional uses for this district in Appendix C, Principal Permitted Uses Table shall be subject to the Compatibility Assessment Meeting process pursuant to Article 7, Section 7.6 inclusive.

~~1. Light Industrial Uses~~

~~2. Commercial Uses~~

~~3. Medical/Dental/Optical Office, Small~~

~~4. Barber/Beauty Shop, Limited~~

~~5. Antique Shop~~

~~6. ATM~~

~~7. Branch Bank~~

~~8. Kennel (subject to the requirements for such use in Article 8)~~

~~9. Dry Cleaner~~

~~10. Florist~~

~~11. Restaurant, Limited~~

~~12. Restaurant, Fast Food, Limited~~

~~13. Veterinary Services~~

~~14. Video Rental Store~~

~~15. Country Inn~~

~~16. Dwelling, Single Family~~

~~17. Dwelling, Two Family~~

~~18. Dwelling, Duplex~~

~~19. Dwelling, Townhouse~~

~~20. Dwelling, Multi-Family~~

~~21. Mobile Home Parks~~

~~22. Home Occupation, Level 1~~

~~23. Home Occupation, Level 2~~

~~24. Cottage Industry~~

~~25. Elementary or Secondary School~~

~~26. Hospital~~

~~27. Vocational and/or Training Facility for Adults~~[~~12~~]

~~28. Church~~

~~29. Cultural Facility~~

~~30. Day Care Center, Small~~

~~31. Day Care Center, Large~~

~~32. Essential Utility Equipment~~

~~33. Publicly Owned Facility~~

~~34. Public Safety Facility~~

~~35. Accessory Uses~~

~~36. Group Residential Facility~~

~~37. Nursing or Retirement Home~~

~~38. Model Home/Sales Office (subject to requirements for this use in Article 8)~~[~~12~~]

~~39. Non-Profit Community Center~~

~~40. Non/Not for Profit Commercial Uses~~[~~12~~]

~~41. Preschool~~

~~42.~~1. ~~Wireless Telecommunications Facilities pursuant to Article 4B~~

B. Standards[23]

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

2. Light industrial and commercial uses are subject to the standards for such uses in Article 8 of this Ordinance.[23]

~~2.~~3. Impervious surface coverage shall not exceed eighty (80) percent of the gross land area.

C. Site Development Standards ~~Other Regulations~~[23]

1. All sections of this ordinance applying to the ~~r~~Residential ~~g~~Growth district with the exception of Section 5.4(a) will apply to residential uses in this District.

2. Setbacks, height, and other site development standards shall be as indicated in Appendix A, Residential Site Development Standards, and Appendix B, Non-Residential Site Development Standards, except as provided elsewhere in this ordinance.~~All commercial uses must conform with the commercial design standards and yard requirements cited in Sections 5.6(d) 1-6 and 4.6(b). All industrial uses must conform with the Industrial Design Standards and yard requirements cited in Sections 5.6(d) 1-6 and 4.6(a)~~. All commercial or industrial uses ~~Either use~~ must be in compliance the requirements for such use in Article 8. In addition, a site plan, if required, must demonstrate that traffic patterns created by Commercial or Light Industrial uses (1) will not use adjacent residential roads for through traffic and (2) will connect to principal and major arterial highways as directly as feasible considering access restrictions.[5, 7, 23]

3. Restaurants where the primary mode of food distribution is by pick-up counter or drive in window and convenience stores (food stores not in excess of 10,000 square feet gross floor area) shall be subject to the Compatibility Assessment Meeting process pursuant to Article 7, Section 7.6 inclusive.[23] This requirement shall not apply to a building located within a shopping center shown on an approved site plan.

4. Proposed uses in this zone ~~do not have to comply with~~are exempt from the distance requirements in Sections 4.6 (a-b) if part of a master planned community. This provision shall only apply to the internal use of land under the same ownership.[7]

Section 5.9 Reserved[23]

Section 5.10 Village District[8, 23]

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

A. Principal permitted uses[23]

1. Uses that are permitted, conditional, and not permitted in this district shall be as indicated in Appendix C, Principal Permitted Uses Table.

~~1. Dwelling, Single Family~~

~~2. Dwelling, Duplex~~

~~3. Dwelling, Two Family~~

~~4. Home Occupation, Level 1~~

~~5. Home Occupation, Level 2~~

~~6. Cottage Industry~~

~~7. Public Safety Facility[12]~~

~~8. Essential Utility Equipment~~

~~9. Medical/Dental/Optical Office, Small[12]~~

~~10. Group Residential Facility~~

~~11. Cultural Facility[12]~~

~~12.~~1. ~~Wireless Telecommunications Facilities pursuant to Article 4B~~

B. Conditional Uses[23]

1. Uses shown as conditional uses for this district in Appendix C, Principal Permitted Uses Table shall be subject to the Compatibility Assessment Meeting process pursuant to Article 7, Section 7.6 inclusive.

~~The following uses may be approved after being evaluated by the Development Review System (Article 7). The LESA point system would not apply~~

~~1. Barber/Beauty Shop, Limited~~

~~2. Dry Cleaners~~

~~3. Video Rental Stores~~

~~4. Retail Food Store, Limited~~

~~5. Church~~

~~6. Day Care Center, Large~~

~~7. Country Inn~~

~~8. Bed and Breakfast (subject to the requirements for such a use in Article 8)~~

~~9. Restaurant, Limited~~

~~10. ATM~~

~~11. Branch Bank~~

~~12. Antique Shop~~

~~13. Florist~~

~~14.~~1. ~~Restaurant, Fast Food, Limited[12]~~

C. Setbacks

1. Setbacks, height, and other site development standards shall be as indicated in Appendix A, Residential Site Development Standards, and Appendix B, Non-Residential Site Development Standards, except as provided elsewhere in this ordinance.~~Residential~~

~~a. Section 9.7, Residential Growth standards~~[23]

~~2. Commercial~~

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

~~b. Setbacks may be reduced as a result of a Compatibility Assessment Meeting based on other structures existing in the neighborhood.~~[23]

~~3.~~2. Existing Structures

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

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

E. Proposed uses in a recognized historic district shall obtain approval from the Historic Landmarks Commission and/or other appropriate state or federal agency prior to processing.[23]

F. There will be no outdoor storage of equipment, materials or other stock.

G. Parking requirements may be modified as a result of a compatibility meeting.[23]

H. Other Requirements[23]

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

Section 5.11 Neighborhood Commercial District

A. Purpose. The purpose of this district is to permit the development of small scale commercial uses which serve the convenience needs of residential neighborhoods immediately adjacent to or within walking distance of the commercial use. Developments in the NC district should be designed, landscaped and buffered so as to be compatible with neighboring development. Uses should be appropriate in scale to the residential character of their context.

B. Location. This zoning category is intended for use in the following locations:

1. Properties located on Primary or Secondary roads as shown on the Highway Classification map in the Jefferson County Comprehensive Plan
2. Locations within ¼ mile of an existing residential subdivision or development of at least 20 dwelling units
3. Locations adjacent to existing non-residential development
4. Locations with safe vehicular access on roads that function as collector roads

5. Properties currently zoned Residential-Light Industrial-Commercial or Industrial-Commercial.

C. Permitted Uses

1. Uses that are permitted, conditional, and not permitted in this district shall be as indicated in Appendix C, Principal Permitted Uses Table.
2. Uses shown as conditional uses for this district in Appendix C, Principal Permitted Uses Table shall be subject to the Compatibility Assessment Meeting process pursuant to Article 7, Section 7.6 inclusive.

D. Site Development Standards

1. Setbacks, height, and other site development standards shall be as indicated in Appendix A, Residential Site Development Standards, and Appendix B, Non-Residential Site Development Standards, except as provided elsewhere in this ordinance.
2. For a non-residential use abutting a commercial or industrial use at a side lot line:
    a. No side yard building setback is required, unless required by Building Code or other law or regulation
    b. Section 4.11A-B does not apply to the side property line that abuts a commercial or industrial use
3. For a non-residential use abutting a commercial or industrial use at a rear lot line:
    a. A rear yard building setback may be reduced to 10 feet
    b. Section 4.11A-B does not apply to the rear property line
4. Section 4.11A-B does not apply to the front lot property line.
5. Vehicular parking requirements shall be 80% of the required number of parking spaces indicated in Article 11 of this ordinance.
6. On-street vehicular parking spaces located within 100 feet of the property where the development is located may compose up to 50% of the number of required parking spaces indicated in Article 11 of this ordinance.

E. Additional Requirements

1. Any off-street parking shall be located in the rear or on the side of a building and may not be located between a street and the front facade of a building.
2. Each building shall be limited to a maximum building footprint of 3,500 square feet.
3. For new development or the substantial redevelopment of an existing site, a fifteen-foot-wide pedestrian zone is required, consisting of a ten-foot-wide landscaped buffer yard measured from the edge of the right-of-way (or from the back of the adjacent street curb) and five-foot-wide sidewalks. If the Comprehensive Plan or the

Subdivision and Land Development Regulations identify the property location as appropriate for a trail in lieu of a sidewalk, a trail may be installed.

4. One bicycle parking space shall be provided for each ten vehicular parking spaces.
5. Buildings shall be oriented toward the street with one or more entrances facing the principal street adjacent to a building.
6. Commercial and Industrial uses are subject to the requirements for such uses in Article 8.

Section 5.12 General Commercial District

A. Purpose. The purpose of this district is to provide for general destination business uses which provide a broad range of commercial products and services necessary for large regions. The uses in this district may be characterized by medium-to-large buildings (up to 50,000 square feet of gross floor area for an individual building), more intensive commercial activity, and more vehicular traffic than would be permitted for uses in the NC district.

B. Location. This zoning category is intended for use in the following locations:

1. Properties located on four-lane Primary roads as shown on the Roadway Classification map in the Jefferson County Comprehensive Plan.
2. Properties currently zoned Residential-Light Industrial-Commercial or Industrial-Commercial are eligible for the GC designation.

C. Permitted Uses

1. Uses that are permitted, conditional, and not permitted in this district shall be as indicated in Appendix C, Principal Permitted Uses Table.
2. Uses shown as conditional uses for this district in Appendix C, Principal Permitted Uses Table shall be subject to the Compatibility Assessment Meeting process pursuant to Article 7, Section 7.6 inclusive.

D. Site Development Standards

1. Setbacks, height, and other site development standards shall be as indicated in Appendix A, Residential Site Development Standards, and Appendix B, Non-Residential Site Development Standards, except as provided elsewhere in this ordinance.
2. A development that complies with all requirements of Section 5.11E may be developed in accordance with the requirements of Section 5.11D(2-6) and the front

setback requirements for the Neighborhood Commercial District as indicated in Appendix A, Residential Site Development Standards, and Appendix B, Non-Residential Site Development Standards.

E. Additional Requirements
   1. Commercial and Industrial uses are subject to the requirements for such uses in Article 8.

Section 5.13 Highway Commercial District

A. Purpose. The purpose of this district is to provide appropriate locations for high-intensity, motor-vehicle oriented commercial uses fronting on major roadways. The uses in this district may be characterized by a broad scale of building sizes, including buildings that exceed 50,000 square feet of gross floor area for an individual building. This district may include land uses that are more intensive than other commercial districts and incompatible with nearby adjacent residential uses.

B. Location. This zoning category is intended for use in the following locations:

   1. Properties located within 1000' feet of major intersections on four-lane Primary roads as shown on the Roadway Classification map in the Jefferson County Comprehensive Plan.
   2. Properties designated for Highway Commercial uses in the Comprehensive Plan.

C. Permitted Uses

   1. Uses that are permitted, conditional, and not permitted in this district shall be as indicated in Appendix C, Principal Permitted Uses Table.
   2. Uses shown as conditional uses for this district in Appendix C, Principal Permitted Uses Table shall be subject to the Compatibility Assessment Meeting process pursuant to Article 7, Section 7.6 inclusive.

D. Site Development Standards
   1. Setbacks, height, and other site development standards shall be as indicated in Appendix A, Residential Site Development Standards, and Appendix B, Non-Residential Site Development Standards, except as provided elsewhere in this ordinance.

E. Additional Requirements

1. Commercial and Industrial uses are subject to the requirements for such uses in Article 8.

Section 5.14 Light Industrial District

A. Purpose. The purpose of this district is to provide locations for lighter manufacturing processes which are not as extensive as those provided in the Major Industrial District and can be served with adequate public or community water and sewerage service. Properties with this designation are generally located within 1,000 feet of four-lane Primary roads as shown on the Roadway Classification map in the Jefferson County Comprehensive Plan. In this district, most manufacturing is composed of processing or assembly of previously processed materials.

B. Location. This zoning category is intended for use in the following locations:
   1. Properties located in Industrial Parks
   2. Properties with Industrial-Commercial zoning
   3. Properties designated as appropriate for either Light or Major Industrial land uses in the Comprehensive Plan

C. Permitted Uses
   1. Uses that are permitted, conditional, and not permitted in this district shall be as indicated in Appendix C, Principal Permitted Uses Table.
   2. Uses shown as conditional uses for this district in Appendix C, Principal Permitted Uses Table shall be subject to the Compatibility Assessment Meeting process pursuant to Article 7, Section 7.6 inclusive.

D. Site Development Standards
   1. Setbacks, height, and other site development standards shall be as indicated in Appendix A, Residential Site Development Standards, and Appendix B, Non-Residential Site Development Standards, except as provided elsewhere in this ordinance.

E. Additional Requirements
   1. Commercial and Industrial uses are subject to the requirements for such uses in Article 8.

Section 5.15 Major Industrial District

A. Purpose. This district is intended to provide sufficient space in appropriate locations for a wide variety of industrial activities, generally located within 1,000 feet of four-lane Primary roads as shown on the Roadway Classification map in the Jefferson County Comprehensive Plan. The uses in this district can be served with adequate public or community water and sewerage service, and may be characterized by extensive warehousing, frequent heavy trucking activity, and broader manufacturing activity than would be permitted in the Light Industrial district.

B. Location. This zoning category is intended for use in the following location(s):
   1. Properties located in Industrial Parks
   2. Properties with Industrial-Commercial zoning
   3. Properties designated as appropriate for Major Industrial land uses in the Comprehensive Plan

C. Permitted Uses
   1. Uses that are permitted, conditional, and not permitted in this district shall be as indicated in Appendix C, Principal Permitted Uses Table.
   2. Uses shown as conditional uses for this district in Appendix C, Principal Permitted Uses Table shall be subject to the Compatibility Assessment Meeting process pursuant to Article 7, Section 7.6 inclusive.

D. Site Development Standards
   1. Setbacks, height, and other site development standards shall be as indicated in Appendix A, Residential Site Development Standards, and Appendix B, Non-Residential Site Development Standards, except as provided elsewhere in this ordinance.

E. Additional Requirements
   1. Heavy industrial land uses shall not be located less than 1000 feet from an adjacent property with a dwelling, school, church or institution for human care or a residential zoning district.
   2. Commercial and Industrial uses are subject to the requirements for such uses in Article 8.

Section 5.16 Planned Neighborhood Development District

A. Purpose. The purpose of the PND District is to:

1. Encourage flexibility in the development of land in order to promote its most appropriate use;
2. Improve the design, character and quality of new developments;
3. Provide and promote redevelopment and reuse opportunities;
4. Encourage a harmonious and appropriate mixture of uses and/or housing types;
5. Facilitate the adequate and economic provision of streets, utilities and services;
6. Promote safe and convenient travel for pedestrians, bicyclists, transit users, and motorists;
7. Promote connections to adjacent properties, developments, and transportation routes;
8. Preserve critical natural environmental and scenic features of the site;
9. Encourage and provide a mechanism for arranging improvements and sites so as to preserve desirable features and to provide transitions between land uses; and
10. Mitigate the problems which may be presented by specific site conditions.

B. Location. This zoning category is intended for use in the following location(s):

1. Properties identified as being located in the Growth Area in the Comprehensive Plan.

C. Permitted Uses

1. Uses that are permitted, conditional, and not permitted in this district shall be as indicated in Appendix C, Principal Permitted Uses Table.
2. The Planning Commission may restrict land uses shown as permitted or conditional uses in Appendix C, Principal Permitted Uses Table, as part of the approval of a Preliminary PND Plan.
3. Uses shown as conditional uses for this district in Appendix C, Principal Permitted Uses Table shall be subject to the Compatibility Assessment Meeting process pursuant to Article 7, Section 7.6 inclusive.

D. Site Development Standards

1. Setbacks, height, and other site development standards shall be as indicated in Appendix A, Residential Site Development Standards, and Appendix B, Non-Residential Site Development Standards, except as provided elsewhere in this ordinance.

2. Modification of Development Standards Allowed
   a. The Planning Commission may approve modification of the development standards of this ordinance and the Jefferson County Subdivision and Land Development Regulations may as part of the approval of a Preliminary PND Plan.

b. Modification of these standards pertains only to developments associated with the Preliminary PND Plan for which the modifications are approved.

3. The minimum site area for a PND development is three acres.

E. Additional Requirements

1. A PND development shall include the following mix of uses:
   a. 10-30% commercial
   b. 10-30% high density residential
   c. 20-40% medium density residential
   d. 0-60% low density residential

2. Open Space Requirements
   a. A minimum of 20% of the total tract area of a PND development shall be composed of common and open space. Up to one-half of the common and open space may be used for active recreation. Acreage within the 100-year floodplain, as designated by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM), may constitute up to 25% of the required common and open space area.
   b. At least 20% of the total of the site's existing tree canopy area shall remain undisturbed and shall be so noted on any site plan or subdivision approval associated with the development.

3. Connectivity Requirements. The development shall provide pedestrian and vehicular connections to each adjacent property. If a connection to an adjacent property cannot be made at the time that the Preliminary PND Plan for the development is submitted, the plan shall include a cross-access easement in a logical location to allow for future connection when the conditions on the adjacent property will allow for connection.

4. Street Network. An interconnecting network of internal streets shall be designed to accommodate the various uses found within a PND development. Where possible, all access to sites shall be from these internal streets.

5. Commercial and Industrial uses are subject to the requirements for such uses in Article 8.

F. Review and Approval Process

The review and approval of a development in the PND district includes the following steps:

1. Pre-Application Conference. Prior to filing a formal application for a Zoning Map Amendment for a PND district, the applicant shall schedule and attend a Pre-Application Conference with staff of the Planning, Zoning, and Engineering Departments. The purpose of the conference is for the applicant to present a general concept for the development, and for staff to inform the applicant of relevant policies, requirements, adopted plans, planning principles, and recommendations. This conference is informal and has no binding effect.
2. Preliminary PND Plan. Submittal of a Preliminary PND Plan is required prior to submittal of a petition for a map amendment to change the zoning designation of a property to the Planned Neighborhood Development district.
    a. The format and content requirements for a Preliminary PND Plan shall be the same as the Submission and Completeness Review requirements for a Major Site Plan Concept Plan as described in the Jefferson County Subdivision and Land Development Regulations, with the exception of the public workshop and advertising requirements. Additionally, a Preliminary PND Plan shall include the following:
        i. Graphic illustration of locations of proposed land uses; landscaping areas; pedestrian amenities; interconnectivity of roads, trails, sidewalks, and adjacent parcels; open space areas and areas of undisturbed tree canopy; passive or active recreational areas; setbacks for buildings, parking, drive aisles, and other features associated with the proposed development.
        ii. Proposed square footages of development by type and proposed residential densities
        iii. Proposed building heights
        iv. Any requested modifications to the standards of the Zoning Ordinance or the Subdivision and Land Development Regulations.

    b. Following a staff determination that the Preliminary PND Plan is sufficient, the applicant may present a petition for a zoning map amendment to the Planning Commission. The Preliminary PND Plan is a required component of the petition submission.

3. Zoning Map Amendment. The procedure for processing a map amendment petition shall be in accordance with the requirements of Article 12 and this Article.
    a. Presentation of petition for map amendment. The applicant shall present the petition for map amendment to the Planning Commission. As part of the petition, the applicant shall provide a Preliminary PND Plan to the Planning Commission, as described in this article.
    b. Planning Commission review and public hearing. The Planning Commission shall conduct a public hearing on the proposed zoning map amendment in accordance

with Article 12 and this Article. The Preliminary PND Plan shall be considered during the public hearing. In addition to the review criteria for a Concept Plan as required by the Subdivision and Land Development Regulations, the Planning Commission shall utilize the following criteria in its consideration of a Preliminary PND Plan and any requested modifications to the Zoning Ordinance and/or the Subdivision and Land Development Regulations:

i. Consistency with the purpose of the PND district as described in this Article;
ii. General conformance with the Zoning Ordinance, with the exception of requested modifications of development standards;
iii. Consistency with the Comprehensive Plan

c. As part of its recommendation to the County Commission regarding approval or disapproval of a zoning map amendment as described in Article 12, the Planning Commission shall make a recommendation to the County Commission regarding the Preliminary PND Plan, including any changes proposed by the Planning Commission.
d. County Commission review and public hearing. The County Commission shall conduct a public hearing on the proposed map amendment in accordance with Article 12 and this Article.
e. In its deliberation of a proposed map amendment to change a zoning designation to a PND district and any requested modifications to the Zoning Ordinance and/or the Subdivision and Land Development Regulations, the County Commission shall consider:
    i. Consistency with the purpose of the PND district as described in this Article
    ii. General conformance with the Zoning Ordinance, with the exception of requested modifications of development standards
    iii. Consistency with the Comprehensive Plan
f. The County Commission shall approve, amend, or deny the Preliminary PND Plan and the zoning map amendment request; and may apply conditions to the approval of a zoning map amendment to a PND district.
g. County Commission approval of a zoning map amendment to change the zoning designation of a property to a PND district shall have the following effect:
    i. Approval of the change in zoning designation;
    ii. Approval of the Preliminary PND Plan;
    iii. Approval of any modifications to the Subdivision and Land Development Regulations and the Zoning Ordinance; such modifications being associated with the Preliminary PND Plan; and

iv. Establishment of any conditions of approval applied by the County Commission.

4. If a request to amendment the zoning map designation of a tract to a PND district is approved, the applicant may submit applications for the development of the property as a PND development.
   a. Compliance with Other Ordinances. With the exception of any modifications granted by the County Commission, all applicable requirements of the Zoning Ordinance, the Subdivision and Land Development Regulations, and all other County ordinances must be met, including but not limited to any applicable site plan and subdivision requirements.
   b. Consistency with Preliminary PND Plan. All applications submitted for the site must be consistent with the requirements of the approved Preliminary PND Plan and shall clearly state any modifications granted.
   c. Any modifications to the Zoning Ordinance or the Subdivision and Land Development Regulations approved by the County Commission are associated with and indivisible from the approved Preliminary PND Plan.

5. Amendment. Minor changes to a Preliminary PND Plan may be reviewed and approval administratively if the Planning and Zoning Department determines that such changes are consistent with the purpose and general character of the Preliminary PND Plan. An applicant's request for revisions determined substantive by the Planning and Zoning Department shall follow the approval process for a Preliminary PND Plan as described in this Article. Substantive changes include but not are limited to changes that would exceed one or more of the percentages noted in a-c below.
   a. A change in total square footage of the development by ±10%
   b. A change in the area of any land use by ±10%
   c. A change in the residential density by ±5%

Section 5.17 Office / Commercial Mixed-Use District

A. Purpose. The purpose of the OC district is to allow for well-designed employment centers. Developments in the OC district contain a mix of land uses, primarily oriented to commercial and office uses but also allowing multi-family and attached single-family residential uses. Developments are oriented to principal streets, contain substantial public space and streetscaping, allow for pedestrian movement within the site and between adjacent sites, and meet the design standards provided for this district.

B. Location. This zoning category is intended for use in the following location(s):

1. Properties designated by the Comprehensive Plan as appropriate for Office/Commercial development.

C. Permitted Uses

1. Uses that are permitted, conditional, and not permitted in this district shall be as indicated in Appendix C, Principal Permitted Uses Table.
2. Uses shown as conditional uses for this district in Appendix C, Principal Permitted Uses Table shall be subject to the Compatibility Assessment Meeting process pursuant to Article 7, Section 7.6 inclusive.

D. Site Development Standards

1. Setbacks, height, and other site development standards shall be as indicated in Appendix A, Residential Site Development Standards, and Appendix B, Non-Residential Site Development Standards, except as provided elsewhere in this ordinance.
2. For a non-residential use abutting a commercial or industrial use at a side lot line:
   a. No side yard building setback is required, unless required by the Building Code or other law or regulation
   b. Section 4.11.A-B does not apply to the side property line that abuts a commercial or industrial use
3. For a non-residential use abutting a commercial or industrial use at a rear lot line:
   a. A rear yard building setback may be reduced to 10 feet
   b. Section 4.11.A-B does not apply to the rear property line
4. Section 4.11.A-B does not apply to the front lot property line.
5. Vehicular parking requirements shall be 80% of the required number of parking spaces indicated in Article 11 of this ordinance.
6. On-street vehicular parking spaces located within 100 feet of the property where the development is located may compose up to 50% of the number of required parking spaces indicated in Article 11 of this ordinance.

E. Additional Requirements

1. At least 75% of the gross floor area of land uses in a development in this district shall be non-residential uses.
2. Buildings fronting a principal street must be at least 2 stories in height.
3. A minimum of 75% of the total gross floor area located on the ground floor of buildings in a development in this district shall be composed of non-residential space
4. Any off-street parking shall be located in the rear or on the side of buildings and may not be located between a street and the front façade of a building.

5. For new development or the substantial redevelopment of an existing site, a fifteen-foot-wide pedestrian zone is required, consisting of a ten-foot-wide landscaped buffer yard measured from the edge of the right-of-way (or from the back of the adjacent street curb) and five-foot-wide sidewalks. If the Comprehensive Plan or the Subdivision and Land Development Regulations identify the property location as appropriate for a trail in lieu of a sidewalk, a trail may be installed.
6. One bicycle parking space shall be provided for each ten vehicular parking spaces.
~~1.~~7. Buildings shall be oriented toward the street with one or more entrances facing the principal street adjacent to a building.
8. Commercial and Industrial uses are subject to the requirements for such uses in Article 8.

ARTICLE 6: DEVELOPMENT REVIEW SYSTEM

Section 6.1 Development Review System (DRS)

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

Section 6.2 Issuance of a Conditional Use Permit

Application for a conditional use permit shall be made before construction of any uses not listed as permitted uses within the appropriate zoning district. Upon receipt of an application, the site will be evaluated by the Departments of Planning and Zoning Staff using the Development Review System. The two major components of the System, the Soils Assessment and the Amenities Assessment, consist of criterion which each possess a numerical value that is weighted relative to its importance as an indicator of a parcel's agricultural significance or its development potential. The total numerical value of the combined criteria is 100 points: the Soil Assessment contributes 25 points and the Amenities Assessment contributes 75 points. The highest total numerical value of the combined criteria indicates that a parcel is more suitable for agriculture, whereas, the lowest numerical value indicates that development is more appropriate for the site. A score of 60 points or less advances the application to the Compatibility Assessment as provided in Section 7.6.[14, 17, 21, 23]

Section 6.3 The Soils Assessment

A. The Soils Assessment evaluates a particular parcel for development based on the soil types it possesses.

B. The Soils Assessment of a proposed development is not applied when:

1. the development proposal is located within the Residential/Growth District or the Industrial/Commercial District; or *[note: Moved from Section 6.5D]*
2. the development is proposed to be located in an existing building, on an existing paved or disturbed area, or entails an expansion of less than 1,000 square feet total of an existing building and/or an existing paved area.

~~1.~~3. The following soils types will be combined into soil groups.

G. Emergency Service Availability

The purpose of this criterion is to assess the distance of potential site development to emergency services: fire department (4.5 points) and ambulance service (4.5 points).

Distance to Emergency Services

Distance to Fire	Points		Distance to Ambulance	Points
Less than 2 miles	0 points		Less than 2 miles	0 points
2 to 5 miles	2.5 points		2 to 5 miles	2.5 points
Over 5 miles	4.5 points		Over 5 miles	4.5 points

Distances for Fire and Ambulance will be measured by vehicular miles from a subdivision entrance by the most direct route to the closest entrance of the appropriate fire or ambulance station.

Section 6.5 Computation of Soils/Amenities Assessment

A. At the completion of evaluation of a site with the Soils and Amenities Assessment Criteria, there should be a total number of points awarded to each Assessment. Since the Soils Assessment utilized was based on a 100 points relative point value in itself, a minor conversion must be made to the total relative value. The Development Review System allots a maximum of 25 points to the Soils Assessment therefore the conversion to be made is expressed as follows: 100 x .25 = 25 pts. (For example, if a parcel receives the maximum point value of 100 points, in actuality only 25 points will be awarded for the Soils Component of the Development Review System.)

B. The Amenities Assessment has a 75 point maximum point value.

C. The combined maximum total for both Assessments is 100 points. The most agriculturally significant parcel would rate 100; the most developable parcel would rate 0. A total of 60 points or less advances the application to the Compatibility Assessment Meeting.[14, 17, 21]

~~D. The Soils Assessment of a proposed development is not applied when the development proposal is located within the Residential/Growth District or the Industrial/Commercial District.~~ *[Note: moved to Section 6.2]*

~~E.~~D. Any land in the Rural District that is located on a primary or secondary road, as defined in the Comprehensive Plan, shall not have to process through the LESA points process for a commercial or industrial project and shall be advanced directly to the Compatibility Assessment Meeting.[17, 21]

ARTICLE 8: SUPPLEMENTAL USE REGULATIONS[23]

Section 8.1 Adult Use Requirements[16, 23]

Adult arcades, adult bookstores, adult cabarets, adult mini motion picture theaters, adult saunas, adult theaters, sexual encounter establishments, sexual paraphernalia stores, massage parlors and any sign advertising the operation thereof, shall only be permitted in the Industrial-Commercial District under the following conditions:

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

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

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

   This provision does not apply to any specific existing use that legally qualifies as a nonconforming use; provided, however, that an existing nonconforming use cannot add any of the uses described in this section to their operations as existing on May 1, 2003.

Section 8.2 Barns and Feeding Pens[23]

Barns and feeding pens must be set back a minimum of 75' from a residential district, a lot with a residential use, a church, a school, or an institution for human care.

Section 8.3 Bed and Breakfast[23]

A bed and breakfast may contain up to 7 bedrooms, and may conduct up to 4 receptions per year, with 1 tent per reception. Breakfast is the only meal served, and is served only to overnight tenants and their guests. An owner or designated caretaker must reside on the premises while the bed and breakfast is occupied. Up to 2 bedrooms may be located in an accessory dwelling unit, provided that the total number of bedrooms associated with the land use does not exceed 7.

Section 8.4 Kennels[23]

All portions of a Kennel land use must be buffered pursuant to Article 4 and set back at least 500 feet from any property that contains a residence. Kennels cannot be located within a Planning Commission approved residential subdivision.[15]

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

Container Setback from Lot Lines

Water Capacity per Container (Gallons)	Containers		Between Above Ground Containers (Feet)
	Underground (Feet)	Above Ground Containers (Feet)	
0 to 2,000	25	25	3
2,000 to 30,000	50	50	5
30,000 to 60,000	50	75	
In excess of 60,000	75	100	¼ the sum of diameters of adjacent containers

9. Frontage Road

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

10. Landscape Buffer

    All commercial and industrial developments shall comply with Section 4.11 unless otherwise specified in this ordinance.

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

    All front setbacks (building and parking lot) are to be measured from the landscape buffer. (See diagram)

ROW LIMITS OF
CONTROLLED ACCESS
HIGHWAY



* Maximum 60' easement or dedication for frontage road
** 50' landscaped buffer strip
*** Setbacks

This provision shall also apply to any ramps or access roads connecting to a controlled access highway within ½ mile of a controlled access highway.[5]

Section 8.10 Model Homes/Sales Offices[23]

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

Model homes with a staffed sales office in any other location within the subdivision must be approved or denied by the Board of Zoning Appeals after a public hearing advertised for 15 days.[17, 21]

Model homes without staffed sales offices are permitted internally within the subdivision.[12]

Section 8.11 Petroleum Products Refining or Storage[23]

Petroleum refining or storage (above ground in tanks) requires adherence to all state and federal laws, as well as National Fire Underwriters Codes.

Section 8.12 West Virginia Legal Fireworks[23]

Sales of fireworks are ~~only~~ permitted in the ~~commercial~~ Industrial - Commercial, Residential - Light Industrial - Commercial, General Commercial, Highway Commercial, Light Industrial, and Major Industrial zoning districts~~zones~~ provided all other restrictions such as setbacks and the requirements of the Jefferson County Subdivision and Land Development Regulations are met.[8]

Section 8.13 Dormitory[23]

A dormitory shall be located on the same property or campus as the use it is intended to serve. A dormitory shall not offer accommodations to the general public or to persons who are visiting the property or campus primarily for the purpose of being a spectator at a sporting event or other gathering held at the facility. A dormitory may include one common kitchen or dining facility and common gathering rooms for social purposes for use only by its temporary occupants.

ARTICLE 12: MAP AND TEXT AMENDMENTS

Section 12.1 Purpose

A. These regulations, restrictions, provisions, and the boundaries of districts provided herein may from time to time be amended, modified, or repealed by the County Commission. Any person, individual, board, commission or bureau of the County may petition the County Commission for such change.

B. The County Commission shall refer any amendment or alteration of this Ordinance to the Planning Commission for analysis, study, report, and recommendations regarding compatibility with the Comprehensive Plan as well as consideration as to whether a Conditional Use Permit (CUP) or other process may be a more appropriate process.[17, 21, 23, 25]

Section 12.2 Procedure for Amendment by County Commission[1,25]

A. After the enactment of the Zoning Ordinance, the governing body of the County may amend the Zoning Ordinance without holding an election.[17, 21]

B. Before amending the Zoning Ordinance text or map, the governing body, with the advice of the Planning Commission, must find that the amendment is consistent with the adopted Comprehensive Plan, or if it is inconsistent, must make findings in accordance with the requirements of §8A-7-8 et seq of the West Virginia State Code, as amended.[17, 21, 25]

C. All amendments to the Zoning Ordinance Map require a Public Hearing to be held by the Planning Commission for the purpose of making a recommendation to the County Commission. Subsequently, all recommended map amendments require a Public Hearing before the County Commission prior to a final determination.

1. Public Notice of the Public Hearing for a Zoning Map amendment before the Planning Commission requires the following:

   a. A legal advertisement describing the location and identification of the subject parcel for which the zoning is proposed to be changes, including the current tax district, map and parcel number, and the date, time and place of hearing regarding the amendment at least 15 days prior to the date set for such hearing in a newspaper with local circulation;

   b. Any property affected by the proposed zoning map amendment shall be posted ~~at least 30~~ not less than 20 and not more than 28 days prior to the Public Hearing. The posting shall state the time, date, and location of such hearing, as well as, what new zone is being requested on the property; and

   c. All property owners adjoining the property proposed to be rezoned shall be noticed by first class mail not less than 20 and not more than 28 ~~at least 30~~ days prior to the Public Hearing. The adjoiner letters shall be mailed by the Department staff and shall state the time, date, and location of such hearing, as well as, what new zone is being requested on this particular property. The letter

shall also describe the location and identification of the subject parcel proposed to be rezoned, including the current tax district, map and parcel number.

2. Public Notice of the Public Hearing before the County Commission requires compliance with the appropriate State Code for amending Ordinances.

D. All amendments to the Zoning Ordinance Text require a Public Hearing to be held by the Planning Commission for the purpose of making a recommendation to the County Commission. Subsequently, all recommended text amendments require a Public Hearing before the County Commission prior to a final determination.

1. Public Notice of the Public Hearing for a Zoning Text Amendment before the Planning Commission requires the following:

   a. A legal advertisement describing the Sections of the Ordinance proposed to be revised, with a summary of the revision(s), and the date, time and place of hearing regarding the amendment at least 15 days prior to the date set for such hearing in a newspaper with local circulation.

2. Public Notice of the Public Hearing before the County Commission requires compliance with the appropriate State Code for amending Ordinances.

Section 12.3 Procedure for Map Amendment by Petition[25]

A. Map Amendments by Landowners

The procedure for processing a map amendment petition initiated by the owners of fifty percent or more of the real property to which the petition relates shall be as dictated in §8A-7-9 et seq of the West Virginia State Code, as amended.

The procedure for processing a map amendment petition to change the zoning map designation of a property to the Planned Neighborhood Development district shall also include the applicable requirements of Article 5.

Petitions for a map amendment initiated by landowners shall be submitted to the Planning Commission and shall contain the following information:

1. Substantiation for the request
2. Tax District, Map and Parcel number
3. Deed Book reference
4. Plat or sketch pursuant to Section 7.4 (b)
5. Tract size
6. Discussion on:
   a. Comprehensive Plan compatibility of the proposed change.
   b. Any change of transportation characteristics and neighborhood from when the original ordinance was adopted.[17, 21]
7. A petition for a map amendment to change the zoning designation for a property to the Planned Neighborhood Development (PND) district shall include a Preliminary

PND Plan for the subject property. The submittal review process for a Preliminary PND Plan is described in Article 5 of this ordinance.

Planning Commission is required to set a public hearing on the proposed Zoning Map amendment within 60 days of the date upon which a complete petition is presented to the Planning Commission at a Planning Commission meeting. A complete petition, and related fees, shall be submitted to the office of the Departments of Planning and Zoning for placement on a Planning Commission agenda at least two (2) weeks prior to the meeting date at which the petition will be presented. Upon request, the Departments of Planning and Zoning staff can present the petition to the Planning Commission on behalf of the applicant for the purpose of setting the public hearing date.

Notice of the Planning's Public Hearing shall be in accordance with Section 12.2 of this Ordinance. At the conclusion of the Planning Commission's Public Hearing, or at the next regular Planning Commission meeting, the Planning Commission shall make a recommendation to the County Commission regarding approval or disapproval of the requested Map Amendment. This recommendation shall be forward to the County Commission within four weeks of final Planning Commission action.

B. Map Amendments by the Planning Commission

The procedure for processing a formal map amendment petition initiated by the Planning Commission shall be as dictated in §8A-7-9 et seq of the West Virginia State Code, as amended.

Petitions for a map amendment initiated by the Planning Commission shall be presented to the County Commission and submitted to the County Clerk for filing on the same date. On such petitions a map amendment shall be clearly labeled as "§8A-7-9 Petition" in the heading and contain the following information:

1. Substantiation for the request
2. Tax District, Map and Parcel number
3. Deed Book reference
4. Plat or sketch pursuant to Section 7.4 (b)
5. Tract size
6. Discussion on:
    a. Comprehensive Plan compatibility of the proposed change.
    b. Any change of transportation characteristics and neighborhood from when the original ordinance was adopted.[17, 21]

The County Commission is required to set a public hearing on the proposed Zoning Map amendment within 60 days of the date of the meeting at which the petition is presented to the County Commission. The petition and related agenda request form must be submitted to the County Commission office for placement on a County Commission agenda at least one (1) week prior to the meeting date or in accordance with the agenda request procedure of the County Commission.

Appendix A, Residential Site Develop... Standards Table [DRAFT 8/9/12]

Zoning District	Land use	Land Use Subtype	Minimum Lot Area (MLA) in sq. ft.***	Area per Dwelling Unit (ADU) in sq. ft.	Min. Lot Width	Maximum Building Height	Setbacks (feet)			
							Front	*Side*	*Street Side*	*Rear*
Residential Growth	Single family detached dwelling	*Public/Central water and sewer*	6,000	10,000	N/A	40	25	12	15	20
		Public/Central water or sewer	20,000	N/A	N/A	"	"	"	"	"
		No Public/Central water or sewer	40,000	N/A	N/A	"	"	"	"	"
	Small lot single-family detached dwelling	*Public/Central water and sewer*	3,200	7,500	35	40	20****	5	10	20
	Duplex dwelling unit	*Public/Central water and sewer*	3,200	7,500	N/A	40	25	15**	15	20
		Public/Central water or sewer	N/A	10,000	N/A	"	"	"	"	"
	Townhouse	*Public/Central water and sewer*	1,400	3,500	N/A	40	25	12**	15	20
	Multi-family dwelling	*Public/Central water and sewer*	20,000	2,000	N/A	40	25	12**	15	30
	Single-family dwelling with setbacks not previous stipulated by Planning Commission	*Over 40,000 square feet --*	N/A	N/A	N/A	40	25	12	‡	12
		30,000 sq. ft. to 40,000 sq. ft.--	N/A	N/A	N/A	40	20	10	‡	12
		Under 30,000 square feet --	N/A	N/A	N/A	40	20	8	‡	12
Rural	Dwellings		40,000	N/A	100	35	40	15	‡	50
	Single-family dwelling with setbacks not previous stipulated by Planning Commission	*Over 2 acres --*	N/A	N/A	N/A	35	40	15	‡	50
		40,000 sq. ft. to 2 acres --	N/A	N/A	N/A	35	25	12	‡	12
		30,000 sq. ft. to 39,999 sq. ft. --	N/A	N/A	N/A	35	20	10	‡	12
		under 30,000 sq. ft. --	N/A	N/A	N/A	35	20	8	‡	12
	Cluster Subdivision	*See Residential Growth*								
	Residential use that complies with the Development Review System	*See Residential Growth*								
Village	Residential uses	*See Residential Growth*								
Residential / Light Industrial / Commercial	Residential uses	*See Residential Growth* ◆								
Industrial-Commercial	Residential uses	*See Residential Growth*								
Neighborhood Commercial	Residential uses	*See Residential Growth*								
General Commercial	Residential uses	*See Residential Growth*								
Highway Commercial	Residential uses	*N/A*								
Light Industrial	Residential uses	*N/A*								
Major Industrial	Residential uses	*N/A*								
Planned Development	Residential uses	*See Residential Growth. Note: the Planning Commission may amend site development standards for a land use in the Planned Neighborhood Development district.*								
Office / Commercial Mixed Use	Residential uses	*See Residential Growth*								

~~This table is for reference purposes only.~~ In the event of a conflict with the text of the Zoning and Land Development Ordinance, ~~the Ordinance~~ this table shall prevail.

All dimensions are in feet unless otherwise indicated. * Maximum height subject to Section 9.2 **Exterior side only

*** The balance square footage between the ADU and the MLA shall not include land set aside in a Sensitive Natural Area, Buffer to a Sensitive Natural Area, land qualifying as Hillside development or a 100 Year Flood Plain.

****The front setback for a Small lot single-family detached dwelling may be reduced to 10' if the front yard does not contain a driveway.

‡See setback requirements noted in Sec. 2.2, definition of "Lot, Corner."

NOTE: All detached accessory structures under 144 square feet in size - 6' setback. (Res Growth District)

For all lots approved prior to Sept. 1, 1989, lots under 40,000 square feet side and rear setbacks for residential accessory structures shall be 6'.

◆In the Residential - Light Industrial - Commercial District, on townhouse lots with a lot depth of 110 linear feet or less and/or a lot area of 3,500 square feet or less, the rear setback of a deck for a townhouse may be reduced to 10'.

Appendix B, Non-residential Site Deve. .nt Standards Table [DRAFT 8/9/12]

Zoning District	Development Type	Minimum Lot Area (MLA)	Minimum Lot Width	Maximum Building Height*	Impervious Surface Limit	Building Setbacks			Parking/Drive Aisle Setbacks$^{\Phi}$			Distance (if required by Section 4.6)
						Front	*Side*	*Rear*	*Front*	*Side*	*Rear*	
Industrial - Commercial**	Commercial sites 1.5 acres and smaller	N/A	N/A	75	80%	25'			15	4	4	75
	Commercial sites greater than 1.5 acres	N/A	N/A	75	80%	25'	50' (or 25' if adjacent to industrial use)		15	10	10	75
	Industrial	3 acres***	N/A	75	90%	50' (or 25' if adjacent to industrial use)			25	25 (or 20' if adjacent to industrial use)		200
Residential / Light Industrial / Commercial	Commercial or Industrial	N/A	N/A	60	80%	*See Industrial - Commercial District*						75 (commercial) 200 (industrial)
Rural	Churches	2 acres	200	35	N/A	25	50	50	*See Parking/Drive Aisle Setbacks for commercial sites (greater or less than 1.5 acres, depending on lot size) in the Industrial - Commercial District.*			N/A
	Schools, Grades K-4****	10 acres +	500	35	N/A	100						N/A
	Schools, Grades 5-8****	20 acres +	500	35	N/A	100						N/A
	Schools, Grades 9-12****	30 acres +	500	35	N/A	100						N/A
	Hospitals	10 acres	500	35	N/A	100						N/A
	Other Rural principal permitted uses	40,000 sq. ft.	100	35	N/A	40	50	50				N/A
	Commercial or Industrial**	*See Industrial-Commercial District*										75 (commercial) 200 (industrial)
Village District	Commercial$^{¥}$	N/A	N/A	35	N/A	25	10	40	See Industrial-Commercial District			75
	Industrial**	*See Industrial-Commercial District*										200
Residential Growth	Commercial or Industrial**	*See Industrial-Commercial District*										75 (commercial) 200 (industrial)
Neighborhood Commercial	Commercial	N/A	N/A	35	70%	15' (min) 25' (max)	10	10	*See Industrial-Commercial District*			25
General Commercial	Commercial	N/A	N/A	60	80%	20	10	25				75
Highway Commercial	Commercial	N/A	N/A	60	80%	25	25	25				75
Light Industrial	Commercial or Industrial	N/A	N/A	60	80%	25	25	25				75 (commercial) 200 (industrial)
Major Industrial	Commercial	N/A	N/A	75	90%	25	10	50				75
	Industrial	3 acres***	N/A	75	90%	25	50	50				200
Planned Development	Commercial	3 acres	N/A	60	80%	20	10	25				75
Office / Commercial Mixed Use	Commercial	N/A	N/A	60	80%	15' (min) 25' (max)	10	10				25

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All dimensions are in feet unless otherwise indicated.

* Maximum building height is subject to Section 9.2.

~~*These yard requirements are also for an approved commercial or industrial use proposed for any other zone. [Source: Section 5.6(d)]~~

**If land use(s) approved via Neighborhood Compatibility Meeting process or Development Review System process in accordance with ~~the Zoning and Development Review~~ this Ordinance.

***MLA for Industrial uses does not apply if the site is located in an approved Industrial Park [Source: Section 5.6(e)]

****For schools in Rural district: Plus one (1) additional acre for every 100 pupils. Minimum lot size for Vocational Schools shall be based on State of West Virginia Code. If a sewer treatment plant and retention ponds are required, acreage shall be increased accordingly. [Source: 5.7(b)]

¥Village Commercial setbacks may be reduced as a result of a Compatibility Assessment Meeting based on other structures existing in the neighborhood [Source: 5.10c]

‡Setback may be reduced if adjacent to industrial use.

$^{\Phi}$For an industrial use, no structures, stored materials, or vehicular parking shall be permitted within the buffer yard. For a commercial use, no structures, materials, or vehicular parking shall be permitted within the side and rear yard buffers.

APPENDIX C: PERMITTED USES TABLE

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[Note: Blue text indicates proposed new districts and new land use name, or other text changes]
[Red text indicates deleted text]

Land Use	NC	GC	HC	LI	MI	PND	OC	R	RG	R-LI-C	I-C	V	General Standards	Additional Standards
Residential Uses														
Dwelling, Single Family	P	NP	NP	NP	NP	P	NP	P	P	P	NP	P		
Dwelling, Single Family, Small Lot	P	NP	NP	NP	NP	P	P	NP	P	P	NP	NP		
Dwelling, Two Family	NP	NP	NP	NP	NP	P	NP	P	P	P	NP	P		
Dwelling, Duplex	NP	NP	NP	NP	NP	P	NP	NP	P	P	NP	P		
Dwelling, Townhouse	P	NP	NP	NP	NP	P	P	NP	P	P	NP	NP		
Dwelling, Multi-Family	P	NP	NP	NP	NP	P	P	NP	P	P	NP	NP		
Day Care Center, Small	P	NP	NP	NP	NP	P	NP	P	P	~~NP~~ P	P	~~NP~~ P		
Mobile Home	NP	NP	NP	NP	NP	NP	NP	P	NP	NP	NP	NP		
Mobile Home Park	NP	NP	NP	NP	NP	NP	NP	NP	P	P	NP	NP		
Model Homes/Sales Office	P	PC	NP	NP	NP	P	P	P	P	P	NP	NP	Sec. 8.10	
Home Uses														
Home Occupation, Level 1	P	NP	NP	NP	NP	P	P	P	P	P	P	P	4A.3	4A.1
Home Occupation, Level 2	P	NP	NP	NP	NP	P	P	P	P	P	P	P	4A.4	4A.1
Cottage Industry	P	NP	NP	NP	NP	P	P	P	P	P	P	P	4A.5	4A.1
Institutional Uses														
Airport	NP	NP	NP	P	P	NP	NP	NP	NP	NP	PC	NP		
Church	P	P	P	P	PC	P	P	P	P	P	NP	~~PC~~ P		
Convention Center	NP	P	P	P	PC	P	P	NP	NP	P	PC	NP		
Cultural Facility	P	P	P	P	PC	P	P	P	NP	P	P	P		
Day Care Center, Large	P	P	P	P	PC	P	P	NP	P	P	P	PC		
Electric Vehicle Charging Station	P	P	P	P	P	P	P	NP	NP	P	P	PC		
Elementary or Secondary School	P	P	PC	PC	NP	P	P	P	P	P	NP	NP		
Essential Utility Equipment	P	P	P	P	P	P	P	P	P	P	P	P	4.7	
Group Residential Facility	P	P	P	NP	NP	P	P	P	P	P	NP	P		
Group Residential Home	P	P	P	NP	NP	P	P	P	P	P	NP	P		
Heliport	PC	PC	PC	P	P	PC	PC	NP	NP	PC	PC	NP		
Hospital	NP	P	P	P	PC	P	P	P	P	P	NP	NP		
Nursing or Retirement Home	PC	P	P	P	NP	P	P	NP	P	P	NP	NP		
Park	P	P	P	P	NP	P	P	P	P	P	NP	P		
Performing Arts Theater	P	P	P	P	P	P	P	NP	NP	P	P	PC		
Preschool	P	P	PC	PC	PC	P	P	P	P	P	NP	NP		
Public Safety Facility	P	P	P	P	P	P	P	P	P	P	P	P		
Publicly Owned Facility	P	P	P	P	P	P	P	P	P	P	P	~~NP~~ PC		
Recycling Drop-Off Center	PC	P	P	P	P	P	P	NP	NP	P	P	NP		
Residential Care Home	P	P	P	NP	NP	P	P	P	P	P	NP	P		
Vocational and Training Facility for Adults	P	P	P	P	P	P	P	P	P	P	NP	NP		
Industrial														
Heavy Equipment Repair	NP	NP	NP	PC	P	NP	NP	NP	NP	NP	PC	NP		
Heavy Industrial Uses	NP	NP	NP	NP	P	NP	NP	NP	NP	NP	P	NP		Sec. 8.9
Light Industrial Uses	NP	NP	NP	P	P	NP	NP	NP	**	P	P	NP		Sec. 8.9
Manufacturing, Heavy	NP	NP	NP	PC	P	NP	NP	NP	NP	NP	PC	NP		
Manufacturing, Limited	NP	P	P	P	P	PC	P	NP	NP	P	P	NP		
Printing and Publishing	NP	P	P	P	P	P	P	NP	NP	P	P	NP		
Salvage Yards	NP	NP	NP	NP	P	NP	NP	NP	NP	NP	PC	NP		
Shooting Range, Indoor	NP	PC	PC	P	P	NP	NP	NP	NP	PC	P	NP		

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[Note: Blue text indicates proposed new districts and new land use name, or other text changes]
[Red text indicates deleted text]

Land Use	NC	GC	HC	LI	MI	PND	OC	R	RG	R-LI-C	I-C	V	General Standards	Additional Standards
Shooting Range, Outdoor	NP	NP	NP	PC	PC	NP	NP	NP	NP	NP	~~P~~ PC	NP		
Slaughterhouses, Stockyards	NP	NP	NP	NP	P	NP	NP	NP	NP	NP	PC	NP		
Transportation Terminal	NP	P	P	P	P	P	P	NP	NP	PC	P	NP		
Vehicle Storage	NP	NP	NP	P	P	NP	NP	NP	NP	NP	P	NP		
Warehousing and Distribution, General	NP	NP	NP	PC	P	NP	NP	NP	NP	PC	P	NP		
Warehousing and Distribution, Limited	NP	P	P	P	P	PC	P	NP	NP	P	P	NP		
Industrial Manufacturing & Processing														
Acid or heavy chemical manufacturer, processing or storage	NP	NP	NP	NP	PC	NP	NP	NP	NP	NP	PC	NP		
Bituminous concrete mixing and recycling plants	NP	NP	NP	NP	PC	NP	NP	NP	NP	NP	PC	NP		
Cement or Lime Manufacture	NP	NP	NP	NP	PC	NP	NP	NP	NP	NP	PC	NP		
Commercial Sawmills	NP	NP	NP	NP	PC	NP	NP	NP	NP	NP	PC	NP		
Concrete and ceramic products manufacture, including ready mixed concrete plants	NP	NP	NP	NP	PC	NP	NP	NP	NP	NP	PC	NP		
Explosive manufacture or storage	NP	NP	NP	NP	PC	NP	NP	NP	NP	NP	PC	NP		
Foundries and/or casting facilities	NP	NP	NP	NP	PC	NP	NP	NP	NP	NP	PC	NP		
Garbage or dead animal reduction or processing; andfills	NP	NP	NP	NP	PC	NP	NP	NP	NP	NP	PC	NP		
Jails and Prisons	NP	NP	NP	NP	PC	NP	NP	NP	NP	NP	PC	NP		Sec. 8.7
Mineral extraction, mineral processing	NP	NP	NP	NP	PC	NP	NP	NP	NP	NP	PC	NP		
Petroleum products refining or storage	NP	NP	NP	NP	PC	NP	NP	NP	NP	NP	PC	NP		Sec. 8.11
Adult Uses														
Adult Uses	NP	NP	NP	P	P	NP	NP	NP	NP	NP	P	NP		Sec. 8.1
Recreational Uses														
Hunting, Shooting, Archery and Fishing Clubs, public or private	NP	NP	NP	PC	PC	NP	NP	P	NP	NP	NP	NP		Sec. 8.8
Commercial Uses														
Antique Shop	P	P	P	P	NP	P	P	NP	NP	P	P	PC		
Appliance Sales	NP	P	P	P	P	P	P	NP	NP	P	P	NP		
Art Gallery or Artist Studio	P	P	P	P	NP	P	P	NP	NP	P	P	PC		
ATM	P	P	P	P	NP	P	P	NP	NP	P	P	PC		
Automobile repair, sales and service	NP	P	P	P	P	P	P	NP	NP	P	P	NP		
Automobile parts, supplies and tire stores	NP	P	P	P	P	P	P	NP	NP	P	P	NP		
Automobile, light truck and light trailer rentals, indoor	P	P	P	P	P	P	P	NP	NP	P	P	NP		
Automobile, light truck and light trailer rentals, outdoor	NP	P	P	P	P	P	P	NP	NP	P	P	NP		
Bail Bond Services	NP	P	P	P	P	NP	NP	NP	NP	PC	P	NP		
~~Branch~~ Bank	P	P	P	P	PC	P	P	NP	NP	P	P	PC		
Bank with drive-through facility	PC	P	P	P	PC	P	P	NP	NP	P	P	NP		
Bar / Nightclub	PC	P	P	P	NP	P	P	NP	NP	P	P	NP		
Barber/Beauty Shop, Limited	P	P	P	P	NP	P	P	NP	NP	P	P	PC		
Bed and Breakfast	P	NP	NP	NP	NP	NP	NP	P	NP	NP	NP	PC		Sec. 8.3
Business Equipment Sales and Service	PC	P	P	P	P	P	P	NP	NP	P	P	NP		
Building Maintenance Services	PC	P	P	P	P	P	P	NP	NP	P	P	NP		

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[Red text indicates deleted text]

Land Use	NC	GC	HC	LI	MI	PND	OC	R	RG	R-LI-C	I-C	V	General Standards	Additional Standards
Building Materials and Supplies	NP	P	P	P	P	P	P	NP	NP	P	P	NP		
Campground	PC	P	NP	NP	NP	P	P	NP	NP	P	P	NP		
~~Commercial Uses~~	~~-~~	~~-~~	~~-~~	~~-~~	~~-~~	~~-~~	~~-~~	~~*~~	~~**~~	~~P~~	~~P~~	~~*~~		~~Sec. 8.9~~
Car Wash	NP	P	P	P	P	P	P	NP	NP	P	P	NP		
Commercial Blood Plasma Center	NP	P	P	P	P	PC	PC	NP	NP	PC	P	NP		
Contractor with no outdoor storage	P	P	P	P	P	P	P	NP	NP	P	P	NP		
Contractor with outdoor storage	NP	P	P	P	P	P	P	NP	NP	P	P	NP		
~~Retail Food~~ Convenience Store, Limited	P	P	P	P	PC	P	P	NP	NP	P	P	PC		
Convenience Store	PC	P	P	P	PC	P	P	NP	NP	P	P	NP		
Country Inn	P	P	P	P	NP	P	P	NP	NP	P	P	PC		
Dry cleaning and laundry pick-up station; laundromat	P	P	P	P	PC	P	P	NP	NP	P	P	PC		
Dry cleaning and laundry services	NP	P	P	P	P	P	P	NP	NP	P	P	NP		
Equipment Rental, Sales, or Service	NP	P	P	P	P	P	P	NP	NP	P	P	NP		
Exterminating Services	NP	P	P	P	P	P	P	NP	NP	P	P	NP		
Florist	P	P	P	P	PC	P	P	NP	NP	P	P	PC		
Food Preparation	P	P	P	P	P	P	P	NP	NP	P	P	NP		
Hotel/Motel	NP	P	P	P	NP	P	P	NP	NP	P	P	NP		
Gambling Facilities	NP	NP	NP	P	P	NP	NP	NP	NP	NP	P	NP		
Gas Station, Limited	P	P	P	P	P	P	P	NP	NP	P	P	NP		
Gas Station	NP	P	P	P	P	P	P	NP	NP	P	P	NP		
Gas Station, Large	NP	PC	P	P	P	PC	PC	NP	NP	P	P	NP		
Golf Course	NP	P	P	P	P	P	P	NP	NP	P	P	NP		
Grocery Store	P	P	P	P	PC	P	P	NP	NP	P	P	NP		
Kennel	NP	P	P	P	PC	P	P	P	NP	P	P	NP		Sec. 8.4
Medical/Dental/Optical Office, Small	P	P	P	P	PC	P	P	NP	NP	P	P	P		
Medical/Dental/Optical Office	NP	P	P	P	PC	P	P	NP	NP	P	P	NP		
Mobile home, boat and trailer sales	NP	P	P	P	P	P	P	NP	NP	PC	P	NP		
Movie Theater	NP	P	P	P	PC	P	P	NP	NP	P	P	NP		
Non~~/Not for~~-Profit Commercial Uses	P	P	P	P	PC	P	P	NP	NP	P	P	NP		
Non-Profit Community Centers	P	P	P	P	PC	P	P	P	NP	P	P	NP		
Parking, Commercial Offsite Accessory	NP	P	P	P	P	P	P	NP	NP	P	P	NP		
Pawn Shop Services	NP	P	P	P	P	P	P	NP	NP	P	P	NP		
Personal Services	P	P	P	P	PC	P	P	NP	NP	P	P	PC		
Professional Office	P	P	P	P	PC	P	P	NP	NP	P	P	PC		
Restaurant, Fast Food, Limited	P	P	P	P	PC	P	P	NP	NP	P	P	PC		
Restaurant, Fast Food	PC	P	P	P	PC	P	P	NP	NP	P	P	NP		
Restaurant, Fast Food, Drive-Through	NP	P	P	P	PC	PC	P	NP	NP	P	P	NP		
Restaurant, Limited	P	P	P	P	PC	P	P	NP	NP	P	P	PC		
Restaurant	P	P	P	P	PC	P	P	NP	NP	P	P	NP		
Retail Sales Limited	P	P	P	P	PC	P	P	NP	NP	P	P	NP		
Retail Store	P	P	P	P	PC	P	P	NP	NP	P	P	NP		
Retail Store, Large	NP	PC	P	PC	PC	PC	PC	NP	NP	PC	PC	NP		
Shipping and Mailing Services	P	P	P	P	PC	P	P	NP	NP	P	P	NP		
Storage, Commercial	NP	P	P	P	P	P	P	NP	NP	P	P	NP		
Veterinary Services	P	P	P	P	PC	P	P	P	NP	P	P	NP		

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[Note: Blue text indicates proposed new districts and new land use name, or other text changes]
[Red text indicates deleted text]

Land Use	NC	GC	HC	LI	MI	PND	OC	R	RG	R-LI-C	I-C	V	General Standards	Additional Standards
Wireless telecommunications facilities	P	P	P	P	P	P	P	P	P	P	P	P	4B	
Agricultural Uses														
Agricultural Uses as defined in Article 2	P	P	P	P	P	P	P	P	P	P	P	P		
Agricultural Repair Center	NP	P	P	P	P	P	P	P	NP	P	P	NP		
Agricultural Tourism	P	P	P	P	P	P	P	P	P	P	P	P		
Farm Brewery or Winery	P	P	P	P	P	P	P	P	P	P	P	P		Sec. 8.5
Farm Market	P	P	P	P	PC	P	P	P	NP	P	P	~~NP~~ PC		Sec. 8.6
Farm Vacation Enterprise	P	P	P	P	P	P	P	P	P	P	P	P		
Feed and/or Farm Supply Center	PC	P	P	P	P	P	P	P	NP	P	P	NP		
Horticultural Nurseries and Commercial Greenhouses	P	P	P	P	P	P	P	P	NP	P	P	NP		
Landscaping Business	P	P	P	P	P	P	P	P	NP	P	P	NP		
Rental of Existing Farm Building for Commercial Storage (structure must have existed for 5 years)	NP	P	P	P	P	P	P	P	NP	P	P	NP		
Accessory Uses														
Accessory Uses	P	P	P	P	P	P	P	P	P	P	P	P		

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Proposed New Commercial Zoning Districts and Related Amendments to the Zoning and Land Development Ordinance

Section 2.2: Definitions

Add (or amend) the following definitions:

Airport	Any area of land or water designated, set aside, used, or intended for use, for the landing and take-off of aircraft, including runways, aircraft storage buildings, helicopter pads, air traffic control facilities, informational facilities, and devices, terminal buildings, and airport auxiliary facilities, including fences, lighting and antennae systems, on-premise signs, driveways, and access roads. This term includes aircraft maintenance facilities, aviation instruction facilities, and heliports when part of a larger airport facility.
Appliance Sales	Use of a site for indoor sale of nonportable equipment used for domestic functions, including but not limited to washers, dryers, refrigerators, freezers, and stoves.
Art Gallery or Artist Studio	The use of a site for (a) an establishment engaged in the sale or exhibit of art works including but not limited to paintings, sculpture, knitted goods, or potter; and/or (b) work space for one or more artists or artisans, or craftspersons, who may offer instruction in the creation of art works.
Automobile parts, supplies and tire stores	Stores that sell new automobile parts, tires, and accessories. This use includes installation of new tires.
Automobile repair, sales and service	The use of a site for the repair and maintenance of automobiles, motorcycles, trucks, trailers, or similar vehicles including but not limited to body, fender, muffler, or upholstery work, oil change and lubrication, painting, and tire service, but excluding dismantling or salvage.
Automobile, light truck and light trailer rentals, indoor	Rental of automobiles, light trucks, light trailers, and vans, including a rental office but not including parking and servicing of vehicles for rent or lease. Typical uses include auto rental agencies and taxicab dispatch areas
Automobile, light truck and light trailer rentals, outdoor	Rental of automobiles, light trucks, light trailers, and vans, including a rental office and incidental parking and servicing of vehicles for rent or lease. Typical uses include auto rental agencies and taxicab dispatch areas.
Bail Bond Services	An establishment which provides sureties to procure the release of persons under arrest by becoming financially responsible for their appearance at the time and place designated.
Bank with drive-through facility	A bank that includes provisions for the conduct of banking services directly to the occupants of motor vehicles.
Bar / Nightclub	An area primarily devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages. This use may include live entertainment (other than an adult use) that complies with Jefferson County noise restrictions.

Bicycle Parking Space	A volume of space that can accommodate locked storage of one (1) bicycle at a bicycle rack, i.e. a fixture to which one or more bicycles can be securely locked.
Bank	A financial institution that is open to the public and engaged in deposit banking, and that performs closely related functions such as making loans, investments, and fiduciary activities. A bank does not include the Pawn Shop Services land use.
Building Maintenance Services	An establishment primarily engaged in the provision of maintenance and custodial services to firms rather than individuals. Typical uses include janitorial, landscape maintenance, or window cleaning services.
Building Materials and Supplies	An establishment which sells goods relating to construction which require a large floor area such as lumber, appliances, electrical supplies and plumbing supplies.
Business Equipment Sales and Service	An establishment primarily engaged in the sale, rental or repair of equipment and supplies used by office, professional and service establishments to the firms themselves rather than to individuals, but excluding automotive, construction and farm equipment. Typical uses include office equipment and supply firms, small business machine repair shops or hotel equipment and supply firms.
Campground	An area or premises operated as a commercial enterprise, generally providing space for seasonal accommodations for transient occupancy or use by tourists occupying camping trailers, self-propelled campers, tents, cabins and/or lodges. A camp ground shall be designed for seasonal occupancy, as opposed to permanent year-round occupancy, and shall not be construed to mean a Mobile Home Park as defined in this ordinance.
Car Wash	A structure, or portion thereof, containing facilities for washing motor vehicles by hand or by using production-line, automated or semi-automated methods for washing, whether or not employing a chain conveyor, blower, steam-cleaning or similar mechanical device.
Commercial Blood Plasma Center	The use of a site as a facility for the donation or sale by individual donors of blood plasma and other blood products, with the exception of whole blood. This land use does not include a blood bank.
Contractor with no outdoor storage	Use of a site for the business office of a general contractor or builder engaged in the construction of buildings, either residences or commercial structures. The premises may include an enclosed space used for the housing and/or operating of machinery, the provision of services, the fabrication of building-related products, and interior storage, but which does not use any exterior storage area other than incidental storage.
Contractor with outdoor storage	Use of a site for the business office of a general contractor or builder engaged in the construction of buildings, either residences or commercial structures. The premises may include an enclosed space used for the housing and/or operating of machinery, the provision of services, the fabrication of building-related products, and interior storage. This use may include outdoor storage of building materials and heavy equipment such as road graders, dump trucks, cement mixers.

Convenience Store	An establishment, not exceeding 10,000 square feet of gross floor area, engaged in the retail sale, from the premises, of food, beverages and other frequently or recurrently needed items for household use. This land use does not include a gas station.
Convention Center	A facility designed to accommodate 500 or more persons and used for conventions, conferences, seminars, product displays, recreation activities, and entertainment functions, along with accessory functions including temporary outdoor displays, and food and beverage preparation and service for on-premise consumption.
Custom Manufacturing	Use of a site for the manufacturing of products that are usually handmade and/or are made in small-scale enclosed workshops, involving the use of hand tools, the use of domestic mechanical equipment, or a kiln. This category also includes incidental direct sale to customers of those goods produced on the site. Examples include clay products, glass blowing, jewelry, leatherworking, custom bookbinding, metalworking, and woodworking.
Dry cleaning and laundry facility	A facility at which clothing and other fabrics are dry-cleaned or laundered for customers, utilizing processes which are in compliance with applicable state and federal laws.
Dry cleaning and laundry pick-up station; laundromat	An establishment or business maintained for the pickup and delivery of dry cleaning and/or laundry, and that provides self-service machines for use by customers for the washing or drying of clothes or other fabrics. This use does not include the maintenance or operation of any other types of laundry or dry-cleaning equipment or machinery on the premises.
Dry cleaning and laundry services	The use of a site for customer drop-off and pickup of clothing or fabrics, to be laundered or dry-cleaned at an offsite location. This use does not include use of a site as a Dry Cleaning and Laundry Facility.
Dwelling, Single Family, Small Lot	A single-family detached dwelling meeting the site development standards for a Dwelling, Single Family, Small Lot as required by this ordinance.
Electric Vehicle Charging Station	A public or private parking space that is served by battery charging station equipment that has as its primary purpose the transfer of electric energy (by conductive or inductive means) to a battery or other energy storage device in an electric vehicle.
Equipment Rental, Sales, or Service	The use of a site for the sale or rental of trucks of one ton or greater capacity, tractors, construction equipment, agricultural implements, mobile homes, or similar heavy equipment, including incidental storage, maintenance, and servicing. This use includes truck dealerships, construction equipment dealerships, and mobile home sales establishments.
Exterminating Services	The use of a site for the eradication or control of rodents, insects, or other pests with incidental storage on sites other than where the service is rendered.
Food Preparation	An establishment in which the principal use is the preparation of food and meals on the premises, and where such food and meals are delivered to another location for consumption. This use includes food preparation for catering.
Gambling Facilities	The operation or conducting of any games played with cards, roulette wheels, dice, craps, slot machines, video lottery terminals, mechanical, electro-mechanical, or electronic amusement devices or machine for the return of money, cash, or prizes, or anything that could be redeemed for money, cash, or prizes. This definition does not apply to games of chance operated by charitable organizations licensed under West Virginia state law.

Gas Station	Buildings and premises for the supply and retail dispensing of motor fuels. Accessory uses may include minor servicing and repair of automobiles; and sale of lubricants, batteries, tires, motor vehicle accessories, beverages, food, tobacco products and other retail merchandise; a car wash; and up to fifty (50) square feet of accessory outdoor storage and display area for goods offered for sale. A gas station shall be classified as a "Gas Station, Large" if it exceeds any of the following criteria: four fuel pump islands, a total of eight fuel pumps, and/or a gas station combined with a convenience store of 3,000 square feet gross floor area.
Gas Station, Large	A gas station (as defined in this ordinance) exceeding any of the following criteria: four fuel pump islands, a total of eight fuel pumps, and/or a gas station combined with a convenience store of 3,000 square feet gross floor area.
Gas Station, Limited	A gas station (as defined in this ordinance) limited to two fuel pump islands and a total of two fuel pumps. A Gas Station, Limited land use may include as an accessory use a convenience store with a gross floor area not to exceed 1,000 square feet gross floor area.
Golf Course	A facility other than a miniature golf course for the playing of golf. A golf course may include a clubhouse with rest rooms and locker rooms, may provide additional services customarily furnished such as swimming, outdoor recreation, and related retail sales; and may include a restaurant as an accessory use.
Grocery Store	An establishment in which most of the floor area is devoted to the sale of food products for home preparation and consumption, which typically also offer other home care and personal care products, and which carry a broader range of merchandise than convenience stores. A grocery store may include a pharmacy as an accessory use.
Heavy Industrial Use	Manufacturing or other enterprises with significant external effects, or which oppose significant risks due to the involvement of explosives, radioactive materials, poisons, pesticides, herbicides, or other hazardous materials in the manufacturing or other process. This use also includes those land uses characterized by heavy trucking activity or extensive warehousing.
Helipad	A facility without the logistical support provided by a heliport where helicopters take off and land. Helipads do not include facilities for maintenance, repair, fueling, or storage of helicopters.
Heliport	An area designed to be used for the landing or takeoff of helicopters including operations facilities, such as maintenance, loading and unloading, storage, fueling, or terminal facilities.
Hotel/Motel	A building in which lodging is provided and offered to the public for compensation, and which is open to transient guests and is not a Bed and Breakfast, Residential Care Home, Group Residential Home, Group Residential Facility, or Country Inn as defined in this ordinance. A hotel/motel may include a restaurant, bar, personal and retail services, and entertainment as accessory uses.
Kennel (amended)	The boarding, breeding, raising, grooming, or training of more than six dogs, cats, or other household pets of any age not owned by the owner or occupant of the premises, and/or for commercial gain or as part of the operations of a not-for-profit organization.

Manufacturing, Heavy	An establishment engaged in manufacturing, assembly, fabrication, packaging or other industrial processing of products primarily from extracted or raw materials or the bulk storage and handling of such products and materials, or an industrial establishment having potential to produce noise, dust, glare, odors or vibrations beyond its property line. A land use that generates significant noise, odor, vibration, illumination, or particulate matter that has the potential to adversely affect adjacent land uses, or requires a significant amount of on-site hazardous chemical storage, shall be classified under this land use.
Manufacturing, Limited	The manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment and packaging of such products, and incidental storage, sales, and distribution of such products, but excluding basic industrial processing and custom manufacturing. This category includes welding services.
Medical/Dental/ Optical Office	A facility other than a hospital where medical, dental, optical, mental health, surgical, and/or other personal health care services are provided on an outpatient basis, and that accommodates licensed primary practitioners (for example, chiropractors, dentists, medical doctors, optometrists, prescription opticians, psychologists, etc.) within a single office suite.
Mobile home, boat and trailer sales	Use of a site for the sale, rental or servicing of mobile homes, boats and trailers. This use includes outdoor display of items for sale or rent, and accessory retail sale of merchandise related to mobile homes, boats and trailers. This use does not include a gas station.
Movie Theater	A building containing audience seating and one or more screens and auditoriums intended for the viewing of films. A movie theater may contain a lobby and refreshment stand, and may include service of food and beverages to seated patrons. Incidental use of a movie theater for community events and live performances is permitted. This use does not include an adult use or a bar/nightclub.
Parking, Commercial Offsite Accessory	Use of a site for the storage of motor vehicles, which is not accessory to any other use on the same or any other lot, and which contains parking space rented to the general public or reserved for individuals by the hour, day, week, or month.
Pawn Shop Services	An establishment that engages, in whole or in part, in the business of loaning money on the security of pledges of personal property, or deposits or conditional sales of personal property, or the purchase or sale of personal property. This use does not include a Bank.
Performing Arts Theater	An establishment for the performing arts with seating for audiences. Such establishments may include related services such as food and beverage sales and other concessions.
Personal services	Establishments primarily engaged in providing individual services generally related to personal needs of a non-medical type, including barber shops; beauty salons; chiropractic clinics; clothing rental; dry cleaning and laundry services; duplicating services; garment repair, pressing, and tailoring; massage therapy provided by licensed massage practitioner; photographic studios; psychic readers; real estate; self-service laundromat; shoe repair; spas; tanning salons; travel agencies; video rental stores and other similar establishments.

Printing and Publishing	A printing operation of an industrial scale, involving a process that is considered printing, imprinting, reproducing, or duplicating images and using printing methods including but not limited to offset printing, lithography, web offset, flexographic, and screen process printing. This use may include the production of books, magazines, newspapers and other printed matter.
Professional Office	A building used primarily for offices for administrative, executive, professional, research, or similar organizations; and for real estate, advertising, and insurance agencies and similar firms. No merchandise is sold on the premises. An office building may include ancillary services for employees, such as a coffee shop. This land use does not include a Medical/Dental/Optical Office.
Recycling Drop-Off Center	A building or site used for a drop-off location for temporary storage of recyclable, recoverable or reuseable materials such as paper, cardboard, glass, metal, plastic, batteries and motor oil. Processing of materials is limited to separation. This land use is intended for household or consumer use rather than commercial or industrial use. The area dedicated a Recycling Drop-Off Center is limited to 1,000 square feet.
Restaurant	A commercial establishment where food and beverages are prepared, served, and consumed primarily within the principal building and where food sales constitute more than 50 percent of the gross sales receipts for food and beverages.
Restaurant, Fast Food	Any establishment whose principal business is the sale of foods and or beverages in ready-to-consume individual servings, for consumption either inside or outside the restaurant building or for carry-out. Customer orders and/or service may be by means of a window or walk-up counter. A fast food restaurant whose design or method of operation includes a drive-up window or drive-through service or includes service to customers in parked motor vehicles is classified as a Restaurant, Fast Food, Drive-Through.
Restaurant, Fast Food, Drive Through	A fast food restaurant whose design or method of operation includes a drive-up window or drive-through service or includes service to customers in parked motor vehicles.
Retail sales, limited	Establishments of 10,000 square feet or fewer of gross floor area engaged in the sale or rental of goods for consumer or household use; excluding, however, animal sales or service; building materials and/or supplies, sales, or rental; and food sales or markets. Typical uses include sale of consumer goods or art or craft objects, flower shops, gift shops, boutiques, and book stores.
Retail Store, Large	A retail sales establishment located within one building with a gross floor area exceeding 50,000 square feet.
Shipping and Mailing Services	Retail sales or business service establishment to facilitate the transmittal and receipt of letter, bulk and packaging mail. This use does not include major processing of mail or packages or bulk mailing distribution centers, and does not include facilities owned or operated by governmental agencies such as the United States Postal Service.
Shooting Range, Indoor	A facility designed or used for shooting at targets with rifles, pistols, or shotguns, and which is completely enclosed within a building or structure. The operations and design and design of an outdoor shooting range meet National Rifle Association standards.

Shooting Range, Outdoor	The use of land for the safe discharge and use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any similar firearm for the purpose of target practice, sport shooting, military/law enforcement training, mock war games, or temporary competitions. The operations and design and design of an outdoor shooting range meet National Rifle Association standards. This land use does not include Hunting, Shooting, Archery and Fishing Clubs and general hunting.
Storage, Commercial	An enclosed storage facility of a commercial nature containing independent, fully enclosed bays which are leased to persons exclusively for storage of their household goods or personal property.
Transportation Terminal	The use of a site for the provision of a facility for the loading, unloading, or interchange of passengers, baggage, or incidental freight or shipped materials between modes of transportation, and includes bus terminals, railroad stations, airport terminals, and public transit facilities. This use does not include long-term storage of shipped items.
Vehicle Storage	The use of a site for long term storage for vehicles. This use includes storage of vehicles towed from private parking areas and impound yards, but excludes dismantling or salvage.
Warehousing and Distribution, General	Use of a site for the storage and sale of goods to other firms for resale, as well as activities involving significant movement and storage of products or equipment. This use includes major distribution centers, frozen food lockers, motor freight terminals, moving or storage firms and similar high volume, high turnover facilities. Facilities may be characterized by extensive warehousing, frequent heavy trucking activity, open storage of material, or nuisances such as dust, noise, and odors.
Warehousing and Distribution, Limited	Use of a site for the small scale storage and sale of goods to other businesses for resale. Wholesale and warehouse area will be no more than 50,000 square feet in area and operate during conventional business hours. Outdoor storage is limited to an area of 1,000 square feet. This use does not include major distribution centers, motor freight terminals, moving or storage firms and similar high volume, high turnover facilities, or a use described as a Storage, Commercial facility.

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

Email: planningdepartment@jeffersoncountywv.org
zoning@jeffersoncountywv.org
Phone: (304) 728-3228
Fax: (304) 728-8126

MEMO

TO: Planning Commission Members

FROM: Steve Barney, Zoning Administrator

DATE: June 12, 2012

RE: Comprehensive Plan Consistency - Draft Zoning Ordinance Amendments – New Zoning Districts

Background

The West Virginia code (Section §8A-7-8) states that, before amending the Zoning Ordinance, the governing body (i.e. the County Commission) must make a finding regarding consistency with the Comprehensive Plan. To approve the amendment, the Commission must either:

1. Find that the amendment is consistent with the adopted comprehensive plan; or
2. If the amendment is found to be inconsistent with the Comprehensive Plan, 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.

As is noted above, the Planning Commission's role is to advise the County Commission regarding Comprehensive Plan consistency.

Staff Recommendation Regarding Comprehensive Plan Consistency

Staff finds that the Comprehensive Plan supports the proposed amendments and has identified sections related to the proposed amendments, below:

> ***Plan Vision*** *(page 8)**: 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.*
>
> Comment: The proposed amendments would provide the opportunity for commercial development that is compatible with residential areas, and encourage the development of planned, mixed-use neighborhoods. Additionally, by creating a range of commercial zoning categories, the proposed Zoning Ordinance amendments would contribute to encouraging economic development.

Plan Vision *(page 8)**: This Plan identifies strategies to assure that community facilities and transportation infrastructure are provided in sequence with new development.*

Comment: The proposed amendments identify the appropriate locations for the new zoning districts. In all cases, these districts are intended for location within the vicinity of existing transportation infrastructure, such as four-lane primary roads. For the proposed industrial districts, the districts' "purpose" section includes a statement regarding availability of "adequate public or community water and sewerage service."

Recommendation 3:19 *(page 67)**: The County should explore the adoption of innovative planning concepts as discussed in the following section, including transferrable development rights and traditional neighborhood designs.*

Comment: The proposed amendments contain innovative planning concepts such as districts intended to encourage traditional neighborhood designs, in addition to the proposed Planned Neighborhood Development district.

Recommendation 3.21 *(page 68)**: [T]he County should review different zoning methods to see if LESA is still the zoning of choice for the County.*

Comment: While the proposed amendments would have little effect on the applicability of the LESA system, the new districts would provide property owners with additional options for pursuing land use entitlements – i.e. options other than LESA and the County's current limited set of zoning districts.

Recommendation 3.23 *(page 71)**: A concept plan for an entire tract in this district and other districts should be required when submitting an application seeking to develop only a portion of that tract, including codified standards for what should appear on the concept plan.*

A subsection associated with Recommendation 3.23 also includes the following text:

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.

Comment: The proposed amendments address the issues raised in this section. The PND district requires a Preliminary PND Plan, to be prepared based on the submittal requirements for a Concept Plan. Additionally, both the Office/Commercial Mixed Use district and the PND district have minimum requirements for percentages of non-residential uses.

If you have any questions, please feel free to contact me at zoning@jeffersoncountywv.org.

Maps from the Adopted 2004 Comprehensive Plan

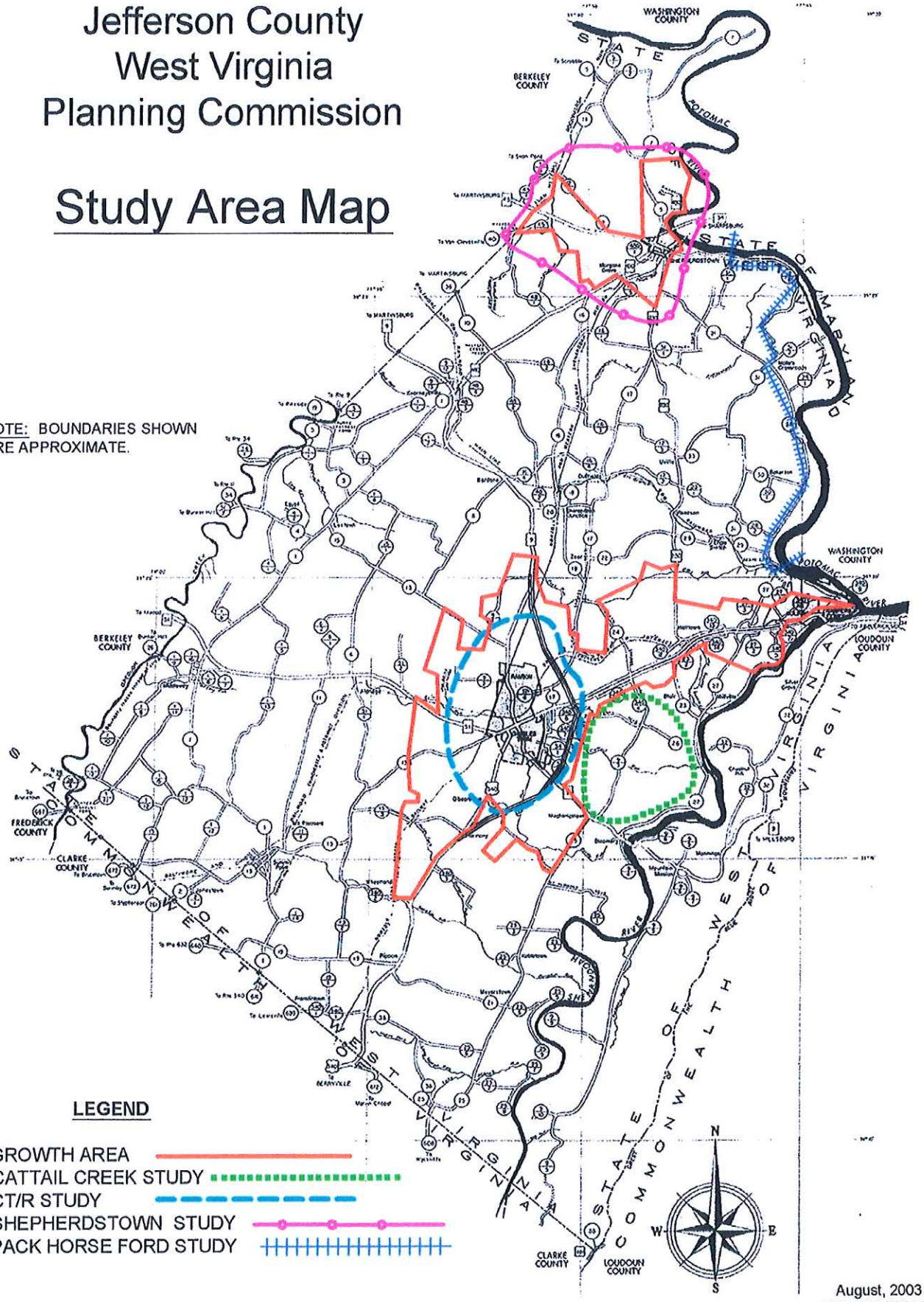
1. Roadway Classification Map

2. Study Area Map

Jefferson County
West Virginia
Planning Commission

Study Area Map

NOTE: BOUNDARIES SHOWN ARE APPROXIMATE.



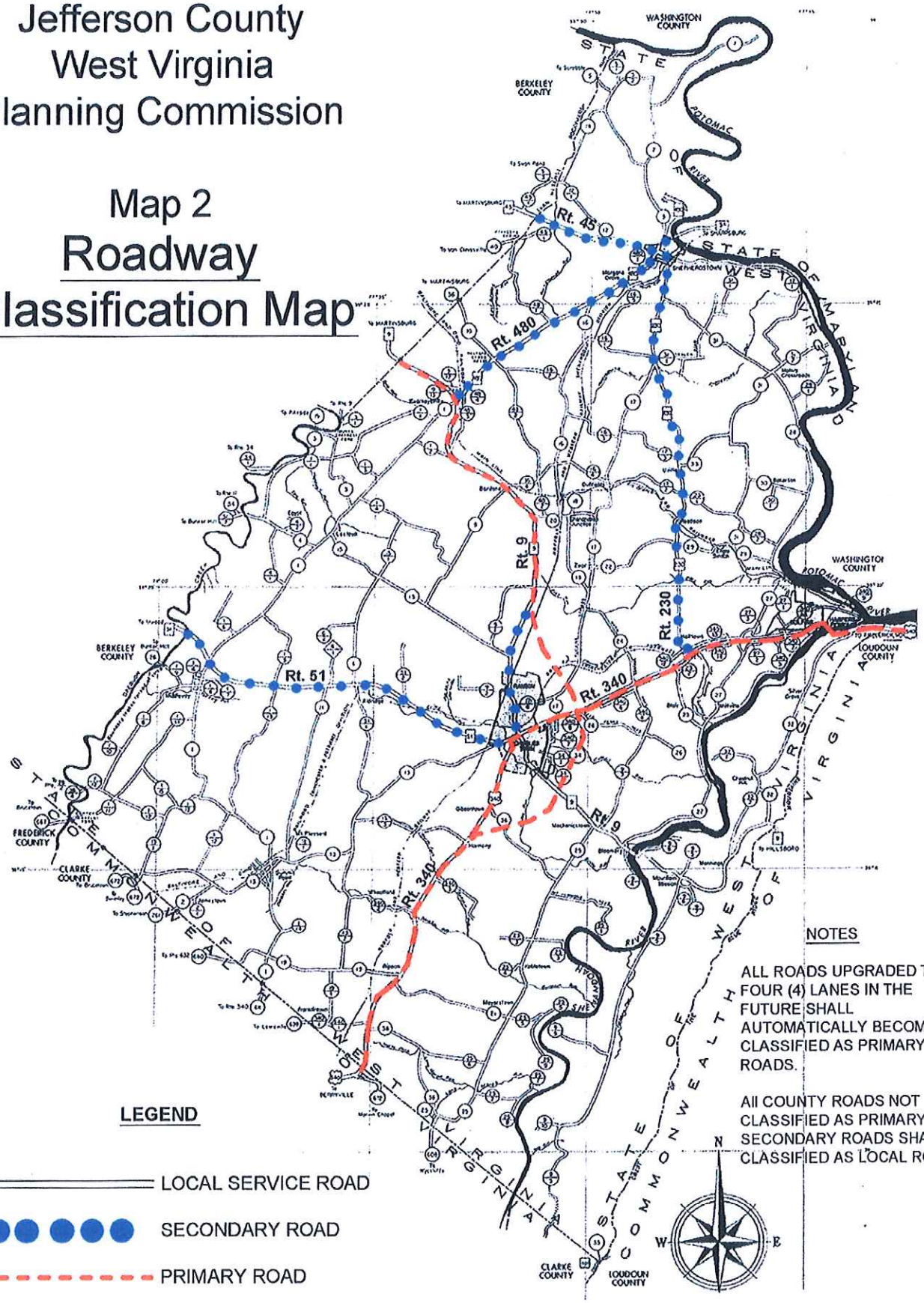
LEGEND

1. GROWTH AREA
2. CATTAIL CREEK STUDY
3. CT/R STUDY
4. SHEPHERDSTOWN STUDY
5. PACK HORSE FORD STUDY

August, 2003
NOT TO SCALE

Jefferson County
West Virginia
Planning Commission

Map 2
Roadway
Classification Map



LEGEND

- LOCAL SERVICE ROAD
- SECONDARY ROAD
- PRIMARY ROAD

NOTES

ALL ROADS UPGRADED TO FOUR (4) LANES IN THE FUTURE SHALL AUTOMATICALLY BECOME CLASSIFIED AS PRIMARY ROADS.

All COUNTY ROADS NOT CLASSIFIED AS PRIMARY OR SECONDARY ROADS SHALL BE CLASSIFIED AS LOCAL ROADS.

July, 2003



Meet and Converse with your

Jefferson County

Commissioners

Where: **Skipper's Downtown Dips & Deli**

114. West Washington St - Charles Town, WV 25414

304-725-DIPS (3477)

When: **September 27, 2012**

Time: **5:00 p.m.—7:00 p.m.**

Questions regarding the event should be directed to the Jefferson County Commission: 304-728-3284

RECEIVED

AUG 2 4 2012

Jefferson County Commission

Jefferson County Commission
PO Box 250
Charles Town, WV 25414

August 22, 2012

Commissioners,

This month, the Jefferson County Commission asked the Courthouse Committee for its recommendations regarding two ongoing courthouse projects: landscaping and painting. The members of the committee met this week to discuss these two items.

I will begin with the committee's recommendations regarding the landscaping. As you will recall, the committee sent the county commission a letter on May 2nd, 2012 with its recommendations for the site from its April meeting. This letter contained the following statements:

"...it was the unanimous consensus of the committee that the designs (proposed by Boyer Landscaping) were generally too complicated and busy for the site. The committee would prefer a simple and elegant design. In addition to allowing the building's magnificent architecture to speak for itself, such a pared-down plan would be less expensive to construct and require fewer man-hours to maintain.

The committee, therefore, recommends that the designer develop a new plan with all unnecessary items removed. In addition, it was the consensus of the committee that all signage, monuments, furniture, plantings, and planters be removed from the courthouse yard. Only the two flagpoles should remain in that area, though not in their current locations. The committee feels that a simple design is the best way to maintain the dignity of the courthouse."

These remain the committee's sentiments regarding the exterior work to the site. The committee agreed that the existing

benches, ashtray cans, markers, pine tree, large carved rock (placed about 40 years ago as a temporary marker), planters, bollards, and signs should be removed from the front yard of the courthouse. It was the consensus of the courthouse committee that this random assortment of items detracts from the building's architecture by cluttering the entry.

As for the pavement treatment, the committee asked Bill Polk to obtain pricing information for bluestone pavers under the portico and new concrete to replace the current concrete walkway. So far, we have not seen any pricing for this possible design. If chosen as the paving material, the bluestone pavers should be a minimum of one and a half inches in thickness, laid in an ashlar pattern. The individual pieces should be substantial in size so as to reduce the number of joints and fit the scale of the building. Any new concrete should have the sandy appearance of the old concrete under the portico and have the same dimpled surface.

I will move on to the second item of ongoing work - the exterior painting. As the commission will recall, the county paid for a Historic Structures Report to be prepared for the courthouse. This action was an important first step in caring for the historic and irreplaceable building. The Historic Structures Report is a guide and manual for the maintenance and repair of the building.

As we have seen with the courthouse columns, trapping moisture inside a masonry structure is a recipe for disaster. Non-permeable coating had been applied to the brick columns, which sealed moisture inside. Significant deterioration occurred due to the misguided use of modern materials that was costly to repair.

In regard to the exterior walls of the courthouse, the Historic Structures Report recommends removing the modern, non-permeable paint, as well as, and the old lead paint beneath it. Once these problematic materials are removed, the HSR advises

repainting with a lime-based paint that will allow the wall to breathe, so that moisture moving from the inside of the building can escape.

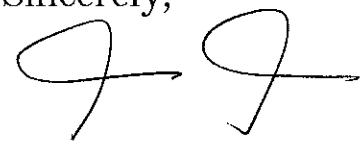
In our recent meeting, committee member Bill Polk felt that the removal of the modern paint suggested by the historic structures specialist would be too costly. He also expressed concern that the removal of paint might be detrimental to the building. It was the opinion of the historic structure specialists that authored the courthouse report that failure to remove these materials and remedy the problems they have caused would be problematic.

Mr. Polk informed the committee that he had contacted a person at the National Park Service to ask about the paint removal. The committee agreed that if Mr. Polk felt a second opinion regarding the paint removal and reapplication was warranted, the group would certainly take the additional opinion into consideration.

So, with regards to the painting of the courthouse, the committee will wait to hear from the additional specialist before recommending a course of action.

Thank you for the opportunity to comment on the continued maintenance of the historic Jefferson County Courthouse.

Sincerely,



John C. Allen, Jr.

MinSec Companies 101 N. Providence Road P: 610.892.9167
Wallingford, PA 19086 F: 610.892.9166
www.minsec.us

August 17, 2012

Sheriff Robert Shirley
Jefferson County
102 Industrial Boulevard
Kearneysville, WV 25430

Dear Sheriff Shirley:

minsec

The purpose of this letter is to inform you that MinSec Companies, LLC, has decided against pursuing an offer for Residential Reentry Center (RRC), or "halfway house," services for federal offenders releasing to the Northern West Virginia area. We previously informed you that we were considering a potential facility to be located at 1716 Kabletown Road, Charles Town, West Virginia, 25414 in response to a request for proposals (RFP) issued by the Federal Bureau of Prisons (BOP).

Although there is a need for a rehabilitation facility helping people transition from prison back to their hometowns in the region, MinSec will not be pursuing this opportunity at this time.

It is our understanding that the Federal Bureau of Prisons is still seeking an operator for RRC services in Northern West Virginia. We wish you the best, and will be back in touch if ever we reconsider establishing a facility in the area.

Sincerely,

Thomas Smith

Tom Smith
President

cc: Terence K. O'Hara, CFO
Kate Philips, VP of Marketing & Communications

WEST VIRGINIA LOTTERY
WEEKLY SETTLEMENT FOR CHARLES TOWN

		Week Ending
Week Ending Date		August 18, 2012
To be Deposited on:		August 24, 2012
Amount Played		68,350,142.28
Amount Won		61,145,084.49
Amount Promo		227,731.00
MWAP Contribution		5,360.98
Adjusted Gross Terminal Revenue		6,971,965.81
Administrative Costs @ 4%		278,878.64
Excess Lottery Fund @ 4%		0.00
Net Terminal Revenue		6,693,087.17
Surcharge @ 10%		0.00
State Share Excess @ 58%		0.00
Track Share of Capital Reinvestment @ 42%		0.00
Track Share of Capital Reinvestment @ 42% - 96%	$	-
Track Share of Capital Reinvestment @ 42% - 4%	$	-
Adjusted Net Terminal Revenue		6,693,087.17
Racetrack @ 46.50% / 42%		3,112,285.53
Lottery Fund @ 30% / 0%		2,007,926.12
Excess Lottery Fund @ 0% / 41%		0.00
Race Track Purses @ 7% / 14% / 8%		468,516.10
Workers' Compensation Debt Reduction @ 7% / 0%		468,516.10
Employee Pension Fund @ 1% / .5%		66,930.88
Greyhound Development @ .75%		50,198.15
Thoroughbred Development @ .75%		50,198.15
Racing Commission @ 1%		66,930.88
County/Municipality @ 2%		133,861.76
3% Funds:		
Tourism Promotion Fund @ 1.375%		92,029.95
Development Office Promotion Fund @ .375%		25,099.08
Research Challenge Fund @ .5%		33,465.44
Capitol Renovation and Improvement Fund @ .6875%		46,014.97
2004 Capitol Complex Parking Garage Fund @ .0625%		4,183.18
1% Funds:		
State Capitol Complex Parking Garage @ 1%		0.00
Cultural Facilities and Capitol Resources @ .5%		33,465.44
Capitol Dome and Capitol Improvements @ .5% / 1%		33,465.44
		6,693,087.17

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	$ -	$ -	$ -	$ -	$ -	$ -
07/14/12	$ 129,458.04	$ 129,458.04	$ -	$ -	$ -	$ -	$ -	$ -
07/21/12	$ 130,037.00	$ 130,037.00	$ -	$ -	$ -	$ -	$ -	$ -
07/28/12	$ 137,164.44	$ 137,164.44	$ -	$ -	$ -	$ -	$ -	$ -
08/04/12	$ 132,931.16	$ 132,931.16	$ -	$ -	$ -	$ -	$ -	$ -
08/11/12	$ 134,212.88	$ 134,212.88	$ -	$ -	$ -	$ -	$ -	$ -
08/18/12	$ 133,861.76	$ 110,241.90	$ 23,619.86	$ 1,934.47	$ 9,731.38	$ 529.08	$ 8,214.99	$ 3,209.94
Subtotal	$ 959,303.20	$ 935,683.34	$ 23,619.86	$ 1,934.47	$ 9,731.38	$ 529.08	$ 8,214.99	$ 3,209.94

Benchmark Goal @ 2% $ 912,063.48

Remainder until 1% / 1% Split $ -

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	07/03/2010	115,402.58	7/1-2/2011	69,824.12	07/07/2012	161,637.92
07/12/2008	176,592.38	07/11/2009	168,815.08	07/10/2010	205,731.64	07/09/2011	171,717.28	07/14/2012	129,458.04
07/19/2008	160,344.08	07/18/2009	160,652.98	07/17/2010	161,386.76	07/16/2011	143,019.52	07/21/2012	130,037.00
07/26/2008	162,982.74	07/25/2009	158,869.08	07/24/2010	160,368.28	07/23/2011	146,508.00	07/28/2012	137,164.44
08/02/2008	178,171.04	08/01/2009	174,493.08	07/31/2010	157,802.08	07/30/2011	144,510.28	08/04/2012	132,931.16
08/09/2008	123,538.04	08/08/2009	138,408.80	08/07/2010	136,494.98	08/06/2011	151,495.28	08/11/2012	134,212.88
08/16/2008	82,482.89	08/15/2009	81,222.14	08/14/2010	78,376.68	08/13/2011	117,350.38	08/18/2012	110,241.90
08/23/2008	76,426.18	08/22/2009	76,260.31	08/21/2010	76,199.02	08/20/2011	71,614.12		
08/30/2008	89,459.86	08/29/2009	80,472.92	08/28/2010	72,460.03	08/27/2011	63,432.14		
09/06/2008	91,644.46	09/05/2009	80,798.15	09/04/2010	76,362.84	09/03/2011	80,837.76		
09/13/2008	79,729.93	09/12/2009	86,286.92	09/11/2010	82,969.36	09/10/2011	84,845.80		
09/20/2008	71,269.36	09/19/2009	70,010.15	09/18/2010	67,638.78	09/17/2011	66,748.62		
09/27/2008	79,735.73	09/26/2009	69,316.87	09/25/2010	70,435.06	09/24/2011	68,929.80		
10/04/2008	75,186.22	10/03/2009	72,286.04	10/02/2010	71,013.86	10/01/2011	68,871.64		
10/11/2008	77,139.04	10/10/2009	69,650.63	10/09/2010	69,311.50	10/08/2011	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		
11/01/2008	68,352.42	10/31/2009	64,528.30	10/30/2010	65,615.04	10/29/2011	60,507.98		
11/08/2008	70,823.02	11/07/2009	63,741.59	11/06/2010	61,337.62	11/05/2011	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		
12/06/2008	55,696.68	12/05/2009	51,006.51	12/04/2010	53,215.08	12/03/2011	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		
01/03/2009	96,504.65	01/02/2010	92,980.40	01/01/2011	85,152.12	12/31/2011	94,661.00		
01/10/2009	53,286.62	01/09/2010	55,020.46	01/08/2011	54,301.30	01/07/2012	74,863.40		

01/17/2009	56,068.87	01/16/2010	60,551.28	01/15/2011	54,005.90	01/14/2012	58,901.92
01/24/2009	71,474.63	01/23/2010	69,943.53	01/22/2011	60,924.74	01/21/2012	61,819.92
01/31/2009	61,089.80	01/30/2010	48,527.75	01/29/2011	48,036.94	01/28/2012	62,898.78
02/07/2009	83,539.63	02/06/2010	37,155.14	02/05/2011	60,777.44	02/04/2012	72,154.66
02/14/2009	76,054.44	02/13/2010	44,334.00	02/12/2011	67,471.84	02/11/2012	66,429.04
02/21/2009	91,838.41	02/20/2010	76,946.12	02/19/2011	72,018.54	02/18/2012	77,455.88
02/28/2009	80,806.88	02/27/2010	72,024.40	02/26/2011	75,544.02	02/25/2012	77,611.78
03/07/2009	48,837.13	03/06/2010	76,936.85	03/05/2011	74,535.34	03/03/2012	75,963.86
03/14/2009	96,025.39	03/13/2010	71,007.37	03/12/2011	66,979.48	03/10/2012	76,808.62
03/21/2009	79,002.82	03/20/2010	74,335.38	03/19/2011	73,113.26	03/17/2012	76,883.92
03/28/2009	79,250.83	03/27/2010	69,941.88	03/26/2011	68,490.80	03/24/2012	72,108.36
04/04/2009	75,968.30	04/03/2010	70,636.28	04/02/2011	70,846.58	03/31/2012	74,244.22
04/11/2009	75,964.94	04/10/2010	69,692.79	04/09/2011	67,076.78	04/07/2012	75,382.98
04/18/2009	80,598.22	04/17/2010	69,335.92	04/16/2011	64,698.56	04/14/2012	71,065.34
04/25/2009	75,571.46	04/24/2010	68,714.11	04/23/2011	67,674.14	04/21/2012	68,055.08
05/02/2009	73,957.05	05/01/2010	68,799.06	04/30/2011	66,807.50	04/28/2012	72,880.66
05/09/2009	76,697.22	05/08/2010	67,403.54	05/07/2011	66,379.74	05/05/2012	71,582.30
05/16/2009	71,925.70	05/15/2010	70,186.32	05/14/2011	66,699.76	05/12/2012	63,357.92
05/23/2009	81,395.43	05/22/2010	64,695.71	05/21/2011	63,210.44	05/19/2012	78,984.36
05/30/2009	82,161.55	05/29/2010	67,157.40	05/28/2011	64,724.06	05/26/2012	67,396.24
06/06/2009	74,895.74	06/05/2010	77,371.80	06/04/2011	74,952.34	06/02/2012	76,959.44
06/13/2009	67,327.23	06/12/2010	66,106.29	06/11/2011	62,203.12	06/09/2012	63,584.86
06/20/2009	75,500.53	06/19/2010	64,888.48	06/18/2011	61,200.76	06/16/2012	59,436.12
06/27/2009	67,354.10	06/26/2010	63,950.29	06/25/2011	65,470.44	06/23/2012	55,921.30
6/30/2009 ***	32,059.58	06/30/2010	29,667.19	06/30/2011	34,351.16	06/30/2012	58,207.40
TOTALS	**4403564.04**		**4041141.56**		**4016541.01**		**4124906.8**

935683.34

Table Game Revenue

Date	Amount
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
Total 2010-2011	1297391.7

Date	Amount
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
June, 2012	129,235.38
Total 2011-2012	1602900.84

Date	Amount
July, 2012	138,663.64
Total 2011-2012	138663.64

WEST VIRGINIA LOTTERY
WEEKLY SETTLEMENT FOR CHARLES TOWN

Week Ending Date		**Week Ending August 25, 2012**
To be Deposited on:		**August 31, 2012**
Amount Played		**68,791,249.08**
Amount Won		**61,639,719.19**
Amount Promo		**249,100.00**
MWAP Contribution		**5,565.30**
Adjusted Gross Terminal Revenue		**6,896,864.59**
Administrative Costs @ 4%		**275,874.59**
Excess Lottery Fund @ 4%		**0.00**
Net Terminal Revenue		**6,620,990.00**
Surcharge @ 10%		**0.00**
State Share Excess @ 58%		**0.00**
Track Share of Capital Reinvestment @ 42%		**0.00**
Track Share of Capital Reinvestment @ 42% - 96%	$	-
Track Share of Capital Reinvestment @ 42% - 4%	$	-
Adjusted Net Terminal Revenue		**6,620,990.00**
Racetrack @ 46.50% / 42%		**3,078,760.35**
Lottery Fund @ 30% / 0%		**1,986,296.99**
Excess Lottery Fund @ 0% / 41%		**0.00**
Race Track Purses @ 7% / 14% / 8%		**463,469.30**
Workers' Compensation Debt Reduction @ 7% / 0%		**463,469.30**
Employee Pension Fund @ 1% / .5%		**66,209.90**
Greyhound Development @ .75%		**49,657.43**
Thoroughbred Development @ .75%		**49,657.43**
Racing Commission @ 1%		**66,209.90**
County/Municipality @ 2%		**132,419.80**
3% Funds:		
Tourism Promotion Fund @ 1.375%		**91,038.61**
Development Office Promotion Fund @ .375%		**24,828.71**
Research Challenge Fund @ .5%		**33,104.95**
Capitol Renovation and Improvement Fund @ .6875%		**45,519.31**
2004 Capitol Complex Parking Garage Fund @ .0625%		**4,138.12**
1% Funds:		
State Capitol Complex Parking Garage @ 1%		**0.00**
Cultural Facilities and Capitol Resources @ .5%		**33,104.95**
Capitol Dome and Capitol Improvements @ .5% / 1%		**33,104.95**
		6,620,990.00

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	$ -	$ -	$ -	$ -	$ -	$ -
07/14/12	$ 129,458.04	$ 129,458.04	$ -	$ -	$ -	$ -	$ -	$ -
07/21/12	$ 130,037.00	$ 130,037.00	$ -	$ -	$ -	$ -	$ -	$ -
07/28/12	$ 137,164.44	$ 137,164.44	$ -	$ -	$ -	$ -	$ -	$ -
08/04/12	$ 132,931.16	$ 132,931.16	$ -	$ -	$ -	$ -	$ -	$ -
08/11/12	$ 134,212.88	$ 134,212.88	$ -	$ -	$ -	$ -	$ -	$ -
08/18/12	$ 133,861.76	$ 110,241.90	$ 23,619.86	$ 1,934.47	$ 9,731.38	$ 529.08	$ 8,214.99	$ 3,209.94
08/25/12	$ 132,419.80	$ 66,209.90	$ 66,209.90	$ 5,422.59	$ 27,278.48	$ 1,483.10	$ 23,027.80	$ 8,997.93
Subtotal	$ 1,091,723.00	$ 1,001,893.24	$ 89,829.76	$ 7,357.06	$ 37,009.86	$ 2,012.18	$ 31,242.79	$ 12,207.87

Benchmark Goal @ 2% $ 912,063.48

Remainder until 1% / 1% Split $ -

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	07/03/2010	115,402.58	7/1-2/2011	69,824.12	07/07/2012	161,637.92
07/12/2008	176,592.38	07/11/2009	168,815.08	07/10/2010	205,731.64	07/09/2011	171,717.28	07/14/2012	129,458.04
07/19/2008	160,344.08	07/18/2009	160,652.98	07/17/2010	161,386.76	07/16/2011	143,019.52	07/21/2012	130,037.00
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08/09/2008	123,538.04	08/08/2009	138,408.80	08/07/2010	136,494.98	08/06/2011	151,495.28	08/11/2012	134,212.88
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09/06/2008	91,644.46	09/05/2009	80,798.15	09/04/2010	76,362.84	09/03/2011	80,837.76		
09/13/2008	79,729.93	09/12/2009	86,286.92	09/11/2010	82,969.36	09/10/2011	84,845.80		
09/20/2008	71,269.36	09/19/2009	70,010.15	09/18/2010	67,638.78	09/17/2011	66,748.62		
09/27/2008	79,735.73	09/26/2009	69,316.87	09/25/2010	70,435.06	09/24/2011	68,929.80		
10/04/2008	75,186.22	10/03/2009	72,286.04	10/02/2010	71,013.86	10/01/2011	68,871.64		
10/11/2008	77,139.04	10/10/2009	69,650.63	10/09/2010	69,311.50	10/08/2011	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		
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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		
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01/10/2009	53,286.62	01/09/2010	55,020.46	01/08/2011	54,301.30	01/07/2012	74,863.40		

01/17/2009	56,068.87	01/16/2010	60,551.28	01/15/2011	54,005.90	01/14/2012	58,901.92
01/24/2009	71,474.63	01/23/2010	69,943.53	01/22/2011	60,924.74	01/21/2012	61,819.92
01/31/2009	61,089.80	01/30/2010	48,527.75	01/29/2011	48,036.94	01/28/2012	62,898.78
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04/04/2009	75,968.30	04/03/2010	70,636.28	04/02/2011	70,846.58	03/31/2012	74,244.22
04/11/2009	75,964.94	04/10/2010	69,692.79	04/09/2011	67,076.78	04/07/2012	75,382.98
04/18/2009	80,598.22	04/17/2010	69,335.92	04/16/2011	64,698.56	04/14/2012	71,065.34
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TOTALS	**4403564.04**		**4041141.56**		**4016541.01**		**4124906.8**

1001893.24

Table Game Revenue

Date	Amount
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December, 2010	118,721.11
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May, 2011	130,492.02
June, 2011	121,576.41
Total 2010-2011	1297391.7

Date	Amount
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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
June, 2012	129,235.38
Total 2011-2012	1602900.84

Date	Amount
July, 2012	138,663.64
Total 2011-2012	138663.64

CCAWV COUNTY COMMISSIONERS' ASSOCIATION OF WEST VIRGINIA
County Government Works

2309 Washington Street, East
Charleston, WV 25311
E-mail: info@ccawv.org
Phone: (304) 345-4639
Fax: (304) 346-3512

August 13, 2012

To: All County Commissioners' & Staff:

It's time to make plans to attend the County Commissioners' Association of WV's Fall Board & Legislative Committee meeting scheduled for September 16-17, 2012, at The Inn at Charles Town, Charles Town, WV. A block of rooms have been reserved at $83.00 per night. Reservations should be made by calling The Inn at Charles Town at 1-304-885-5800. **September 2nd is the reservation cut-off date.** Check in time on Sunday is after 3:00 p.m. and checkout is 11:00 a.m.
Following is the "tentative meeting schedule..."

Sunday – Sept. 16, 2012
4:00 p.m.-6:00 p.m. - Legislative Meeting
7:00 p.m. - Dinner

Monday –Sept. 17, 2012
8:30 a.m. - 9:00 a.m. - Breakfast
9:00 a.m.-12:00 p.m. – CCA Board Meeting
12:00 noon- Lunch
1:30 p.m. – 5:00 p.m. – CCA Board Meeting continued

The registration fee for the board meeting will be $125.00 per county attendee/ $60.00 for guests. Registration for guests includes dinner, breakfast and lunch. Please clip the registration form below and return to this office by September 7, 2012 or fax your registration to 304-346-3512.

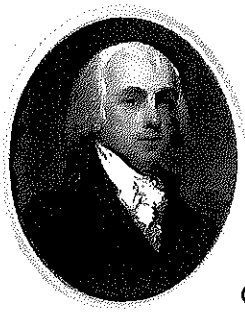
***Cancellation Policy:** There will be no penalty for cancellations received on or before September 9, 2012! September 10, 2012, and there after, all no-shows will be charged the full registration amount. We apologize for the need to adopt this policy, but on this date, the costs for room rentals, refreshments, etc. are incurred on your behalf even when you cancel and the Association is stuck with covering the cost. Thanks for your cooperation!*

Name _____ Title _____ County _____

_____ I will attend Fall Board & Legislative Mtg./ Bill my County $125.00 Registration Fee
_____ I will attend/ Check enclosed for $125.00 Registration Fee
_____ I am unable to attend

_____ My Guest(s) will attend
Name
_____ Will pay ($60.00 per guest) at door (Includes Dinner on Sunday and lunch on Monday)
_____ Check for Guest(s) enclosed ($60.00 per guest)

The Friends of Happy Retreat
cordially invite you to attend a buffet dinner and
Gala Celebration
in honour of the
two hundred and eighteenth
wedding anniversary of



James Madison
and
Dolley Payne Todd



on Saturday, the fifteenth of September
two thousand and twelve
at five o'clock in the afternoon

Harewood
8382 Middleway Pike
Charles Town, West Virginia

)uilt in 1770 by Samuel Washington, George Washington's
ther, was then the home of Dolley's sister, Lucy Payne
who had married Samuel's son, George Steptoe
The marriage of James Madison and Dolley Payne
ace in the elegant paneled drawing room at Harewood
er 15th, 1794, which today remains nearly untouched
me.

is limited for this rare chance to relive history. Table
; are available for $1000 which includes a table for eight
:ion in the program for the evening. Individual tickets
; at $100 per person and will be sold on a first come, first
Seating is limited to 210.

:es will be served from five to six o'clock, followed by a
t at six o'clock in the evening. For further information
)ur website http://www.happyretreat.org/.

this event will benefit Friends of Happy Retreat and its effort to secure
)f Happy Retreat, the 1780 home of Charles Washington, founder of
and brother of George and Samuel Washington.

WVACo
The County Line
A monthly publication of the West Virginia Association of Counties
JULY 2012 | Number 193

INFORMATION SHARED AT HEALTHY COMMUNITIES CONFERENCE

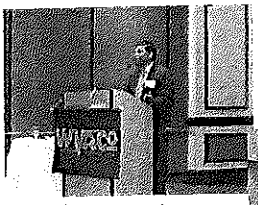
Over 50 County, Municipal, and Health officials came together for a 1½ day conference emphasizing the leadership role that local government can take to "make the healthy choice the easy choice." Kate Long, writer of *"The Shape We're In"* series for *The Charleston Gazette* opened the conference with her findings about the state of West Virginia's health and what counties and communities are already doing about it. The focus of the conference was to promote leadership and partnership for solutions rather than stating the problems. The West Virginia Association of Counties has partnered with The West Virginia Municipal League, The Charleston Gazette and the WVU Extension Service to bring the county and community component to the health issues facing WV. Speakers shared information about resources and funding opportunities that are available to local government. Sue Polis provided a national perspective from the Trust for America's Health in Washington, DC while Chris Danley "took it to the streets" in a walk around Charleston to point out walkability issues in the built community. Danley is CEO of Vitruvian Planning based in Idaho.



Chris Danley, Vitruvian



Shannon Holland



Dr. Gupta



Local Government, Health Agencies, and several elected officials

INTERIM HIGHLIGHTS

July's interim session was rather quiet since many legislators will be coming back to town at the end of July for the Southern Legislative Conference hosted this year by West Virginia's Legislature. Topics included:

Senate Judiciary heard several presentations regarding **DUI offenses** including an overview of current administrative suspension process, coordination with other jurisdictions, criminal prosecutions, tracing of repeat offenders, and conviction of criminal offenses. Steve Dale, Deputy DMV Commissioner, reviewed the administrative process. State Police Captain Corsaro discussed criminal prosecution record verification and reporting of DUI arrests and convictions. He told the committee that they search the DMV registry and do a criminal history check. John Hackney, Director of the Office of Adminstrative Hearing, reviewed their hearing process and statistics on hearings. *Michael Sparks, Mingo County Prosecutor,* discussed the prosecution of DUI cases, plea bargaining and treatment of prior offenses. He emphasized that pills and prescription drugs are as big or a bigger problem than alcohol and that legal steps to test for drugs are needed.

The Joint Committee on Health addressed **Obesity in WV – Policy, System & Environmental Changes.** Policy makers were told that if they could find ways to encourage each West Virginian eat 5 servings of fruits and vegetables a day, reduce tobacco use, and get 30 minutes of physical activity a day, they could help reduce Type II diabetes and cardiovascular disease significantly. Looking at the built community was also emphasized, such as funding for trails and walkways to work and school. West Virginia is second in the nation in physical *inactivity.* Dr. Eloise Elliott of WVU told the committee, "It is everyone's responsibility to change the culture."

Continued to Page 6

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THE President's View

Greetings to my fellow elected official across the great state of West Virginia. As we have endured the inconveniences of storms, power outages, and extreme heat, I am once again reminded of the strength of family, friends, and community. I was one of the fortunate ones who had no power loss, and was able to open up my home to family and friends for hot showers, meals, and last but not least, air conditioning! I am sure many of you were going through the same things, and I hope and pray that things have returned to the normal hustle in bustle of everyday activities. Many of the staff and my office were without power for over a week, and some services such as phone and cable have yet to be restored, but they like

Continued to Page 2

WVACo Board of Directors

PRESIDENT		
Jeff Waybright	Jackson County Clerk	373-2258
IMMEDIATE PAST PRESIDENT		
Jerry Berry	Summers County Commission	466-7100
VICE PRESIDENTS		
Chris Kessler	Marshall County Assessor	845-1490
Betsy Castle	Preston County Circuit Clerk	329-0047
Donnie Tenney	Upshur County Commissioner	472-0535
Donnie Evans	Monroe County Clerk	772-3096
Michael Sparks	McDowell County Prosecutor	235-0350
Jim Childers	Greenbrier County Sheriff	647-6613
COMMISSIONERS		
Larry Barnhart	Pleasants County	684-3542
Nancy Cartmill	Cabell County	526-8634
Mike Taylor	Randolph County	636-2057
Patrick Boyle	Lewis County	269-8200
COUNTY CLERKS		
Sue Morgan	Pleasants County	684-3542
Janice Cosco	Marion County	367-5445
Diana Cromley	Mason County	675-1997
Jamie Six	Wood County	424-1850
ASSESSORS		
Steve Keadle	Greenbrier County	647-6613
Cheryl Romano	Harrison County	624-8510
Helen Phillips	Upshur County	472-4650
Arlene Mossor	Ritchie County	643-2164
CIRCUIT CLERKS		
Donnie Kopp	Harrison County	624-8729
Brenda Miller	Ohio County	234-3611
Sue Ann Zickefoose	Boone County	369-7321
Virginia Sine	Berkeley County	264-1918
PROSECUTING ATTORNEYS		
Rick Staton	Wyoming County	732-8000
Chris Chiles	Cabell County	526-8653
Gerald Hough	Gilmer County	462-7007
Leckta Poling	Barbour County	457-1611
SHERIFFS		
Vince Shambaugh	Morgan County	258-1067
Tom McComas	Cabell County	526-8663
John Hawkins	Barbour County	457-2352
Steve Tanner	Raleigh County	255-9195
DIRECTOR EMERITUS		
Dana Lynch	Webster County Assessor	847-2110
Barbara Core	Marion County Circuit Clerk	367-5360
John Gruzinskas	Marshall County Sheriff	843-1552
Jean Friend	Monongalia County Circuit Clerk	291-7240
David "Bugs" Stover	Wyoming County Circuit Clerk	732-8000
Bob Pasley	Wayne County Commissioner	272-6350

WVACo

The County Line

WEST VIRGINIA ASSOCIATION OF COUNTIES
2211 WASHINGTON STREET, EAST
CHARLESTON, WV 25311

TELEPHONE (304) 346-0591 I FAX (304) 346-0592
EMAIL: WVACO@WVACO.ORG I WEBSITE: WW.WVCOUNTIES.ORG

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Affiliated members, & other interested parties.

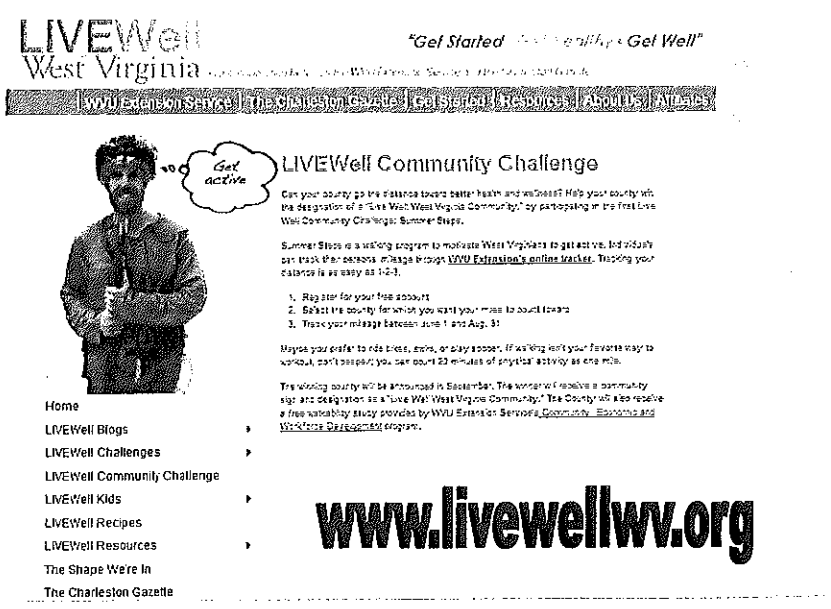
Patti Hamilton **EXECUTIVE DIRECTOR**
Kathy Yates **MEMBER SERVICES COORDINATOR**
Crystal Young **EXECUTIVE ASSISTANT**
Jack C McClung **LEGAL COUNSEL**

THE President's View

many others have just kept plugging away. Such is life in rural West Virginia, and I wouldn't trade it for anything. I also hope that the summer has brought a little rest and relaxation to each and every one. We all need time away to get recharged both mentally and physically. As an association we have much work to do between now and the next legislative session, and by working together, I believe we will see much accomplished. I wish you all a great rest of the summer, and am looking forward to seeing you at various meeting in the future. May God Bless each and every one.

Jeff Waybright

LOG YOUR MILES



Fayette County -





Perched on a high-cut stone foundation, the Whipple Company Store is one of few remaining wooden coal company stores. The unique architecture (a six-sided first floor topped by an octagon-shaped second floor) and interesting history make it an essential stop along the "journey through the coalfields." The business was built by coal operator Justus Collins in the early 20th century as the commercial and social center of the community.

WEST VIRGINIA FAIRS & FESTIVALS



Cherry River Festival
July 27-Aug 4
Nicholas

Tri County Fair
July 28—Aug 4
Grant, Hardy, Pendleton

Annual WV Hot Dog Festival
July 28
Cabell

WV State Water Festival
July 30—Aug 5
Summers

Mercer County Fair
Aug 3—4
Mercer

Multifest
Aug 3—5
Kanawha

Monongalia County Fair
Aug 6-11
Monongalia

Tyler County Fair
Aug 6-11

Huntington Rib & Music Fest
Aug 9-12
Cabell

State Fair of West Virginia
Aug 10—18
Greenbrier

Doddridge County Fair
Aug 21-25
Doddridge

WV Honey Festival
August 25—26
Wood

WV Italian Heritage Festival
Aug 31—Sept 2
Harrison

How's Your WV—IQ?

Answers on Page 7

1. What county is the largest by area in WV?
   (a) Wood (b) Mason
   (c) Cabell (d) Randolph

2. What is the second largest city in WV?
   (a) Huntington (b) Parkersburg
   (c) Wheeling (d) Charleston

3. In what county was the first natural gas well drilled ?
   (a) Monroe (b) Kanawha
   (c) Nicholas (d) Wirt

4. What county has the oldest town in WV?
   (a) Boone (b) Summers
   (c) Jefferson (d) Wyoming

5. West Virginia land area is 24,078 sq. miles.
   (a) True (b) False

6. West Virginia borders five states.
   (a) True (b) False

7. West Virginia's state beverage is milk.
   (a) True (b) False

Grants to promote physical activity in your WV community are now available!





Applications for Communities on the Move! (COM) Grants, a program of West Virginia on the Move (WVOM), are now available.

COM grants are offered to promote community-based social support projects that will increase physical activity opportunities and participation levels of WV citizens.

Application **deadline is August 15, 2012** and grants are available from **$3,000 to $5,000**.

COM Application & Guidelines can be **downloaded at** www.wvonthemove.net or **requested by email** from ***sholland@wvonthemove.net*** .

Funding for this program was provided by The Benedum Foundation.

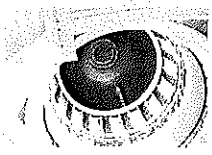
"A lot of people get impatient with the pace of change." JAMES LEVINE

Calendar of Events

AUGUST 5-8, 2012	**County Commissioners Association Annual In-Service of WV** ***Mountaineer, Hancock County***
AUGUST 12-15, 2012	**WV Association of Circuit Clerks** ***Waterfront Place, Monongalia County***
SEPTEMBER 16-18, 2012	**WV Sheriffs Association In-Service Training** ***Snowshoe Mtn. Resort, Pocahontas County***
SEP# 30—OCT 2, 2012	**WVACo Fall Board Meeting Stonewall Resort, Lewis County**
MARCH 10-12, 2013	**WVACo ANNUAL CONFERENCE Charleston Embassy Suites, Kanawha County**

LEGISLATIVE INTERIM CALENDAR

AUGUST	13-15
SEPTEMBER	10-12
OCTOBER	8-10
NOVEMBER	26-28
DECEMBER	10-12
JANUARY	7-9



SESSION STARTS ***February 13***

FEBRUARY 13 LEGISLATURE CONVENES

SEND RECIPES

Senators - Delegates

County Officials

Friends - Family - Employees

Fax: 304-346-0592 ***Email: kathy@wvaco.org***

SEND US RECIPES

MEMBER PROFILE:
VIRGINIA SINE
Berkeley County Circuit Clerk



Years in office: *4th term in Office, Started working in the Circuit Clerk's Office in 1996*

Education: **My favorite sport is:** *high school graduate and haven taken classes in cake, candy making and cooking for the catering busine I had. I received certification and highest merit award in WVU Leadership.*

The hardest thing I have done: *is bury my parents.*

You would be surprised to know: *That I started working in the Sheriff's Tax Office in January 1965. I went to work in the County Clerk's Office for the month and in February for the Board of Equalization.*

I'm most proud of: *my husband, daughter and granddaughter.*

My favorite meal is: *steak and salad.*

The last book I read was: *Supreme Court updates and Patti keeps us busy reading about new changes so I don't have much time to read anything else.*

Three people (living or dead) I'd invite to dinner: *are my parents and grandparents.*

My favorite movie is: *Christmas movies*

My favorite music is: *is from the 1950's and 1960's*

My pet peeve is: *the same people using the system over and over and not paying for the service they get.*

My motto is: *Always do the right thing and it will come back to haunt you and work will never hurt you.*

RECIPE OF THE MONTH
RHUBARB CAKE
RITCHIE COUNTY

1 1/2 cup sugar	1/2 cup margarine
1 egg	2 cups flour
1 tsp. soda	1 cup buttermilk
1 tsp. vanilla	1 1/2 cup rhubarb (cut fine)

Cream sugar and margarine, add 1 egg. Add alternately the flour, soda, buttermilk, vanilla, rhubarb, making sure dry ingredients are mixed in well. Pour into a greased 9 x 13 pan. Mix 1/4 cup sugar and 1 tsp. cinnamon. Sprinkle over cake batter. Bake @ 350 for 40 minutes. Serve with whipped cream if desired. It tastes like apple cake.

"Always remember the future comes one day at a time." DEAN ACHESON

2012 NACo CONFERENCE HELD IN PITTSBURGH

West Virginia had 21 delegates to the National Association of Counties (NACo) Annual Conference held July 13-17 in Pittsburgh, Allegheny County. NACo President Lenny Eliason opened the conference by talking about his health initiative that has been his focus for the year. Allegheny County's County Executive provided a welcome to the Pittsburgh/ Allegheny County region and discussed how changing to a County Executive/County Council form of government helped to revitalize Pittsburgh and the entire area.

Featured speaker Justice Sandra Day O'Connor told the audience how she began her career as a county attorney in San Mateo County, California, stating, "I loved my job. It was a great way to start my life and my career. It made me realize that at every level of government, we can make a difference." After 25 years on the Supreme Court, Justice O'Connor retired and has devoted time to the promotion of Civics in schools. "Our children need civic learning. They need to learn what a citizen does and how to engage with your government," explained O'Connor. She cited examples of the lack of Civics in school curricula today, stating "Less than one-third of 8th graders could identify the purpose of the Declaration of Independence and it's right there in the title!" Her collaboration with NACo has resulted in iCivics and she encouraged the audience to go to www.icivics.org and see the games available to middle school students.

Other conference speakers included Jay Wilkinson, author of "Dear Jay, Love Dad," letters to him written by his father, Coach Bud Wilkinson. Co-Authors of the book "Game Change provided insight into the 2012 Presidential campaign and Dave Barry closed the conference with humor.

NACo announced the hiring of the replacement for retiring Executive Director Larry Naake. Matt Chase will take over NACo's leadership at the end of the year. WVACo and CCAWV hosted the WV Delegation for a breakfast caucus and dinner at Atria's at PNC Park, a popular local chain.



Grants Available

The West Virginia Geological and Economic Survey (WVGES) will be administering $650,000 in grant funds for eligible entities to support broadband use and adoption throughout the state.

The WVGES Technical Assistance Grants Program is part of the State Broadband Data Development grant, under the direction of State GIS Coordinator Tony Simental. These grant opportunities are funded by the National Telecommunications and Information Administration (NTIA) as part of the American Recovery and Reinvestment Act of 2009. One of the goals of the Technical Assistance Grants Program is to make citizens aware of broadband services and Internet applications that are currently available, or due to become available, as broadband infrastructure is installed across the state.

Grants from the program are designed to target various sectors to strengthen West Virginia's ability to compete in an increasingly global online economy. The main sectors may include agriculture, energy & the environment, economic development, education, emergency services, public libraries, e-government, health care, public safety, and tourism.

Competitive grant funding is available in amounts ranging from $5,000 to $30,000 for broadband-based education, training and online application development. State, local and county government agencies, as well as non-profits, educational institutions, community organizations, and planning and economic groups, are eligible to receive funding. Individuals are not eligible to apply. Funded projects will have a year or less to complete their proposed milestones. Grant applications must be submitted by August 10, 2012 for consideration. The Notice Of Funds Availability (NOFA) and application forms may be downloaded from: http://www.wvbroadbandmap.org - and clicking on "Grants". If you have any questions, please contact Joe Mazgaj at 304-594-2331. Joseph M. Mazgaj WV Broadband Mapping Program WV Geological and Economic Survey Email: Joseph.M.Mazgaj@wv.gov Phone:304-594-2331 Fax: 304-594-2575

IT'S NOT TOO LATE TO START WALKING!



JOIN THE SUMMER STEPS PROGRAM FOR THE LAST MONTH OF SUMMER AND ENCOURAGE COUNTY EMPLOYEES & CITIZENS TO REGISTER THEIR STEPS AT WWW.LIVEWELLWV.ORG YOUR COUNTY CAN STILL WIN IF EVERYONE

"Many people think of changing the world, but few think of changing himself." LEO TOLSTOY

Continued from Page 1, INTERIM

Government Organization Committee heard a presentation on the **structure and authority of municipal government**, following a presentation last month about how counties are classified. The Municipal League told the committee that there are 232 municipalities with Thurmond, population 5, being the smallest, and Charleston the largest with population of just over 50,000. Charleston is the only Class I municipality. Class II municipalities have a population of more than 10,000 and there are 14; Class III is less than 10,000 but more than 2,000 while Class IV municipalities are called towns or villages and have less than 2,000 population. There are 5 forms of municipal government:

(1) mayor/council;
(2) strong mayor plan (most common)
(3) commission form (not being used by anyone now)
(4) manager plan
(5) manager/mayor plan.

The average number of council members is seven (7). The Home Rule Pilot Program was cited as a model project that was working well. What is not working well, the committee was told, are federal and state agencies that undermine municipal authority, blanket changes for all municipalities when only one problem area existed; and procedures used by the Ethics Commission.

There were several interim topics of interest to counties in June so this includes a summary of those interim sessions held at the end of June but were not included in the last newsletter:

▶ Melissa Smith, Executive Director of the **WV Courthouse Facilities Improvement Authority** (CFIA), talked about the need for **bonding authority** for her agency. She explained that the ability to issue bonds would allow them to do millions of dollars of improvements and enhancements. The Authority has about $2 million annually to provide in grants, primarily from fees from various courthouse transactions. If given bonding authority, they could turn $1 million of their revenue into $15 million.

▶ Mark Muchow, State Director of Revenue, explained to a Finance interim study committee that the **Homestead Exemption** is a part of our property tax system that is embedded in the Constitution. The Homestead Exemption, along with the low income tax credit on the first $20,000 and the "circuit breaker" tax credit provide property tax relief to senior citizens over age 65 and to disabled citizens. He provided a simple example to the committee: Fair market value of $100,000 x 60% = $60,000 - $20,000 homestead exemption = taxable value of $40,000 x tax rate of 1.18% (average) = gross tax of $472. He pointed out that location matters when calculating taxes due to the tax rate. For example, a tax payer age 65 or older with a $100,000 home in rural Barbour county will pay $254 in taxes while the same $100,000 home in Barboursville will see a tax of $685. He concluded by telling the committee that WV has one of the lowest residential property tax burdens in the country and half of all those with homestead exemption either pay no tax or have seen the value of their tax break more than double since 1984. He emphasized that expansion of current tax relief programs for senior citizens would result in further weakening local government finances.

▶ Judiciary Subcommittee C heard many presentations on the issue of **license suspensions**. *A representative from DMV told the committee that there are approximately 90,000 suspensions a year out of 1.3 million state drivers. Of those, 60,000 are for unpaid tickets; 10,000 for DUI; 9,000 for no insurance; 5,000 for driving while suspended or revoked; 1200 for student attendance; 500 for re-examinations; and 15 for unpaid child support, along with a few other reasons.* Of the 60,000 suspensions for unpaid tickets, 40% of those are for non-motor vehicle related offenses. DMV currently has 324,000 unpaid ticket files and 66,000 are over 10 years old. Municipal Courts have the ability to suspend drivers' licenses for municipal violations such as littering and the representative for the Municipal League told the committee that, while there was no problem with DMV cleaning up old uncollectible files, the ability to suspend licenses helped get court costs and fines paid. The WV Association of Counties told the committee that while many county-related programs such as Community Corrections are funded from these court costs, the incarceration of those with suspended licenses added to jail costs. A representative from the Supreme Court told the committee that unpaid fines and court costs totalled $7 million for 2010 in magistrate court alone. The committee is looking for ideas on how to collect these costs and the suggestion was made that when drivers renew their motor vehicle registration annually, unpaid fines and court costs could be checked and payment required for renewal.

One source One solution
METHOD 1
COMMUNICATIONS
Simplify the way you meet your telecommunications needs, contact..
DAVID FISHER 304.720.6460 888.720.6460
3324 Pennsylvania Avenue, Suite A, Charleston, WV 25302

CHANGE THE FUTURE WV TO HOLD REGIONAL MEETINGS

Making the Healthy Choice the Easy Choice

Change the Future WV is funded through the Communities Putting Prevention to Work Initiative of the Centers for Disease Control and Prevention. Five regional events will be held to share the results of six Mid-Ohio Valley counties using a new approach to promote healthy eating and physical activity. These communities are focusing on changing policies, systems and environments to make the healthy choice the easy choice.

Each regional event will be from 10 a.m. – 2 p.m. and lunch will be provided. Admission is free but registration is required at www.changethefuturewv.org or call 304-654-0875. The schedule is:

August 14 – Parkersburg, Grande Pointe Conference Center
August 20 – Huntington, Pullman Plaza Hotel
August 22 – Bridgeport, Bridgeport Conference Center
August 27 – Beckley, Glade Springs Resort
September 5 – Shepherdstown, Clarion Hotel & Conference Center

A State-wide event will be held September 17 at the Charleston Marriott Hotel and will be geared towards state-level and organizational leaders but all others are welcome to attend.



Mr. Matt Chase, 41, will assume the Executive Director role at NACo on September 17, 2012. As Executive Director, Mr. Chase will serve as the spokesman for NACo and America's counties; advocate before federal policymakers with aligned organizations and partners; and promote counties and county issues to the media on behalf of NACo's more than 2,400 members. He will also direct the operations, initiatives and staff of the association.

NACo National Association of Counties
The Voice of America's Counties



The membership of the National Association of Counties (NACo) recently elected Douglas County Commissioner Chris Rodgers as NACo president during the association's 77th Annual Conference and Exposition in Allegheny County/Pittsburgh.

First elected as Douglas County Commissioner in 2004 and reelected in 2008, Rodgers has been active in NACo since 2005. He was first elected as a NACo officer in July 2010 and has served in various leadership positions since, including chair of NACo's Finance Committee and vice chair of the Justice and Public Safety Steering Committee.

Rodgers has served as NACo's executive committee liaison to the Information Technology Committee and Rural Action Caucus Steering Committee, and as a member of NACo's Financial Services Center Advisory Committee, the Large Urban County Caucus, and the Next Generation NACo. He is also a member of the new Cybersecurity Task Force.

COUNTY WELLNESS.....

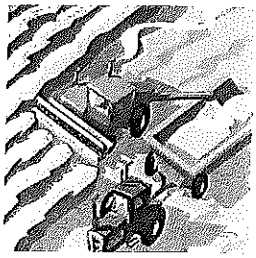
BENEFITS OF EATING LOCAL

It seems as if everyone is talking about eating food grown locally these days. The growing movement has even inspired a new word: "locavore", meaning someone who prefers food that hasn't moved a long distance to market. But does eating this way automatically mean that that you're eating healthier? Here's a quick look at this trend.

Is it more nutritious? Eating a balanced diet that includes plenty of produce has been linked to numerous health benefits, so it makes sense that buying food from nearby farms is a healthy move. One thing that's clear is that fresh food tends to have more nutrients than food that was picked days or weeks ago.

While the jury is still out on the specific health benefits of eating locally produced food, there's no question that choosing a bounty of fresh, unprocessed food is better for you than, say, grabbing a prepared meal high in sodium and fat from the freezer aisle of a supermarket.

Everyone can benefit from eating more fruit and vegetables, the cornerstone of most farmers markets. If you don't have one nearby or a local food section at your grocery store, consider joining a community supported agriculture program. You can look for a farmers market in your community at ***www.LocalHarvest.org.***





Test your WV-IQ:

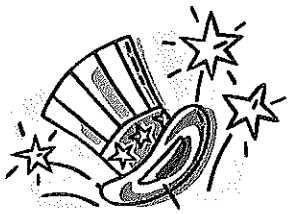
Answers for the quiz on page 3

1. **(d) Randolph County, 1,040 Sq. Miles**
2. **(a) Huntington, Cabell County**
3. **(b) Kanawha, Charleston, while drilling for salt mines.**
4. **(c) Jefferson, Shepherdstown, a German family settled in c.1730 and named it Mecklenburg**
5. **(a) True**
6. **(a) True, Ohio-Kentucky-Virginia-Maryland-Pennsylvania**
7. **(a) True, this is true**

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Direct to You

We were very proud to host the first-ever Healthy Counties Conference this month in Charleston. We had a mix of county, municipal and health officials and covered a variety of health-related topics. Many thanks go to our partners, The Charleston Gazette and WVU Extension Service, for getting us involved. Also thanks to our County Health Initiative Committee and Chairman Jerry Linkinogger. County officials can be leaders in making healthy choices the easy choices in their counties!

Patti



WE ARE WRAPPING UP THE RESEARCH ON THE WV COURTHOUSE BOOK AND ARE MAKING A FINAL ASSESSMENT - DID WE MISS ANY GREAT STORIES?

IF YOU HAVE A FACT OR STORY ABOUT YOUR COURTHOUSE - PLEASE SEND IT TO US BY AUGUST 15TH.

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West Virginia August, 2012
Ethics Reporter

Since the Last Reporter

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

At its August 2 meeting, the West Virginia Ethics Commission approved opinions relating to the permissibility of a prosecuting attorney holding office when his spouse is employed by that office, two opinions relating to the permissibility of an emergency services director contracting with the county to manage a federal grant and the permissibility of a public servant recommending a business or product, being a reference for a vendor and appearing in an advertisement for a business. In addition, the Commission rendered opinions addressing the permissibility of a legislator contracting with a regional educational service agency, the permissibility of local health department employees serving as members of a non-profit organization that distributes and oversees grant funding for their department, the permissibility of a mayor supervising his father and negotiating with a city employee union, and also voting on matters affecting his father while living with him, and finally, the permissibility of a vice president of a public university also serving on the board of a non-profit organization.

ADVISORY OPINION REPORT

Advisory Opinion 2012-21 concerned the permissibility of local health department employees serving as members of a non-profit organization that distributes and oversees grant funding to their department.

All local health departments in the state receive partial funding from a state agency, or from federal funds flowing through the state agency having liaison and oversight responsibilities for the local departments. The local health departments belong to a non-profit professional association to represent their interests and advance their profession.

Dues are paid by the members and the organization has a governing structure in place. Each of the organization's leadership positions is held by a local public health official.

The Association subsequently formed a separate non-profit organization for charitable, educational and scientific purposes

and is empowered to seek and award funds in these categories and in compliance with its mission.

The state agency overseeing local health departments received federal grants that were to be used for the benefit of the local entities, but with tight deadlines pending on the use of the funds, the state agency modified its normal process and entered into an agreement to place some of the federal funds under the control of the health departments' non-profit organization to expedite the spending. The non-profit then awarded the funds to local departments based on criteria it developed.

The agreement between the state agency and the non-profit organization contained specific prohibitions against conflicts of interest being present during the awarding of the funds. The non-profit awarded the funds notwithstanding these strictures.

Challenges from member local health departments to the process and amounts awarded ensued, with the non-profit modifying the grants to accommodate the challenges at one point. Significant disputes over the issue resulted in the matter being submitted to the Ethics Commission.

Of interest to the Ethics in reviewing this case were the provisions of 6B-2-5(b) prohibiting a public official from using their office for their own private gain or for the benefit of another, 6B-2-5(d) prohibiting a public official from having an interest in a contract over which they have control or authority and, 6B-2-5(j)(3) regarding the recusal of a public official from the decision-making process when a conflict arises.

In its opinion, the Commission determined that it was not permissible for the state agency to provide grant funds to the non-profit organization operated by local health departments and their employees for purposes of reallocating the funds through a process developed by the non-profit. The Commission ruled that this arrangement presented an "insoluble" conflict.

The Commission outlined a number of very limited circumstances in which the local health department non-profit organization could accept and award funding in the future. The Commission made this opinion applicable to future activities of the non-profit only.

Advisory Opinion 2012-24 concerned the permissibility of a mayor supervising his father and negotiating with a city employee union, and also voting on matters affecting his father while living with him.

The mayor was elected and took office on July 1. His father is an employee of the city's water department and is supervised by an individual who directly reports to the mayor. The mayor's father was formerly a member of the committee that negotiates a collective bargaining agreement with the city but has

resigned from that position in light of his son's election. The father is also member of the union's grievance committee for disputes arising under the group's contract with the city. The mayor has no authority independent of city council to make decisions relative to a contract or the resolution of grievances.

While the mayor and his father do not reside together, the opinion also seeks guidance on the potential permissibility of this arrangement should it occur.

The Commission analyzed the language of 6B-1-3(f) regarding the definition of immediate family, that of 6B-1-3(l) defining a relative, of 6B-2-5(b) prohibiting a public official from using their position to produce a private benefit for themselves or another, of 6B-2-5(d) prohibiting a public official from having an interest in a contract over which they have control (matters concerning employment excepted) or authority, of 6B-2-5(j) outlining the restrictions public officials face when voting on matters in which they have an interest, along with the Commission's legislative rules concerning nepotism found at WVCSR 158-6-3.

In its opinion, the Commission determined that it is permissible for the son to serve as mayor and for the father to remain employed by the city so long as the mayor does not supervise his father or takes action to approve actions determined by the father's immediate supervisor. Alternative procedures must be put in place to ensure that the mayor does not consider, even indirectly, matters concerning his father's position but the mayor may be involved in any matter affecting the city's employees generally.

This same guidance applies to matters involving the city's collective bargaining negotiations with the union.

Advisory Opinion 2012-28 concerned the permissibility of a prosecuting attorney holding office when his spouse is employed by that office.

The candidate for prosecutor is currently an assistant prosecutor and his wife also works in the office, where they met, married and have worked together for the past 13 years. If he is elected, the prosecutor pledges to not supervise his wife and to permit the county commission to set her salary.

The Ethics Commission examined the provisions of 6B-2-5(d)(1) prohibiting an elected official from having an interest in a contract over which they have direct authority or control, excepting the employment of any person with a governmental body. In addition, the Commission analyzed the language from Chapter 61-10-15 making it unlawful for a county officer to have any direct or indirect pecuniary interests in a contract over which they have voice, control or influence. The pecuniary interests prohibitions also contain language exempting the spouses of county

officials provided that they do not supervise or set the salary of the spouse and that they were not married prior to the assumption of office.

The Ethics Commission determined that there was no restriction in the Ethics Act against a prosecutor's wife being employed in the same office because a specific exemption is included in the law for employment.

In this case, the Commission reinforced its decision recently announced in **A.O. 2012-26**, which interpreted the employment exception included in 61-10-15 to exclude those marriages that were already in existence at the time one of the spouses ascended into an elected county office. Consequently, the Commission ruled in this instance that the presumptive prosecutor's spouse could not continue to work in that office should her husband be elected. The Commission further opined that the spouse could properly work in another county office without penalty.

Advisory Opinion 2012-29 concerned the permissibility of an emergency services director privately contracting with the county to manage a federal grant.

In this case, the requestor is a county emergency services director, a full-time, salaried position, who handles a number of duties for the county, including as the 911 director and floodplain permit officer.

The county has experienced consistent events of flooding and the director has been assigned by the county commission to serve as a liaison in applying for and administering various flood related disaster and mitigation funds awarded by the federal government. The county typically receives a grant administration fee for this work and the money has been used to offset salaries for affected county employees. Other counties use private vendors to administer these funds.

The county commission that employs the emergency services director changed its procedures and decided to retain a private vendor to manage one of its flood related grants and the director was the only person who applied for the position. The county commission executed a contract to that effect.

Part of the grant to be managed under this contract concerns a municipality that may have to apply for a floodplain permit.

The emergency services director states that the work required under the contractual relationship with the county for the flood grant management services will only be performed during times when he is not working full time for the county at his regular job.

The Ethics Commission analyzed the provisions of 6B-2-5(b) prohibiting public officials from using their offices to produce a private gain for themselves or another, the language of 6B-2-5(d)(1) and (3) which prohibits a public employee from having an interest in a contract

over which they have authority or control, but may recuse themselves from the decision-making and voting processes associated with such a contract in order to mitigate a potential conflict, along with the provisions found in Chapter 61-10-15 making it unlawful for a county officer to have direct or indirect pecuniary interests in a contract over which he has voice, influence or control.

In this case, the Ethics Commission found that any contractual relationship between the county emergency services director and the county commission for the purposes of managing flood related grants is a violation of the Ethics Act. The Commission stated that the director had been directly involved in securing and managing these funds previously and that duties required of the grant manager, and, therefore, the requisite amount of control and authority relative to the contract was present. Additionally, the Commission concluded that the arrangement would inevitably conflict with the emergency services director's regular duties since a floodplain permit would be required as a part of the grant management responsibilities at some point.

Advisory Opinion 2012-30 addressed the permissibility of an emergency services director privately contracting with a municipality to manage a federal grant. This request presumably comes from the same individual who was involved in the 2012-29 opinion just discussed.

In this instance, however, the county emergency services director seeks permission to serve as a grant manager for a municipality, which is not subject to the county's floodplain jurisdiction or his authority as the enforcer of these county rules.

The Ethics Commission again reviewed the language of 6B-2-5 (b)(1) prohibiting public officials from using their office to produce a private gain for themselves or another and the provisions of 6B-2-5(d)(1) prohibiting a public official from having an interest in a contract over which they have control and authority. The Commission also analyzed the provisions of Chapter 61-10-15 making it unlawful for a county officer to have direct or indirect pecuniary interests over contracts when they have voice, influence or control.

In this version of the case, the Commission ruled that because the municipality in question was not subject to the jurisdiction of the county or its emergency services director for purposes of floodplain regulation, and the director had no ability to influence the decisions of the municipality to award him a service contract, the proposed relationship is permissible. However, the Commission directed the requestor to obtain the permission of the county commission in this instance before the contract could become effective so that full discussion and disclosure about the unique nature of the

situation would be made clear.

Advisory Opinion 2012-31 addressed the question of the permissibility of a public servant recommending a business or product, being a reference for a vendor or appearing in an advertisement for a business.

The requester is an elected circuit clerk, whose office has a long standing vendor relationship with a software development firm. The vendor has widely distributed a promotional letter, using the clerk's name that could be interpreted as conveying an endorsement of the vendor. The clerk was not aware of this promotional mailing until after it was sent.

The Ethics Commission considered the language of 6B-2-5(b) prohibiting a public official from using their office to produce a private gain for themselves or another.

The Commission cited a long litany of previous Advisory Opinions prohibiting public employees or officials from endorsing a product or service, except in those cases (also noted in Advisory Opinions) where there was determined to be an overriding public benefit to providing such an endorsement.

In this specific instance, the Commission examined the advertising of the county vendor and determined that the clerk's name could not be associated with an endorsement since the advertising spoke to the attributes of the vendor and provided no overriding public benefit for the county.

The Commission did rule that the name of the county or county clerk could be used by the vendor within the context of being a "former customer" but could not provide a subjective endorsement in terms of the service or product that was provided to the county.

In general terms, the Commission opined that it could conceive of no potential circumstances where it would be permissible for a public official to appear in an ad promoting a company or service.

Advisory Opinion 2012-32 concerned the permissibility of a legislator contracting with a regional educational service agency.

The legislator also works as a county bus driver. Counties must train their own bus drivers or contract with regional education service agencies (RESA) for that service. In this instance, the legislator/driver is a certified trainer, and also contracts with a RESA to serve as a trainer. The RESA serves a total of six counties, including the one that employs the legislator/driver.

The legislator had no involvement in the decision by his school system to use the RESA's training services and the legislator provided his services to the RESA during times when he was not working for the county school system.

At this point, the legislator's county has chosen to move its driver training in-house

and he has been assigned to perform these duties as part of his normal work responsibilities, but the legislator still continues to contract with the RESA for the purpose of training drivers from other counties.

The Ethics Commission reviewed the provisions of 6B-2-5(b)(1) prohibiting public officials from using their offices to produce a private gain for themselves or others, and those found in 6B-2-5(d)(1) prohibiting a public official from having an interest in a contract over which they have control and authority. In addition, the Ethics Commission examined the applicability of the Chapter 61-10-15 prohibitions against school employees having a direct or indirect pecuniary interest in a matter over which they exercise voice, influence or control.

In its opinion, the Commission determined that it was permissible for a state legislator who is also a school bus driver to contract with a RESA as long as the legislator did not use his position to gain standing as a contractor or to generate preferences for the RESA to which he is contracted.

In addition, the Commission ruled that there was no potential violation of 61-10-15 either since the legislator/driver had no involvement at all in the decision-making of the county school system or the RESA relative to contracting and driver training.

Advisory Opinion 2012-33 addressed the permissibility of a vice president of a public university also serving on the board of a non-profit organization.

The university officer holds a finance-related position and has significant authority in that realm, including as a signor of checks. The same individual serves on the board of a local non-profit organization and also holds the role of being an authorized check signer with the group.

The university's various departments, from time to time, rent meeting space from the non-profit organization (without the involvement of the university officer) and he must sign the payments for these rentals. The university officer receives no compensation from the non-profit for his service and derives no benefits from the university's commercial rental of the organization's facilities.

The Ethics Commission analyzed 6B-2-5(b)(1) which prohibits a public official from using their position to produce a private gain for themselves or another.

In its opinion, the Commission ruled that there is no general prohibition against public officials simultaneously serving non-profit organizations in leadership positions when there is no compensation involved or expectations of benefit. This was found to be the case in this instance and the Commission opined that the university official could permissibly serve the non-profit group and the university without conflict.

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MISCELLANEOUS

NONE PUBLISHED

COUNTY GOVERNMENT

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WEST VIRGINIA
SECRETARY OF STATE

ADVISORY OPINION NO. 2012-28

Issued On August 2, 2012 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Candidate** for Prosecuting Attorney asks, if elected, whether his spouse may continue her employment with the Prosecuting Attorney's Office.

FACTS RELIED UPON BY THE COMMISSION

The Requester, an Assistant Prosecuting Attorney, is running for Prosecuting Attorney, and expects to be elected since he has no opposition in the general election. His wife has been employed by the Prosecuting Attorney's Office for 19 years. They worked together for approximately 13 years before marrying, and have worked together in the Prosecuting Attorney's Office ever since.

The Requester states that, if elected, the county commission will set his wife's salary, and that he will not supervise his wife.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(d)(1) provides in relevant part:

> [N]o elected ... official ... or member of his or her immediate family ... may be a party to or have an interest in ... a contract which such official ... may have direct authority to enter into, or over which he or she may have control: *Provided,* That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body.

W. Va. Code § 61-10-15 provides in part that:

> (a) It is unlawful for any member of a county commission, district school officer, secretary of a board of education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control: Provided, That nothing in this section prevents or makes unlawful the employment of the spouse of a member, officer, secretary, supervisor, superintendent, principal or teacher as a principal or

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teacher or auxiliary or service employee in the public schools of any county or prevents or makes unlawful the employment by any joint county and circuit clerk of his or her spouse.

...

(k) The provisions of subsection (a) of this section do not prevent or make unlawful the employment of the spouse of any member of a county commission as a licensed health care provider at government-owned hospitals or other government agencies who provide health care services....
(l) The provisions of subsection (a) of this section do not make unlawful the employment of a spouse of any elected county official by that county official: Provided, That the elected county official may not:

(1) Directly supervise the spouse employee; or

(2) Set the salary of the spouse employee: Provided, That the provisions of this subsection shall only apply to spouse employees who were neither married to nor engaged to the elected county official at the time of their initial hiring.

ADVISORY OPINION

Both the Ethics Act and W. Va. Code § 61-10-15, a criminal misdemeanor statute, prohibit public servants from being a party to, or having a financial interest in, a public contract over which their public positions give them control. The relevant provision in the Ethics Act further states, however, that the prohibition is not intended to apply to "the employment of any person with any governmental body". Thus, although there is nothing in the Ethics Act that prohibits a Prosecuting Attorney's spouse from being employed by the Prosecuting Attorney's Office, our inquiry does not end here.

The Commission must next analyze the application of W. Va. Code § 61-10-15, which is more comprehensive. It prohibits covered persons, including a Prosecuting Attorney, from having a personal financial interest, directly or indirectly, in public contracts over which his public position gives him voice, influence or control. Unlike the Ethics Act, it does not specifically make an exception for the employment of any person by any governmental body. It is a strict anti-nepotism provision which is more restrictive than the Ethics Act and only permits the employment of spouses or immediate family members in limited specific circumstances.

The Requester seeks to avail himself of the most recent amendment to W. Va. Code § 61-10-15, subdivision (l). This provision permits the continued employment of a spouse of a newly elected county official in that official's office when the elected official does not directly supervise his spouse or set her salary. The statute further provides, however, that this exception **only** applies to spouse employees who were neither married to nor engaged to the elected county official at the time of their initial hiring.

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In Advisory Opinion 2012-26, the Commission found that the exception created by this language does **not** extend to persons elected to office whose spouses are **already** employed by the County government or the County school system. Instead, this limited exception only applies to an elected official and her or his employee who, during the course of the employer/employment relationship, make the decision to get married, **not** to couples who were already married **before** the spouse of the county employee runs for county office. In reaching this conclusion, the Commission relied upon the Bill title which reads that one purpose of the Bill is to create "an exemption for certain spouses who were employed by the county prior to their engagement or marriage to a county official to county hiring prohibition." When there is ambiguity in a statute, it is appropriate to look at the title of the bill. West Virginia Health Care Cost Review Authority v. Boone Memorial Hospital, 472 S.E.2d 411 (W. Va. 1996). In arriving at this result, the Commission wrote:

> The Commission can only conclude that the Legislature reasoned that when a person is employed by county government, and the spouse considers running for county office, then the household jointly decides whether this decision is in the best interest of the household; particularly when the resulting consequence is that, if the candidate is successful, then the spouse will have to resign. In contrast, when two people fall in love on the job, the consequences may be viewed as more harsh if the law requires them to choose between marriage and one or the other vacating their current position or employment.[1]

As a result of the foregoing analysis, if the Requester becomes the elected Prosecuting Attorney, his spouse may **not** continue her employment with the Prosecuting Attorney's office.[2] Unlike the result in Advisory Opinion 2012-26, however, the Prosecuting Attorney's wife **may** be employed by another county office or agency[3] so long as she is chosen for such a position based on her experience and qualifications, not based on favoritism to the Requester.

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[1] By contrast, W. Va. Code § 6-10-1 states: "The employment of his wife at public expense by any official or employee of the state is expressly prohibited."

[2] Further, although the Ethics Commission is authorized to grant hardship exemptions to non-employment contracts pursuant to W. Va. Code § 61-10-15(h), that authority does **not** extend to employment contracts, as the Commission ruled in Advisory Opinion 2007-03.

[3] The nepotism/employment limitation only applies to spouse employees over whom the elected official exercises voice, influence or control. The Ethics Commission's advisory opinions have consistently held that county commissioners exercise voice, influence or control over **all** county offices. *See, e.g.* Advisory Opinions 95-24 (sheriff's office), By contrast, in Advisory Opinion 96-56 the Commission found that a Sheriff's spouse could work for a Magistrate. Still, any county official whose spouse is considering employment by the county, or is currently employed by the county should seek advice from the Ethics Commission to ensure that such employment complies with W. Va. Code § 61-10-15.

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This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.* and W. Va. Code § 61-10-15, and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.

Jonathan E. Turak, Acting Chairperson

COUNTY GOVERNMENT

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

ADVISORY OPINION NO. 2012-29

Issued On August 2, 2012 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Emergency Services Director** asks whether it is permissible to privately contract with the County to manage a federal grant given to the County for mitigation projects.

FACTS RELIED UPON BY THE COMMISSION

The Requester is the Director of Emergency Services for a County, a full-time, salaried position. As the Director, the Requester is responsible for overseeing multiple County programs and services. His duties further include serving as the 911 Director and the floodplain permit officer.

The stated mission of the County Emergency Services is "[t]o guide and assist in response and recovery in times of disaster in [the] County" as well as "[t]o manage development within the floodplain by enforcement of the floodplain ordinance and the teaching of safe and secure development practices." Additionally, as the floodplain permit officer, the Requester is charged with enforcing the County's floodplain ordinances; as well as the issuance of permits for construction in a floodplain.

Over the past several years, the County experienced damaging floods, and the County Commission sought State/Federal funding for mitigation projects. In particular, the County has sought and received multiple Hazard Mitigation grants. While not a specified responsibility, the Requester states that he typically works with the County in securing the grant. Often times, following a disaster, the State/Federal entities will notify affected Counties of the availability of funds. In the past, the County Commission has designated the Requester to take the necessary steps to secure the grant, and then report back to the County Commission for finalizing the grant (e.g. approval and signature). According to the Requester, the grants are 75% Federal and 25% State, and are overseen by the WV Division of Homeland Security and Emergency Management.

Typically, the mitigation projects include: (1) Acquisition/demolition (e.g. county acquiring a flood prone structure and demolishing the structure); (2) Elevation (e.g. raising a structure out of the flooding hazard while ensuring the lower part of the structure will allow for the unobstructed flow of water.); (3) Relocation (e.g. physically moving a structure out of the hazard area); and (4) Flood-proofing (e.g. making a structure more resistant to the effects of flooding).

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Under these grants, the County Commission serves as grantee and is responsible for overseeing/contracting with vendors to perform the various mitigation projects. As part of the oversight, the County typically is allocated a percentage of the grant for administration. Some counties use this administrative money to offset salaries for county employees that manage the mitigation projects as part of their county job duties/responsibilities.

Other counties contract with non-County government entities/individuals to manage the projects. In these situations, the entity/individual is treated as a vendor for purposes of the grant, and the entity/individual's services are invoiced and billed to the County. The County in turn pays the contractor from the allocated administrative percentage of the grant monies. The selection and payment of the project manager must comply with the grant guidelines, and the invoicing/payment is subject to oversight by the State in its role as Grantor.

The Requester's situation represents a hybrid of both practices. According to the Requester, the County sought and received a Hazard Mitigation Grant from the State/FEMA. According to the Requester, the County Commission desired to contract out the project manager position, and advertised for applicants. The Requester stated that he applied and was the only applicant.

As such, the County Commission executed a contract with the Requester to serve as the project manager under the Hazard Mitigation Grant. According to the Requester, his contractual role as the project manager is to administer the various mitigation projects through their completion. The Requester further states that the Municipality has historically only utilized the acquisition/demolition mitigation, and not the relocation or elevation mitigations. As a result, the Requester states that he has not yet sought or obtained a floodplain permit from the County for the mitigation projects.

The Requester states that he separates his project manager duties from his duties as Director of the County Emergency Services. In particular, he states that he works four 10 hour day shifts as the Director, and then performs his contractual work in the evenings and on days five and six of a typical week. He further states that he is compensated separately for the two jobs. With respect to his Director position, he is salaried employee of the County and paid from the County general fund. With respect to his contractual position, he states that he provides an invoice to the county for his contractual work, and is paid by the County, which in turn seeks reimbursement from the grant.

In light of his county position, the Requester desires to know whether it is permissible for him to contract with the County as the project manager.

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CODE PROVISIONS RELIED UPON BY THE COMMISSION

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

> A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.
>
> . . .
>
> The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

W. Va. Code § 6B-2-5(d)(1) reads in relevant part:

> [N]o elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control.

Further, W.Va. Code § 6B-2-5(d)(3) states:

> If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this section.

Finally, W.Va. Code § 61-10-15(a) reads, in pertinent part:

> It is unlawful for any member of a county commission, . . . or any other county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control…

ADVISORY OPINION

In establishing the Ethics Act, the Legislature sought to create a code of ethics to guide public officials and employees in their public employment. The expressed goal was to assist public servants in avoiding conflicts between their public service and any outside personal interests. W.Va. Code § 6B-1-2(d).

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In furtherance of this goal, the Legislature established certain limits and prohibitions to a public servant contracting with his/her own governmental entity. In particular, the Ethics Act prohibits public servants from having more than a limited interest in the profits or benefits of a public contract over which he or she has direct authority or control. W. Va. Code § 6B-2-5(d)(1). For purposes of this provision, a limited interest is defined as an interest which does not exceed one thousand dollars in the profits or benefits of the contracts in a calendar year. W.Va. Code § 6B-2-5(d)(2)(A).

Additionally, the Ethics Act prohibits public servants from using their public office for private gain, and from receiving compensation for "the performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services." W.Va.Code § 6B-2-5(b).

Given the overlap between the Requester's floodplain duties and the mitigation projects, the Commission hereby finds that the contract with the County is impermissible under the Ethics Act. Specifically, the Commission finds that the Requester has direct authority and control over the contract, and would be receiving compensation for the performance of usual and customary public duties in violation of W.Va. Code §§ 6B-2-5(d) and (b).

In reaching this conclusion, the Commission notes that the Requester was involved in the approval and securing of the grant, even though the Requester has no formal voting authority on the County Commission. In particular, the County Commission delegated the grant process to Requester. He was responsible for obtaining the grant guidelines and in preparing the grant application to the State/Federal entity. Additionally, there is a clear appearance of control over the county contract since Hazardous Mitigation Project grants are only issued upon declaration of an emergency, and the stated mission of the Director is to "[t]o guide and assist in response and recovery in times of disaster in [the] County".

Finally, since there is potential overlap between his County employment duties and the mitigation project, the project manager contract constitutes impermissible "compensation" for the performance of the usual and customary duties, as well as constituent services within the County. This is especially true when considering flood mitigation projects, where the project manager is also the floodplain officer delegated to enforce floodplain ordinances.

Accordingly, having established that the Requester has a prohibited financial interest and improperly derives private compensation for his usual and customary public duties under the Ethics Act, the Commission hereby concludes that it is impermissible for the Requester to contract with the County to be the project manager for the County's mitigation projects.

Having found the contract to be prohibited, the Commission need not address whether W.Va. Code § 61-10-15 (a criminal provision prohibiting certain County officials from having a financial interest in a public contract) is applicable.

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This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.* and W.Va. Code § 61-10-15, and does not purport to interpret other laws or rules. In accordance with W.Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.

Jonathan E. Turak
Acting Chairperson

COUNTY GOVERNMENT

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SECRETARY OF STATE

ADVISORY OPINION NO. 2012-30

Issued On August 2, 2012 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Emergency Services Director** asks whether it is permissible to privately contract with a Municipality within the County to manage a federal grant for mitigation projects.

FACTS RELIED UPON BY THE COMMISSION

The Requester is the Director of Emergency Services for a County, a full-time, salaried position. As the Director, the Requester is responsible for overseeing multiple County programs and services. His duties further include serving as the 911 Director and the floodplain permit officer.

The stated mission of the County Emergency Services is "[t]o guide and assist in response and recovery in times of disaster in [the] County" as well as "[t]o manage development within the floodplain by enforcement of the floodplain ordinance and the teaching of safe and secure development practices." Additionally, as the floodplain permit officer, the Requester is charged with enforcing the County's floodplain ordinances, as well as the issuance of permits for construction in a floodplain.

However, as the County floodplain officer, his jurisdiction does not include incorporated municipalities. Instead, some municipalities either choose not to adopt the County's floodplain ordinance or enact their own ordinances. The Requester states that the Municipality with which he has a contract has its own floodplain ordinance and floodplain officer. Hence, as the County floodplain officer, he has no authority or jurisdiction over the properties/structures within the Municipality.

Over the past several years, several municipalities within the County experienced damaging floods, and sought State/Federal funding for mitigation projects. In particular, the municipalities have sought and received multiple Hazard Mitigation grants. According to the Requester, the grants are 75% Federal and 25% State, and are overseen by the WV Division of Homeland Security and Emergency Management.

Typically, the mitigation projects include: (1) Acquisition/demolition (e.g. county acquiring a flood prone structure and demolishing the structure); (2) Elevation (e.g. raising a structure out of the flooding hazard while ensuring the lower part of the structure will allow for the unobstructed flow of water.); (3) Relocation (e.g. physically moving a structure out of the hazard area); and (4) Flood-proofing (e.g. making a structure more resistant to the effects of flooding).

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Under these grants, the Municipality, by and through its City Council, serves as grantee and is responsible for overseeing/contracting with vendors to perform the various mitigation projects. As part of the oversight, the Municipality typically is allocated a percentage of the grant for administration. Some municipalities use this administrative money to offset salaries for employees that manage the mitigation projects as part of their public job duties/responsibilities.

Other municipalities contract with entities/individuals to manage the projects. In these situations, the entity/individual is treated as a vendor for purposes of the grant, and the entity/individual's services are invoiced and billed to the Municipality. The Municipality in turn pays the contractor from the allocated administrative percentage of the grant monies. The selection and payment of the project manager must comply with the grant guidelines, and the invoicing/payment is subject to oversight by the State in its role as Grantor.

According to the Requester, a Municipality within the County in which he is employed as Director of Emergency Services sought and received a Hazard Mitigation Grant from the State/FEMA. According to the Requester, the Municipality desired to contract out the project manager position, and executed a contract with the Requester to serve as the project manager under the Hazard Mitigation Grant. According to the Requester, his contractual role as the project manager is to administer the various mitigation projects through their completion. The Requester further states that the Municipality has historically only utilized the acquisition/demolition mitigation, and not the relocation or elevation mitigations. As a result, he has not had to seek or obtain a floodplain permit from the Municipality for the mitigation projects.

The Requester states that he is not an employee of the Municipality, and has no existing financial relationship with the Municipality other than this contract. He further stated that he separates his project manager duties for the Municipality from his duties as Director of the County Emergency Services. In particular, he states that he works four 10 hour day shifts as the Director, and then performs his contractual work in the evenings and on days five and six of a typical week.

Additionally, the Requester states that he is compensated separately for the two jobs. With respect to his Director position, he is salaried employee of the County and paid from the County general fund. With respect to his contractual position, he states that he provides an invoice to the Municipality for his contractual work, and is paid by the Municipality, which in turn seeks reimbursement from the grant.

In light of his County Director position, the Requester desires to know whether it is permissible for him to contract with the Municipality to act as their Mitigation project manager.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

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

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> A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.
>
> . . .
>
> The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

W. Va. Code § 6B-2-5(d)(1) reads in relevant part:

> [N]o elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control.

Further, W.Va. Code § 6B-2-5(d)(3) states:

> If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this section.

ADVISORY OPINION

In establishing the Ethics Act, the Legislature sought to create a code of ethics to guide public officials and employees in their public employment. The expressed goal was to assist public servants in avoiding conflicts between their public service and any outside personal interests. W.Va. Code § 6B-1-2(d).

The Commission addressed a related situation in A.O. 2012-29, wherein the Commission was asked if the County Director of the Emergency Services could contract with the ***County*** to serve as the Mitigation project manager. The Commission held that the County Director had a prohibited financial interest in the contract, and concluded that the Director may not contract with the County. *See* A.O. 2012-29.

In this opinion request, the Commission is asked to consider whether the County Director may contract to serve as a ***Municipality's*** project manager.

Unlike in A.O. 2012-29, the Municipality is the grantee, and the Requester is not an employee of the Municipality. While the Requester does hold a County position, his contract is with a separate governmental entity than his employer (e.g. County Commission) or over which he has authority or control. In light of such, the

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Commission hereby finds, for purposes of the Ethics Act and W.Va. Code § 61-10-15, that the Requester does not possess a prohibited financial interest in the contract with the Municipality. Specifically, the Commission finds that, as the County Director, his position does not give him direct authority voice, influence, or control over the Municipality's decision relating to the grant money, and the expenditure thereof.

However, the Commission's consideration of the question does not end there. Rather, the Commission must analyze whether the contract with the Municipality constitutes an impermissible use of public office for private gain. W.Va. Code § 6B-2-5(b). In particular, the Commission must determine if the contract with Municipality constitutes "compensation" for "the performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services."

In A.O. 2012-29, the Commission found that that contracting to serve as project manager for a County mitigation project constituted impermissible "compensation" for the performance of the usual and customary duties associated with a County Director of Emergency Services, as well as constituent services within the County. In particular, the Commission noted:

> Finally, inasmuch there may overlap between his County position duties and the mitigation project, the contract position of the project manager constitutes impermissible "compensation" for the performance of the usual and customary duties, as well as constituent services within the County. This is especially true when considering flood mitigation projects, and the project manager is also the floodplain officer delegated to enforce floodplain ordinances.

A.O. 2012-29

To the extent the Requester seeks to contract with a governmental entity or municipality that falls under the County floodplain ordinance, and his County jurisdiction, the prohibition outlined in A.O. 2012-29 would be applicable. However, contracting with a Municipality within the County that does **not** fall under the County's floodplain jurisdiction presents a unique scenario.

Since he has no County public duties to the Municipality to enforce the floodplain, the Requester's contracting with a Municipality does not violate the compensation provision of W.Va.Code 6B-2-5(b). Accordingly, the Commission hereby holds that it is permissible for the Requester, as the County Director of Emergency Services, to contract with the Municipality to be the project manager for the Municipality's mitigation projects.

However, given the unique nature of this arrangement, the Commission directs the Requester to notify the County Commission of the contractual arrangement with the Municipality; to obtain their approval; and abide by any restrictions that the County Commission imposes. As the Commission has often noted, public agencies are free to impose stricter standards upon their employees than those outlined in the Ethics Act.

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The advisory opinion rendered herein is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester should contact us for further advice as it may alter the analysis and render this advice invalid. This advice is limited to the analysis of whether the Ethic Act would be violated by the proposed conduct. The Ethics Commission is without authority to determine whether other laws or rules, including the policies of the Requester's government agency prohibit or otherwise restrict the proposed conduct.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.* and W.Va. Code § 61-10-15, and does not purport to interpret other laws or rules. Due to the unique facts and situation presented, this opinion has no precedential effect and may not be relied upon in good faith by other public agencies.

Jonathan E. Turak
Acting Chairperson

COUNTY GOVERNMENT

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WEST VIRGINIA
SECRETARY OF STATE

ADVISORY OPINION NO. 2012-31

Issued On August 2, 2012 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Circuit Clerk** asks three questions:

1. Under what, if any, circumstances may a public servant recommend or allow a letter of support for a product, service or business?

2. May a public servant or public entity be listed by a vendor as a reference?

3. May a public servant appear, or a public servant or public entity be referenced in any way, in an advertisement for a product, service or business?

FACTS RELIED UPON BY THE COMMISSION

The Requester is an elected Circuit Clerk. Her office has a longstanding contract with a software development company (vendor) to provide various services related to information technology for the benefit of the office and the public. The vendor prepared a letter and company brochure describing the process he developed for the Circuit Clerk's office; he sent the letter and brochure to all West Virginia Circuit Clerks under the Requester's name and title and the Clerk's Office seal and address.

The letter's opening sentence reads: "Fellow Clerks; with regards to the current process underway to modernize the scanning and storing of court orders within the offices of the Circuit Clerks throughout the state of West Virginia, the enclose brochures and documentation demonstrates our position and commitment to this endeavor." The letter concludes: "I hope this information is helpful when considering changes within the Circuit Clerks offices and I would invite any suggestions, comments or concerns after reviewing this information."

Although the Requester approved the concept of the letter before it was mailed, she did not know that the vendor would use the seal and/or letterhead of her office.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b) provides:

> (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of

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> equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

ADVISORY OPINION

The Ethics Commission stated in Advisory Opinion 2007-02:

> The basic concept of the Ethics Act is that public servants may not use their public positions for their own private gain or the private gain of others. The Act's Legislative findings explain that the Act is intended to prevent public servants from using their public positions ".... to benefit narrow economic ... interests at the expense of the public at large ...."

The Ethics Act prohibits public officials from endorsing products. *See e.g.* Advisory Opinions 2000-19, 2000-21, 2002-18, 2005-02, 2005-10, 2007-02, and 2009-12. The Ethics Commission has consistently ruled that a public official may only endorse a product or service when there is an overriding public benefit. In Advisory Opinions 95-05, 95-28, and 05-04, the Commission authorized a public servant or agency to enter into arrangements that provided certain benefits to private businesses; in each case, the Commission found that the agreements involved an overriding public benefit sufficient to legitimize any resulting private gain. Thus, even where some element of private gain is involved, the Commission has discretion to conclude that the public benefit outweighs any potential for improper private gain. In each of those Advisory Opinions, the overriding public benefit arose in the context of an economic development initiative.

Question #1: Under what, if any circumstances may a public servant recommend or allow a letter of support for a product, service or business?

In Advisory Opinion 2000-19, a public employee asked if she could endorse a training program that she attended in the course of her employment. According to the facts set forth in the opinion:

> The employee coordinates a specialized law enforcement program for a State Agency. The employee received specialized training which provided a model for the specific program she subsequently adapted and implemented in West Virginia. The Trainer has asked the employee to provide a "letter of recommendation" for the training she received. Neither the employee nor the State Agency will receive any compensation for the recommendation provided. The Trainer plans to incorporate the

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> employee's comments into a brochure promoting future training sessions. The employee proposes to identify the training she received from the Trainer as a "blueprint for success" and give explicit credit to the Trainer in such terms as, "by following [the Trainer's] instructions, we feel that this . . . program works!!!!!!"

The Commission concluded that, notwithstanding the lack of compensation for the employee or the state agency, the proposed endorsement constituted the prohibited use of public office for private gain. The Commission found that such an endorsement would provide an indirect pecuniary benefit to the training program.

Here, the Requester wanted to share information with her fellow clerks about a company that she felt could provide a good service to them. Instead of generally describing a process, however, the mailing explicitly described the vendor's company and program. Under the particular facts presented, the Commission has carefully examined the potential for violating the Ethics Act. Inasmuch as there does not appear to be an overriding public benefit in the promotional material the vendor sent out under the Requester's name, title, seal and address, the Commission finds that it would violate the Ethics Act for the Requester to recommend or allow a letter of support for a product, service or business of an "interested person" as defined in the Ethics Act, since it would lend the prestige of the office to advance the vendor's private interest.

Question #2: May a public servant or public entity be listed by a vendor as a reference?

In Advisory Opinion 98-22, the Commission determined that no provision in the Ethics Act prohibits a public official from permitting a public company to reference its work with a state agency in a brochure "which does not contain a product endorsement from the agency or the public official." And, in Advisory Opinion 2000-21 the Commission authorized a public employee to give permission to list the employee and her agency as a previous customer of the vendor that provided training to the agency.

In Advisory Opinion 2000-19, however, the Commission ruled that a state agency may not serve as a "reference account" for a vendor's software if the endorsement tends to promote the vendor's private business, and no overriding public benefit for the state or its citizens has been demonstrated. Specifically, such a reference may not include a subjective evaluation of the product, service or company in laudatory, terms.

Thus, the Ethics Commission concludes that the Ethics Act permits a public servant or entity to be listed on a vendor's promotional materials solely as a previous customer. Any language that tends to refer to the public servant or entity as a "satisfied customer" or otherwise serve to promote or endorse the vendor is expressly prohibited.

Question #3: May a public servant appear, or a public servant or public entity be referenced in any way, in an advertisement for a product, service or business?

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In Advisory Opinion 2005-10, the Ethics Commission ruled that a Division Director of a state agency that regulates motor vehicles was prohibited from appearing in an advertisement promoting an automobile dealer. Even though the public official would not have received any compensation, nor would the dealer have used the public official's title, the Commission found that the proposed promotion constituted a prohibited endorsement by the state agency, given the prestige of the official's position.

In Advisory Opinion 2002-18, the Ethics Commission ruled that a state agency was prohibited from allowing one of its dogs to be featured in a dog food commercial. There the agency used two bloodhounds to assist it in wildland fire investigations for almost five years, during which time a business which sells dog food supplied dog food to the agency at no cost. When the business asked to use one of the dogs in a dog food commercial, the agency was willing to cooperate as a way of thanking it for its past financial support and because it felt that the promotion would promote public awareness of the bloodhound program and reduce the likelihood of arson related wildfires. Notwithstanding the fact that the advertisement may have raised public awareness on an issue of importance, the Commission held that there was no overriding public benefit.

In the abstract, the Ethics Commission is unable to envision a circumstance where a public servant could appear, or be referenced, in an advertisement for a product, service or business without violating the Ethics Act. Nonetheless, public servants and entities are encouraged to contact the Ethics Commission for advice if such a situation arises and there is an argument that there is an overriding public benefit.

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

Jonathan E. Turak, Acting Chairperson

LEGISLATURE

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ADVISORY OPINION NO. 2012-32

Issued On August 2, 2012 By The

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WEST VIRGINIA ETHICS COMMISSION

WEST VIRGINIA SECRETARY OF STATE

OPINION SOUGHT

The Requester asks: (1) Whether a **State Legislator** may contract with a Regional Educational Service Agency (RESA); and, (2) Whether a **County BOE Bus Operator** may contract with RESA to provide training and certification to BOE bus drivers.

FACTS RELIED UPON BY THE COMMISSION

The Requester is an elected Member of the West Virginia Legislature. He is also employed by the County school system as a bus operator.

Before newly hired bus drivers may begin transporting students for the County school system, they must be trained and certified. Counties may either operate an in-house training and certification program, or contract with a Regional Education Association (RESA) to provide this service.

The Requester is certified to train and certify bus operators. He contracts with a RESA for this purpose. The RESA with which he currently contracts serves six (6) counties, including his own.

Previously, for a one year period, the Requester's County contracted with a RESA to train and certify its new bus operators. The County Board of Education's (BOE) decision to contract with the local RESA was made by the BOE's Transportation Director, not the Requester. The Requester provided those training services and was paid by the RESA. He performed the duties outside of his regular BOE hours.

Now, the Requester's County provides training and certification in-house.[1] As such, if the Requester continues contracting with a RESA, he will only be training and certifying new bus operators in other counties, not his own. He would perform this work outside of his regular BOE hours.

Every RESA is required to have one of the counties in its region serve as a fiscal agent. The Requester's County serves as the fiscal agent for the RESA with which he contracts. For the services the Requester provides to the RESA, he receives a Form 1099. The payments for the services he renders to RESA and the Form 1099 are generated by his

[1] Due to the fact that he is a certified trainer, the Requester, as part of his BOE job duties, has been tasked with this responsibility. For example, in the summer when he is not operating a school bus, he may train and certify bus operators at that time.

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County BOE in its capacity as the fiscal agent for the RESA; still, the funds in question are RESA funds.

Based upon his public positions, i.e. Legislator and BOE Bus Operator, he asks whether his contract with RESA is permissible.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b)(1) reads in relevant part:

> A public official ... may not knowingly and intentionally use his ... office or the prestige of his ... office for his ... own private gain or that of another person.

W. Va. Code § 6B-2-5(d)(1) provides in relevant part:

> [N]o elected ... official ... or member of his or her immediate family ... may be a party to or have an interest in ... a contract which such official ... may have direct authority to enter into, or over which he or she may have control: *Provided,* That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: *Provided, however,* That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body....

W. Va. Code § 61-10-15 provides in part that:

> (a) It is unlawful for any member of a county commission, district school officer, secretary of a board of education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if... he or she may have any voice, influence or control...

ADVISORY OPINION

Legislator contracting with Regional Education Service Agency (RESA)

The West Virginia Department of Education (WVDE) is statutorily responsible for establishing multi-county Regional Education Service Agencies (RESAs). W.Va. Code § 18-2-26. The RESAs are regional agencies consisting of several counties. Each is governed by a Board of Directors compromised of: the county superintendent and a member of the board of education from each county school system within the region; one representative from the WVDE selected by the State Superintendent (ex-officio, non-voting member); one chief instructional leader who is not a superintendent; one school principal; and one teacher in the region. W. Va. C.S.R. § 126-72-3.4. There are eight regions in the State. W.Va. C.S.R. § 126-72-2.

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the region. W. Va. Code R. § 126-72-3. There are eight regions in the State. W.Va. C.S.R. § 126-72-2.

There is nothing in the Ethics Act which prohibits a Legislator from contracting with a State agency or local government body. Specifically, the Ethics Act public contract provision provides that "nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body...." W.Va. Code § 6B-2-5(d). *See also* Title 15, Series 8. Based upon the plain language in the Ethics Act and related Legislative Rule, the Requester may contract with RESA. Of course he may not use his public position to obtain unfair advantage in securing the RESA contract. Additionally, he may not use his Legislative position to gain unfair advantage for the RESA by which he is employed. For example, he may not use his Legislative position to secure appropriations for the RESA or the BOE. *See* A.O. 2012-03 discussing these limitations as they apply to Members of the Legislature who hold other public positions or employment. He may not get paid during the Legislative Session unless he performs his duties under the contract. *See* A.O. 2012-23 wherein the Commission ruled that a Legislator who is also a municipal recorder must perform the duties to be compensated therefor.

BOE School Bus Operator contracting with RESA

Both the Ethics Act and W.Va. Code § 61-10-15, a criminal misdemeanor statute, prohibit public servants from being a party to, or having a financial interest in, a public contract over which their public positions give them control. In the present case, the Requester exercises no control over the decisions of the County BOEs to contract with RESAs to provide training and certification to their new bus operators. Additionally, it is the RESAs, not the Requester, which is responsible for selecting trainers. Since the Requester exercises no control over the contract in question, it does not violate the Ethics Act or W.Va. Code § 61-10-15 for the Requester, as a BOE Bus Operator, to contract with a RESA to provide these services.

Limitations do apply. Specifically, he must perform his RESA duties on his own time; not during his BOE work hours. If he is permitted to perform these duties during his regularly scheduled BOE work hours and to make-up the time, then he should contact the Ethics Commission for advice as he may be required to file verified time records with the Ethics Commission. Title 158, Series 14.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.* and W.Va. Code § 61-10-15, and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.

Jonathan E. Turak, Acting Chairperson

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ADVISORY OPINION NO. 2012-21

2012 AUG -6 AM 10: 31

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

Issued On August 2, 2012 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Local Health Department** asks whether it is permissible under the Ethics Act for it and/or its employees to be a member of a non-profit entity comprised entirely of public employees whose functions include oversight and distribution of grant funding to their own local health departments.

FACTS RELIED UPON BY THE COMMISSION

The Requester is one of 49 local health departments in the State. Organized pursuant to West Virginia Code § 16-1-1 *et seq.*, local health departments provide services necessary to protect the public health of the community in which it serves. Although each local health department is an autonomous governmental agency, they receive funding and appropriations from the State through a designated State Agency.

Additionally, the State Agency has a working relationship with the local health departments through its various divisions within the Agency. One such division is specifically charged with providing support for local health department employees and local boards of health as they deliver public health services and improve community health.

Historically, the State Agency has also served as a federal grant administrator and distributed federal grant monies to the Requester and other local health departments. According to the Requester, the State of West Virginia, by and through the State Agency, would apply for and receive federal funding and/or other grants. The State Agency would then allocate the funds among the 49 local health departments as sub-recipient grants through a competitive application process and funding matrix based on a variety of factors. The State Agency would handle all administrative oversight and invoicing, along with ensuring compliance with the multitude of federal guidelines and regulations. In short, all funding decisions and oversight rested with the State Agency.

Association and Non-Profit, Inc.

In 1986, the Requester, and several other local health departments, formed a voluntary association, which has since grown to include all 49 local health departments (hereinafter referred to as "Association"). The stated mission of the Association is to represent the interests of local health departments, and "to work together to leverage resources and influence public policy." Member health departments are required to

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annually pay dues to the Association based upon the per capita rate of the community serviced. All local health departments are eligible to members of the Association.

The Association itself is comprised of a single delegate for each member local health departments. The delegates are public employees and chosen by their respective health department. As part of its organizational structure, the Association is overseen by an Executive Council. The Executive Council consists of a President, Vice-President, Past-President and three members-at-large. Voted on annually, any employee of a member health department may be nominated and stand for election. Hence, all members of the Executive Council are public servants employed with a local health department. Until recently, an employee working for the Requester was one of the three elected members-at-large on the Executive Council.

In 1995, the Association formed a private non-profit corporation to aide in furtherance of its mission (hereinafter "Non-Profit, Inc.").[1] According to the Requester, the Non-Profit, Inc. was to operate as a charitable entity organized exclusively for charitable, educational and scientific purposes, including making distributions to organizations that qualify as exempt organizations under 501(c)(3) of the Internal Revenue Code. In addition, the Non-Profit, Inc. was organized to solicit, receive, and manage contributions from individuals, businesses, and organizations.

According to its by-laws, all "appointed delegates to the. . . Association shall be members of the [Non-Profit, Inc.]." The Non-Profit, Inc. is overseen by a Board of Directors. The Board of Directors is comprised of the Association's Executive Council plus two members appointed by the President of the Association.

Federal Infrastructure/Accreditation Grant

In 2010, the State Agency received a federal grant in the amount of roughly $1.2 million to assist and benefit the local health departments. Thereafter, in 2011, the State Agency received another $600,000 bringing the total grant award amount to over $1.8 million. According to the Requester, "the chief declared purpose of the grant was to address performance management improvement and further enhance efforts to effect public health system changes that improve public health impact."

In February 2012, during a meeting of the Association, the Requester and other Association members were informed that a significant amount of the Infrastructure grant money provided to the State Agency had yet to be distributed or allocated, and if the

[1] The Non-Profit, Inc. was recognized as a 501(c)(3) entity by the IRS when it was formed. However, due to a filing error in September 2011, the organization lost its 501(c)(3) status and reverted to a Private Foundation status. The Non-Profit, Inc. still remains an active, registered corporation in the State of West Virginia.

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money was not allocated and spent by September 29, 2012 (the end of the grant term), the money may have to be returned to the federal government. [2]

In light of the looming deadline, a group of Association members, along with the Association's Executive Director, met with representatives of the State Agency. Together they decided that the most expedient means of distributing the funds was to direct a portion of the grant funds ($400,000) to the Non-Profit, Inc. under a sub-recipient grant, and deviate from the State Agency's historical practice by allowing the Non-Profit, Inc. to (1) develop its own funding matrix, and (2) handle all the administrative oversight of distributing the grant funds.

Accordingly, on February 14, 2012, the Non-Profit, Inc.'s Board of Directors agreed to enter into a sub-recipient agreement with the State Agency. In addition, the Board of Directors recommended that a work group be formed to define the grant guidelines and funding matrix. While it appears that a work group was established, the majority of the work was actually handled by the Executive Director of the Association.[3] She developed a funding matrix based entirely on population, and initially established the mini-grant process.

On March 15, 2012, the work group met and considered the Executive Director of the Association's proposed funding matrix and grant guidelines. Based upon the work group's input, the Non-Profit, Inc. changed the grant guidelines. These changes included creating a two-round process to allow for more local health departments to participate. Thereafter, on March 16, 2012, the Executive Director of the Association disseminated the updated grant guidelines and notice of the mini-grants to all 49 local health departments with a deadline of April 6, 2012 to submit a request for round 1 grant monies.[4] According to information provided, only nineteen (19) of the total 49 local health departments applied for the first round. The Requester was one of the nineteen local health departments to submit a grant request.

On April 6, 2012, the Executive Director of the Association notified all nineteen applicants that they would receive a portion of the funds. The Requester received the largest amount of grant funds.

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[2] According to the information provided to the Commission, only $40,000 of a budgeted $1.8 million grant had been expended as of February 1, 2012.

[3] Although it does not affect the Commission's analysis of this issue, the Commission is unable to determine the authority or legal status of the Association's Executive Director performing Non-Profit, Inc. work for and/or representing the Non-Profit, Inc.

[4] A second round of funding was also noticed with a deadline of May 6, 2012.

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Contractual Agreement with the State Agency

On April 27, 2012, the Non-Profit, Inc. formally executed a sub-recipient grant agreement ("Agreement") with the State Agency for $419,928.00. The Agreement authorized the Non-Profit, Inc. to develop its own mini-grant process to provide funding to individual local health departments. In particular, the Agreement stated that:

> Grant process will include application for funding, review of applications to ensure that proposed activities support building capacity around pre-accreditation activities, performance management and improvement practices, monitoring of grantee through submission of financial and progress reports, and the project completion report which will document final outcomes of grant activity.

Additionally, the Agreement between the State Agency and the Non-Profit, Inc. contained the following conflict of interest provision:

> 14.01(a) **Conflicts of Interest**: The Grantee attests that it, its officers or members, employees, or subgrantees presently have no interest and shall not acquire any interest, direct or indirect which would conflict or compromise in any manner the performance of services. The Grantee further attests that during the performance of the Grant Agreement, the Grantee shall periodically question its officers, members and employees concerning such interests. Any such interest discovered shall be promptly presented in detail to the Department. The Grantee will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of private gain.

Questions about Conflict of Interest

Shortly after the April 6, 2012, round 1 awards were issued by the Non-Profit, Inc. (and before the Agreement was executed with the State Agency), questions began to rise about the grant process and the funding matrix. In particular, on April 9, 2012, the Requester sent a letter to the Association inquiring about the role of the Non-Profit, Inc. in the creation of the funding matrix, and the role of the Executive Director of the Association in the grant process. Additionally, according to information provided by the Requester, at least one other local health department was seeking an alteration of the funding matrix and an award of additional monies.

These concerns led the Non-Profit, Inc. to conduct an emergency board meeting on April 12, 2012. The Board decided to seek a legal opinion relating to potential conflict of interests. Thereafter, the Non-Profit, Inc.'s attorney provided a written legal opinion

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maintaining that no conflict of interest existed under the Non-Profit, Inc.'s by-laws.[5] On April 19, 2012, the Non-Profit, Inc. held another board meeting and decided to proceed with the April 6 awards. Additionally, in order to address the funding concern raised by the other local health board, the Non-Profit, Inc. decided to alter the original grant guidelines and distribute additional funding. This resulted in an increase in funds for the Requester and the other local health department.

On the same day, the Requester submitted a letter to the Non-Profit, Inc. indicating its intent to rescind its application for grant funds. According to the letter, the Requester questioned "the duplication of efforts regarding the mini-grant process" by the State Agency, as well as a potential "undeclared conflict of interest in this matter" by the Non-Profit, Inc. board members.

Thereafter, on April 23, 2012, the Requester held an emergency meeting whereupon it unanimously agreed to rescind from the Non-Profit, Inc. grant process, and to seek an Advisory Opinion request from the Ethics Commission. On April 25, 2012, the Requester sought this Advisory Opinion.

Following the filing of the request for an Advisory Opinion, the Requester re-submitted his grant application directly to the State Agency for funding. The State Agency stated that it did not have an alternative grant process, and referred the Requester back to the Non-profit, Inc.

Thereafter, on May 17, 2012, the Requester held another meeting during which it decided to formally withdraw from the Non-Profit, Inc. and the Association. Although the Requester has not sought reimbursement of its Association dues, which are paid in full until the end of the year, the Requester has withdrawn its membership in both the Association and the Non-Profit, Inc.

On June 28, 2012, this Advisory Opinion request was initially presented to the Commission. At the time, the Request posed seven questions, with multiple sub-parts. Of the seven items, only a few appeared to be matters over which the Commission had jurisdiction. In addition, based upon the information available at the time, it was unclear if the Requester had standing to seek an Advisory Opinion. Accordingly, the matter was tabled to allow for further information on standing, and to determine if any of the affected entities desired to join in the Advisory Opinion request.

[5] The legal opinion did not consider or address conflicts under the Ethics Act (W.Va. Code § 6B-1-1 *et seq.*).

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CODE PROVISIONS RELIED UPON BY THE COMMISSION

W.Va. Code § 6B-2-3(a) reads in relevant part:

> A person subject to the provisions of this chapter may make application in writing to the ethics commission for an advisory opinion on whether an action or proposed action violates the provisions of this chapter. . . and would thereby expose the person to sanctions by the commission...

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

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

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

> [N]o elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control.

W. Va. Code § 6B-2-5(j)(3) reads in relevant part:

> For a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue.

ADVISORY OPINION

I.
Standing

When this matter was initially presented to the Ethics Commission, it was unclear if the Requester had standing to seek an opinion. Specifically, the question arose as to whether the Requester's resignation and withdrawal from the Association and the Non-Profit, Inc. divested the Requester of standing.
W.Va. Code § 6B-2-3(a) reads in relevant part:

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> A person subject to the provisions of this chapter may make application in writing to the ethics commission for an advisory opinion on whether an action or proposed action violates the provisions of this chapter . . . and would thereby expose the person to sanctions by the commission[.]

At the time of the filing of the Advisory Opinion, the Requester was a member of both the Association and the Non-Profit, Inc. In addition, one of the Requester's employees was a both a delegate and a member of the Association's Executive Council. Further, because the Requester's employee was a member of the Association's Executive Council, the employee was also a member of the Non-Profit's Board of Directors and involved in the funding decisions.

While the timing of the Requester's withdrawal is an important factor, it does not control the Commission's consideration of standing. Rather, the Ethics Act affords any person subject to the Ethics Act an opportunity to seek an opinion about prospective conduct. W.Va. Code § 6B-2-3(a). As a local health department whose employees and officers are public servants, the Requester is subject to the Ethics Act. *See e.g.* A.O. 2012-12 (relating to restrictions on a part-time appointed health officer). Further, as a local health department, the Requester is eligible for membership in the Association and the Non-Profit, Inc.

The Requester seeks an opinion relating to prospective conduct, i.e may it and/or its employees be a member of a non-profit entity comprised entirely of public employees whose functions include oversight and distribution of grant funding to their own local health departments. The Ethics Act expressly authorizes public servants to seek Advisory Opinions regarding their own proposed conduct. W.Va. Code § 6B-2-3(a).

Additionally, the Commission has issued Advisory Opinions at the request of candidates for public office who were not yet public servants. *See* e.g. A.O. 2012-26 (Candidate for County Commission sought opinion relating to spouse's employment with county if elected); A.O. 2011-14 (Candidate for Assessor sought opinion relating to dual employment if elected); A.O. 96-23 (County Commissioner candidate sought opinion relating to spouse's service on county PSD if elected); and A.O. 91-53 (County Commissioner Candidate sought opinion relating to having an interest as parther in law firm in contracts with the commission).

Accordingly, the Commission hereby finds that the Requester has standing to seek this Advisory Opinion.

II.
Question Presented

The Requester asks whether it is permissible under the Ethics Act for it and/or its employees to be a member of a non-profit entity comprised entirely of public employees whose functions include oversight and distribution of grant funding to their own local

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health department.[6]

Application of the Ethics Act

In establishing the Ethics Act, the Legislature sought to maintain the public's confidence in the impartiality and independence of decisions and actions by public officials and employees, and to ensure that all such decisions be made free of undue influence, favoritism or threat at all levels of government. W.Va. Code § 6B-1-2(a).

The Commission recognizes that the State Agency's decision to give the grant funding process and oversight to the Non-Profit, Inc. was borne of a perceived necessity, and not an attempt by any particular public employee to directly benefit their respective employer. However, the State Agency's decision to use a private entity comprised solely of affected public servants requires the Commission to analyze whether the Ethics Act permits this course of action.

Having reviewed the facts and the Commission's prior Advisory Opinions, the Commission hereby finds that it is impermissible under the Ethics Act for the public employees/servants of the Non-Profit, Inc. to handle, oversee, and/or participate in funding decisions in which their employer is a potential recipient. W.Va. Code § 6B-2-5(b). The Commission finds that an insoluble conflict exists, and, similar to the Commission's holding in A.O. 2009-08 and A.O. 2011-18, the public servants serving on the Board of Directors, work group, committee and/or any other entity empowered to consider, evaluate, discuss, rank, and/or oversee funding decisions, including the funding matrix, need to be recused so as not to violate the Ethics Act. *See* W.Va. Code § 6B-2-3(j)(3)(outlining the procedures for recusal).

In reaching this conclusion, the Commission notes that it is guided by its Legislative intent to maintain the public's confidence in the impartiality and independence of decisions and actions by public officials and employees. The State Agency has chosen to cede its administrative functions to a private entity comprised of public employees who wear "two hats" in handling funding issues. As an employee of a potential recipient, the public employee owes a duty of loyalty to his/her employer and has an interest in ensuring that funding is available for his/her agency. However, as a member of the Non-Profit, Inc., the employee owes a duty of loyalty to the organization to fairly distribute funds. *See* e.g. A.O. 2011-17 ("concern of an appearance of impropriety and potential conflict with the Board member wearing 'two hats'").[7]

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[6] In its original request for an Advisory Opinion, the Requester posed a multitude of questions. However, many of these questions are outside the scope of the Commission's jurisdiction. Instead, the Commission has limited its consideration of the issues to this legal question under the Ethics Act.

[7] Additionally, while not directly within the purview of the Ethics Act, the Commission questions whether the Agreement between the State Agency and the Non-Profit, Inc. even allows the Non-Profit, Inc. to be a sub-recipient. *See* Section 14.01(a) of the Agreement (Conflict of Interest).

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While the Commission is mindful of the underlying reason for this situation, it is also mindful of its charge to uphold the Ethics Act. By prohibiting public employees whose employers are potential grant recipients from participating in the funding process, the Commission ensures transparency in the process and limits the potential for favoritism.

Future Role of Non-Profit, Inc.

Having now concluded that member employees of the Non-Profit, Inc. must recuse themselves, the Commission must now address the implications of this finding in future funding situations. Given the current structure of the Non-Profit, Inc., and by connection thereof the Association, the Commission finds that the required recusal of all the public employees from any and all funding matters prevents the Non-Profit, Inc., as currently structured and constituted, from being involved in any way administratively (e.g. acting as a pass through) in the distribution of the funds; or in the oversight (e.g. reporting/auditing) of the funds.

However, for purposes of the Ethics Act, it could be permissible to use a non-profit organization to handle funding allocation matters under the following circumstances: **First**, if the Non-Profit, Inc. and the Board were truly independent of the State of West Virginia and the local health departments. For example, if the Board of the Non-Profit, Inc. had representative members from the community as a majority of its membership, not merely public employees of a local health department. **Second**, if as a matter of law, the State Agency has clear legal authority to give this funding to the Non-Profit, Inc., generally; and whether it may do so without going through a competitive process (e.g. Request for Proposals, or being placed on the State's approved vendor list). Additionally, as a matter of law, it is unclear whether the State Agency has legal authority to delegate a portion of its executive powers (e.g. allocation and administration of grant funding) to a non-profit organization, and may require the State Agency to obtain a legal opinion from the Office of the Attorney General. **Third**, if the federal grant guidelines expressly permit this delegation of authority to the Non-Profit, Inc..

As it relates to the Non-Profit, Inc., the Board of Directors and membership is comprised of interested public servants who must be completely recused. Unlike A.O. 2009-08 and A.O. 2011-18, the Non-Profit, Inc. does not possess an overarching body of individuals that can neutrally evaluate/handle grant applications. Instead, all members of the Non-Profit, Inc. are affected public employees with a potential financial interest, direct and/or indirect.

As a result, the Commission finds that the evaluation and administration of the grant funds may only be handled by the State Agency, as that is currently the only entity that can neutrally evaluate, decide, and administer the allocation of grant funds.

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Prior distributions

While this Advisory Opinion is prospective in nature and applicable to all future grant funding/distributions, the September 30, 2012 deadline concerns the Commission. This Commission is mindful that this ruling could impose a financial hardship on the local health departments.

Accordingly, with respect **only** to the Infrastructure (Accreditation) Grant money that had been previously allocated by the State Agency to the Non-Profit, Inc. (i.e. $419,928.00), the Commission hereby delays application of this holding until **December 31, 2012**. In making this conclusion, the Commission notes that the State Agency has stated that it has just approved the funding matrix and grant guidelines for the mini-grants to the local health departments, and monies are being re-appropriated through the Non-Profit, Inc. only as a pass through to the local health departments. The delay allows the existing funding allocated to the local health departments, which may have already been spent, to be kept by the local health department. All additional monies and/or future grants shall be subject to the holding in this matter effective immediately.

Conclusion

Finally, the Commission imputes no ill motive to any of the entities in this matter. All entities involved share a collective desire to act in the best interest of the public health. This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.*, and does not purport to interpret other laws or rules. In accordance with W.Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.

Jonathan E. Turak
Acting Chairperson

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MUNICIPAL GOVERNMENT

FILED

ADVISORY OPINION NO. 2012-24

Issued On August 2, 2012 By The 2012 AUG -6 AM 10: 33

WEST VIRGINIA ETHICS COMMISSION OFFICE OF WEST VIRGINIA SECRETARY OF STATE

OPINION SOUGHT

A **Mayor**, whose father is a City employee and member of the City employee union, asks whether: (1) He may supervise his father; (2) He may participate in negotiating the collective bargaining agreement on behalf of the City; (3) He may vote on matters affecting City employees when his father may be affected; and (4) Additional limitations apply if they live together.

FACTS RELIED UPON BY THE COMMISSION

The Requester was recently elected Mayor. He assumed this position on July, 1, 2012. His father is employed by the City as a water meter reader. The father's direct supervisor is the City's maintenance supervisor.

The Requester's father is also a member and officer (secretary) of a local union comprised of City employees. To eliminate the potential for conflict, his father has agreed to resign from his officer position with the union in August of 2012.

The union has a collective bargaining agreement with the City. The City will begin the process of negotiating a new collective bargaining agreement in August. The main negotiations occur between the following two groups: (1) a union committee comprised of union officers, including the union's secretary, and union members at large; and (2) a City Committee comprised of the Mayor, one or more Council Members, and, an attorney retained by the City. Once negotiated, the collective bargaining agreement does not become final until and unless it is approved by the union members and City Council. As the Requester's father will be resigning his officer position, his father will have no direct involvement in the negotiation process.

The Requester's father, as part of his duties as the Union Secretary, also serves on the union's grievance committee. The make-up of this committee is the same as the collective bargaining agreement committee. The committee represents union employees in labor-relation matters, including grievances. The grievance committee first attempts to resolve disputes with the City's Maintenance Supervisor. If unsuccessful, then the Committee will attempt to reach a resolution by conferring with the Mayor who may, at his discretion, involve one or more Council Members.

The City has a Mayor-Council form of government. The Mayor is responsible for the day-to-day supervision of three employees: Police Chief; Maintenance Supervisor; and City Clerk/Treasurer.

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Based upon his father's employment with the City, and union membership, the Mayor seeks guidance on complying with the Ethics Act. Also, while the Mayor and his father do not live together, he also seeks guidance in regard to the application of the Ethics Act if they decide to cohabit.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W.Va. Code § 6B-1-3(f) reads:

> "Immediate family", with respect to an individual, means a spouse with whom the individual is living as husband and wife and any ...dependent parent or parents.

W.Va. Code § 6B-1-3(l) reads:

> "Relative" means spouse, mother, father, sister...

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

> A public official ... may not knowingly and intentionally use his ... office or the prestige of his ... office for his ... own private gain or that of another person.

W. Va. Code § 6B-2-5(d) states, in relevant part:

> (1)...[N]o elected official may be a party to or have an interest in a contract which such official may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body.

W. Va. C.S.R. § 158-6-3 (Nepotism) states, in relevant part:

> 3.1. As used in this section, the term "nepotism" means favoritism shown or patronage granted by a public official or public employee to relatives or cohabitating sexual partners in employment matters without giving public notice and consideration to other applicants or qualifications required to perform the job.
>
> ...
>
> 3.5. A public official should not use his or her position for the private gain of a relative or cohabitating sexual partner by improperly giving bonuses, raises or other employment benefits to such person.

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

> *Limitations on Voting.*

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(1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

...

(C) A personnel matter involving the public official's spouse or relative;

...

(2) A public official may vote:

...

(A) If the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class shall consist of not fewer than five similarly situated persons or businesses; or

...

(3) For a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue.

ADVISORY OPINION

The Ethics Act prohibits public servants from being a party to, or having a financial interest in, a public contract over which their public positions give them control. W. Va. Code § 6B-2-5(d)(1). Nevertheless, the Ethics Act expressly states that the prohibition does not apply to "the employment of any person with any governmental body". Thus, there is nothing in the Ethics Act which prohibits the Requester from serving as the City's Mayor while his father is employed by the City, even if they live together. *See* A.O. 2012-11 where the Commission made this finding with the qualification that a stricter rule of law applies in regard to County officials governed by the more stringent provisions in W.Va. Code § 61-10-15.

Limitations apply. The Mayor may **not** directly supervise his father. Based upon the facts presented, it appears this requirement has been satisfied as his father's direct supervisor is the City's Maintenance Supervisor. Also, the Mayor may not exercise supervisory control over him such as conducting his evaluations, setting his schedule, authorizing overtime or approving recommendations of the City Maintenance Supervisor which directly affect the terms and conditions of his father's employment. If his father

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has a grievance, a Council Member or other City Official, e.g. Recorder, not the Mayor, must serve as the City's liaison in the grievance process.

Additionally, the Mayor may not be involved in any other personnel matters which uniquely affect his father as opposed to affecting him as a class of five (5) or more similarly situated employees. W.Va. Code § 6B-2-5(j). For example, if Council is contemplating a pay raise for the father/employee, the Requester may not be involved in this process. If matters relating uniquely to his father come before Council, then the Mayor must recuse himself.

Under the Ethics Act, in order for a public official's recusal to be effective, it is necessary to excuse him/herself from participating in the discussion and decision-making process by physically removing him/herself from the room or executive session during the period when the item is being discussed or decided, fully disclosing his/her interests, and recusing him or herself from voting on the issue. W. Va. Code § 6B-2-5(j)(3). Additionally, the minutes/record of the meeting must reflect the basis for the recusal and that the public official left the room during all discussion and vote on the item under consideration.

In regard to the father being a member of the employee union, the same rules of law outlined above apply. The Requester may serve on the City's collective bargaining agreement committee. If a matter arises which affects his father uniquely, as opposed to affecting his father as a class of five or more employees, then he may not be engaged in negotiating the terms of such provision. Nevertheless, in regard to discussing and approving the collective bargaining agreement when it comes before City Council for approval, he may participate. If there is a provision in the collective bargaining agreement which uniquely affects his father, and if the City Council challenges or discusses that particular provision, the Requester must recuse himself from the discussion and vote on that particular matter. Once it has been resolved, he may vote on the collective bargaining agreement in its entirety. *See* A.O. 2010-13 wherein the Commission discussed the rules governing voting on a budget when a public official's spouse is employed by the governing body where he or she serves.

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

Jonathan E. Turak, Acting Chairperson

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ADVISORY OPINION NO. 2012-33

Issued On August 2, 2012 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Public University Vice-President** asks if there is a conflict of interest under the Ethics Act between his public duties and his duties as a board member of a non-profit organization.

FACTS RELIED UPON BY THE COMMISSION

The Requester is a Vice-President of Business and Finance of a Public University. He has significant influence in the University's administrative decision-making process. He has signature authority on all checking accounts for the University.

The Requester is the immediate past Chair of the Board of Directors of a large local non-profit organization. He continues to serve on the Board as a member and also serves on the following committees: Information Technology, Programming, Executive, and Finance. He has signature authority on all checking accounts of the non-profit organization. He receives no compensation for his service on the non-profit's Board.

From time to time, the University rents space from the non-profit organization for various functions. The Requester has no involvement in any decisions related thereto. The University pays the same rental rate as other organizations which rent space from the non-profit.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b)(1) provides:

> (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

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ADVISORY OPINION

The Ethics Act generally prohibits public servants from using their public office for their own private financial gain or that of another. W. Va. Code § 6B-2-5(b). The Ethics Act further provides, however, that the performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain. W. Va. Code § 6B-2-5(b)(1)

The Ethics Commission recognizes that many public officials volunteer their service to boards of non-profit organizations. Such volunteer activity is generally consistent with their commitment to public service evidenced by their public office. Indeed, those characteristics which make such individuals attractive candidates for public office also make them popular to private organizations. *See* W. Va. Code § 6B-2-5(b)(3)[1]

In Advisory Opinion 2011-12, the Commission held that a Town's elected officials may generally advocate on behalf of, and otherwise support, a non-profit organization despite their membership on the board of directors. The Commission found that such activity is consistent with the performance of usual and customary duties associated with their position or the advancement of public policy, which the Ethics Act authorizes.

The Commission hereby finds that nothing in the Ethics Act prohibits the Requester from continuing to serve as a member of the Board of Directors of the non-profit organization, so long as he is able to perform his public duties for which he is compensated. *See* Advisory Opinion 2012-23 (Member of Legislature must perform statutorily mandated recorder duties while serving in the legislature in order to lawfully receive compensation therefor.)

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

Jonathan E. Turak, Acting Chairperson

[1] Although related to compensated private activities, the principle is applicable here. It reads:

> The Legislature ... recognizes that there may be certain public officials ... who bring to their respective offices ... their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits... Those persons may, in fact, be sought by the state to serve in their office ... because, through their unusual gifts or traits, they bring stature and recognition to their office ... and to the state itself...."

VALLEY VIEWS

Potomac Valley Audubon Society

Volume 31, Issue 1 — September 2012

Audubon Discovery Camp Celebrates 10 Years!

Once again, Audubon Discovery Camp had another successful summer of day camp in three different places. This was the 10th anniversary of Audubon Discovery Camp at the Yankauer Preserve. We've come a long way since 2003! The first year was held under two shade tents in front of the Yankauer kiosk and served about 8 kids each week for four weeks (a total of 29). The program has steadily grown over time, with the addition of various remote locations through the years. This year we had satellite sites at the Peter Burr Farm and the For Love of Children (FLOC) Outdoor Education Center and a total of 207 campers attended one or more sessions. Suzi Taylor directed sessions at Yankauer and Ellen Murphy directed the weeks at the Peter Burr Farm.



Bland Campbell, Hunter Norton
photo by Ellen Murphy

Sessions at Yankauer included the ever popular Camp Survivor as well as Nature Detectives, Hop, Slither, Sneak, and Mystery Week. Our preschool session, "Out of the Nest" was held in late May. Activities included butterfly chasing, hiking, building forts in the woods; crafts, games, and group challenges like scavenger hunts and blind hikes. Mystery Week was held for 4 days during the first week of July (we took the 4th of July off) and proved to be the most popular session of the summer. Special activities held only during that session included Camp Olympics, an egg drop competition, a dinosaur egg (watermelon) hunt, and making ice cream.

"Audubon Discovery" continues on page 2

Cicadas on the Move

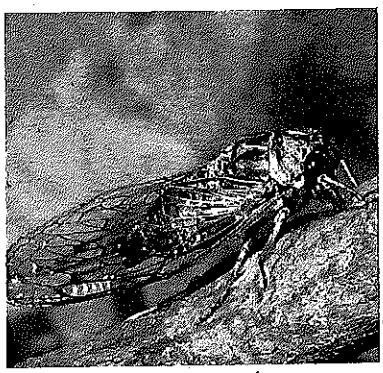


photo by Wil Hershberger

Within the last few years, Robinson's Cicada (*Tibicen robinsoniana*) has expanded its range into our area. This handsome, though seldom seen cicada, lives in the treetops of mixed woodlands. Only a few years ago, its distinctive song could be heard only along the C&O canal near the Antietam Creek aqueduct. The next closest colony was in southern Maryland.

In the last two years, Robinson's Cicadas have been heard all over the four county area. There is a large colony at the National Conservation Training Center that is easily heard from the parking area near the main auditorium. Other colonies can be hear along the Potomac River near Shepherdstown, in wooded areas south of Martinsburg, an in woodlots in Back Creek Valley. Scattered groups have also been heard just north of Sharpsburg, Maryland.

Why has this species expanded it range apparently toward the North and West of its former haunts? There is no clear answer, but certainly the warmer summers we have been experiencing since 2009 could be a factor. Perhaps this species is sensitive to very low temperatures during the winter. Our winters have been warmer as well. Perhaps a few adventurous individuals moved into our area several years ago and have survived and multiplied. As with most of our annual cicadas, this species spends 3-5 years as juveniles under the ground feeding on the root of trees. Every year there are some adults that emerge hence the moniker, annual cicadas.

The song of the Robinson's Cicada is distinctive: A measured, grating series of sounds that can go on for several minutes with one pulse of sound every second or so. Its song is heard from mid-afternoon until late evening. You can listen to the song of Robinson's cicada here: http://tinyurl.com/robinsons-cicada

- Wil Hershberger

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

Reflections on PVAS

This summer Linda and I were fortunate to be able to hike in Glacier National Park and to kayak on Idaho's Salmon River. With its vistas, interesting geology, and virgin red cedars, Glacier exceeded our expectations. Kayaking the Salmon River is great fun – and the river provides 'immersion' lessons in humility. These were all experiences we expected from our vacation.

Over coffee one morning we agreed that an unsuspected highlight for us was meeting and talking with people along the trail and river. When we are in the midst of the natural environment we meet the most friendly and interesting people – people from all across the US and the world. These exchanges were a joy – and a real highlight of our vacation.

And so it is within PVAS! During my term as vice-president I tried to become familiar with as many PVAS services and activities as I could. As appreciative as I am for what we do, I became even more appreciative for who we are.

Our PVAS membership is wonderfully knowledgeable about and skilled in the natural world. Our membership is very giving of its time and funds, not as a duty, but because it gives us pleasure. We are friendly and accepting and we enjoy each other's company.

Our PVAS birders, nature photographers, nature writers, and master naturalists are really interesting people, and during the coming year I hope we find new opportunities to interact with each other. If you have an idea we should explore, please let us know!

Bob Reynolds
PVAS President

"Audubon Discovery" continues from page 1

Two of our camps, serving middle school campers, were held at the FLOC Outdoor Education Center. These sessions focused on adventure programs (high and low ropes team building courses and rock climbing) and backpacking. The latter group spent the week learning how to pack for a backpack adventure, hiked on the FLOC property, and then took off on the Appalachian Trail for an overnight hike.

The second of our satellite sites this summer was at the Peter Burr Farm where one session of The Simple Life gave campers a taste of "old time living." Activities included natural dyeing, weaving on lap looms, making butter, baking bread, and a daily "chore" game where campers had to "do" a typical farm chore like gathering eggs hidden anywhere on the farm property. A sister session, "Life on the Frontier," found middle school-aged campers making yogurt cheese, applesauce ornaments, and taking a special trip to Old Bedford Village in Bedford PA. A second week at the site, "Nature Detectives," gave campers the chance to explore nature at the farm, including butterfly catching, feather investigations, soil strata investigations (the campers were quite good at using a post hole digger), and a special presentation by Master Naturalists Eldon and Virginia Winston on pollinators. Special thanks go to the Jefferson County Landmarks Commission and Martin Burke for making this site available to our campers.

Thanks also go to the individuals and organizations that provided scholarship assistance to some of our campers. Susan Fluharty, Sheri Cooper, Wanda Miller, Bland Campbell, Mary Lynn Robinson, Joan Cuzzart, Eldon Winston, Virginia Winston, Angie Cummings, Deborah Rocheford, and Wayne Braunstein volunteered at one or more of our camp sessions. Twelve middle school students volunteered as Junior Staff.

No Meeting in September

PVAS is currently in the process of seeking a new location for its monthly membership meetings.

Since a suitable new location has not yet been found, **a meeting will not be held during September**.

PVAS has held its monthly meetings at the National Conservation Training Center since the fall of 2007. However, a shift of location is now necessary because NCTC has changed its policies concerning public lectures presented at the facility. From now on all such lectures must relate directly to courses of instruction being offered at the Center or involve major national issues.

PVAS continues to enjoy a good, productive working relationship with NCTC, and the Center will continue to provide us with space for a wide range of programs and activities that engage and educate the community on conservation topics.

These programs and activities will include but not be limited to our ongoing Master Naturalist Program classes, other classes like Birding 101, Potomac Valley Nature Photographers sessions, bird walks on the NCTC campus, and our annual Race for the Birds.

School Programs Supported by New Grants

School begins again in August and PVAS is ready with programs for all class levels thanks to several grants. PVAS has received a $2500 grant from the Eastern West Virginia Community Foundation which will support PVAS programs in Title I schools and be supplemented by an existing Ecolab grant received late last year. The City of Ranson has awarded $1000 to PVAS for support of school programs at Ranson Elementary School. All of these grants will help some school classes visit Yankauer Nature Preserve or allow a PVAS instructor to visit the classroom. Each session is specific to the grade level and closely aligned with the WV standards of learning (CSOs).

An exciting, new collaboration with Burke Street Elementary School in Berkeley County will help PVAS serve the very diverse Burke Street Promise Neighborhood, a special focus of the United Way of the Eastern Panhandle. Thanks to a $2500 grant to the school from the Eastern West Virginia Community Foundation, PVAS will be able to provide 2 hours of pre- and post-field trip classroom instruction and a day-long field trip to Yankauer Preserve for all kindergarten, first, second, and third grade classes at Burke Street Elementary. In addition, each of those classes will receive a nature exploration classroom kit, compiled of fiction and non-fiction books and classroom supplies for teachers and students to use as resources for science inquiry activities. The backpack kits will also be designed so that students can take them home over the weekend and use the resources to explore nature in their neighborhood.

Our 4th grade watershed program continues in its eleventh year and some classrooms will begin that program this fall while others will wait until January to begin. A year-long program with St. Joseph Parish School's second grade, which began last year, will continue with new students beginning in September. Schools can schedule programs at any time.

During the 2011-12 school year, PVAS served 944 students through school programs at Yankauer and 578 students with in-class programs. An additional 1063 fourth graders participated in the watershed program last year. A WV Division of Natural Resources grant awarded to provide new programs for students in kindergarten, first, fourth and fifth grades reached 857 students as well. A few additional school-related events brought our total school programs to 4299 students last school year!

A new year of programs will make this a busy fall for Ellen Murphy and volunteers! We can always use help with any of our school programs, so if you are interested in helping in any way, would like further information, or want to schedule a program at Yankauer Preserve, contact her at Ellen@PotomacAudubon.org or 304-676-8739.

Wee Naturalists Program Back This Fall

PVAS's popular Wee Naturalists program is returning after a break for the summer. The program is designed to provide regular opportunities for children ages 3-5 to explore nature together safely under the guidance of an experienced PVAS instructor. At each session, children must be accompanied by a parent, grandparent, other adult relative, or guardian.

All sessions are held at the Yankauer Nature Preserve. Each session will last from 9:30 a.m. to 11:00 a.m. Dates for this fall's sessions are August 23; September 17 and 18; October 15 and 16; November 12 and 13; and December 3 and 4.

Each month's sessions will focus on a different topic. Topics range from exploring forest insects and animals to learning about signs of autumn. Although the topics remain the same from year to year, the activities for each topic are always being updated and this year's activities are brand new.

To ensure that everyone receives close, personal attention, enrollment will be limited and pre-registration is required. Easy on-line registration is available on our website www.PotomacAudubon.org. Families may register for one or all the months. The fee is $5 per child/adult team per session.

The program is led by Suzi Taylor, of Sharpsburg, MD, a veteran Audubon camp director who has a degree in environmental education. For more information, contact Suzi at 301-432-1908 or tomandsuzi506@cs.com.

The Wee Naturalists program was established in 2009 with support from the Eastern West Virginia Community Foundation's Two Rivers Giving Circle.

PVAS to Start Youth Bird Club

PVAS will be starting a Youth Bird Club for children that have demonstrated a special interest in birding and want to go to the next level in building their birding skills. The club will go on a birding walk or trip once a month during most months of the year. Trips will coincide with bird groups that are migrating through the Eastern Panhandle during the particular month of the year. In mid-September the club will go to Snicker's Gap to observe the Broadwing Hawk migration. An educational component will be included in the program. Parents will be required to attend the trips with their children.

Children that are interested in joining should first attend at least two regularly scheduled bird walks or activities with a parent. For further information, contact Sandy Sagalkin at monsansagalkin@myactv.net or 240-291-6465.

New Nature Education Program for Kids

PVAS has launched a new nature-education program for children that will be held one weekend day each month throughout the year. The program, called Outdoor Explore!, is for children ages 6-9. It is intended to give them a better understanding and appreciation of the natural world in a safe, supervised way, through hiking, exploration of different local habitats, plant and animal identification, and other natural science activities. Jan Hummer, an experienced natural science educator, will lead each program session.

Each month will focus on a different theme that is appropriate to the time of year and the habitat of the chosen location.The first and second program sessions were held in July and August. The third session, which is set for Saturday, September 8, will be a hike along the C&O Canal-towpath in the Sharpsburg area to look for signs of autumn.

Additional sessions will be offered each month, generally on the second Saturday. The cost for each program will be $5.00 per child. Enrollment will be strictly limited to ensure that all children receive personal attention.

Complete information and online registration is available at the PVAS website. Or contact Ellen Murphy at 304-676-8739 or Ellen@PotomacAudubon.org.

The program is being made possible by a grant from the West Virginia Division of Natural Resources.

Jim Jenkins Nominated for Board

Jim Jenkins has been nominated to fill a position on the PVAS board. Jim moved to Harpers Ferry in 1979 to work at FLOC Wilderness School and fell in love with our rivers, woodlands and hills. He has been a teacher for 37 years in elementary schools, an adjunct instructor at Shepherd University, an Aerospace Educator at the Smithsonian Udvar-Hazy Center and a Fulbright teacher in Scotland. He was a river guide for 18 years. Both BS and MEd degrees are from VCU. Hiking, camping, caving, canoeing and fishing with his son, Sam, provide peak experiences. Jim lives minutes from the Appalachian Trail and beloved rivers in Harpers Ferry.

View from the Eagle's Nest

We birders have had a busy summer in the Eastern Panhandle, enjoying the spring migrants that have stayed on to breed. Some of the joys of this time of year are watching the adults build nests and bring food back to the nest, and the fledglings leave the nest. In another article, I described our recent trip to the Eastern Shore of Delaware where we witnessed this small drama: an adult Forster's Tern trying to teach her offspring how to catch its own food. The young bird was planted on a sand bar and mommy would bring it a minnow. She held it out to the young bird, but then flew off with it, trying to lure the youngster over to the pond to catch its own fish. She repeated this routine several times without the young bird ever learning to follow her. Finally, she threw down the fish. As the bird watched on, a gull came by and, thank you for lunch. In the animal world, young birds either learn or die. Only a small percentage will make it through their first year of life.

It was a good summer. We sponsored trips to Stauffer's Marsh Nature Preserve, Murphy's Farm, Virginius Island and the C&O Canal at Harper's Ferry, the Antietam Battlefield, Shannondale Springs Wildlife Management Area, and other birding hot spots, which you can now find on the PVAS website. Whenever we had the opportunity, we ran mini-workshops for school age children at libraries or other venues. They always impress us with their attention, questions and delight in seeing birds.

And we have some interesting events planned for the late summer and early fall. Since it is that time of year, we will search out shorebirds at the shorebird hot spots, the local ponds and drainages. Surprisingly, the Eastern Panhandle routinely gets over a half dozen species of fall shorebird migrants.

By the time this newsletter goes to print, we will have sponsored a "Pledge to Fledge" morning at Stauffer's Marsh Nature Preserve. This is a new nationwide program to get non-birders out for a day of birding in order to build support for birds and bird conservation. As I write this article, I am hoping for a good turnout of new birders. And, as another article notes, PVAS is starting a youth bird club. Children are always invited to join us on our regularly scheduled bird trips. The club will be for youngsters who want to go up to the next level and build birding skills. One of them will teach Birding 101 some day.

We will be running a pilot, Advanced Birding workshop, on raptors starting in mid-September. If successful, we hope to build it into a Master Birding Program that will cover all of the major groups of birds. This program will be a "deep dive" into each group of birds that will ask the students to identify species during field trips based on observable factors, such as habitat, shape, size, behavior and plumage details.

In mid-September, the hawk migration will kick off with the stunning Broadwing Hawk migration. Last year was a banner year, the "perfect storm" from a Broadwing perspective. Thousands of Broadwings in record numbers passed through our area, "kettle" after "kettle." A "kettle" is created over a spot on the earth that is warmer than the surrounding areas creating a "thermal" or plume of rising hot air. The hawks search out these thermals to gain height so they can migrate from one thermal to the next saving energy during their migration. When a bunch of hawks are riding a thermal, they appear to be like a kettle of boiling water with a plume of rising steam. This year we will go to Snicker's Gap, Washington Monument and Waggoner's Gap, the latter for the Golden Eagle migration.

People interested in birds at all levels of experience are invited, especially children with their parents. I hope to see some new faces this year. For more information, contact me at monsansagalkin@myactv.net or 240-291-6465. *- Sandy Sagalkin*

Birding the Eastern Shore

A group of eight birders went out to the Eastern Shore of Delaware August 3-5 with trip leader Matt Orsie. This outing is an annual event that we look forward to. The plan was to start at Cape Henlopen State Park to the south and work our way north up to Bombay Hook NWR. This year we logged 22 species of shorebirds and 97 species of birds overall.

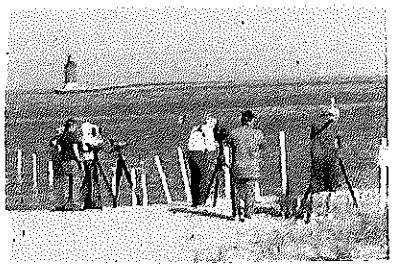


photo by Nathan Snyder

The target bird at Cape Henlopen is always the Piping Plover. This is one of the smallest and rarest birds in the plover family. If you have ever gone to the beach and found an area roped off, it is to protect the nesting areas of this bird. Last year, one came to within 30 feet of our group and lingered for quite awhile. This year, we waited patiently but in vain for the little guy to come out and show itself, all the while baking in 94 degree heat. You may wonder why otherwise seemingly rational adults would subject themselves to this, but this is the life of the birder, always hoping for the rare or interesting sighting. We didn't find the plover, but found American Oystercatchers, Black-necked Stilts, Black Skimmers and other shorebirds.

We next moved on to multiple locations within Prime Hook NWR. This time we were hoping to find some Wilson's Storm-Petrels, a "pelagic" species, usually only found offshore. We set up our spotting scopes at Fowler's Beach and searched the ocean for the storm-petrels. Dave Myles spotted the first one and then others started finding them too. "There are four over there," Matt said, pointing towards Delaware Bay. As everyone but me found them in their scope, I asked with some exasperation, "Where?" Dave Myles came over to put my scope on them. "Look for the black dots. Sometimes they are above the horizon and sometimes below." "Black dots?" I asked. "You're kidding." Last year I saw the storm-petrels with their white rump patch. This year, with eyes one year older, the only black dots I could find were my floaters. Nonetheless, our trip list continued to grow.

Also at Fowler's Beach we were hoping to find a Red Knot, a species whose population is in serious decline. We had almost given up when Matt spotted a rusty colored bird about 100 yards down the beach. "A Red Knot down the beach." We put our scopes on them and caught quick glimpses before it disappeared behind a hummock. (Note to self: Next time, get on birder quicker before it disappears.) Later, we found a small group of American White Pelicans, very

unusual at these latitudes, as well as Glossy Ibises, Royal Terns and other new birds. We tried for the knot again at Mispillion, but the only Red Knot we saw there was the 6 foot plastic knot outside the Dupont Nature Center.

Finally, we arrived at Bombay Hook, where we expected to bird during the evening and next morning. Bombay Hook is one of the jewels of the Delaware Eastern Shore. We decided to head for the "Hook" after dinner to see what was around. As we were searching through thousands of Semipalmated Sandpipers, little sandpipers a little over 6 inches in length that probe the flats for food, Snowy Egrets, Great Egrets and an immature Little Blue Heron started flying in to roost for the night. Groups of 10-30 birds at a time flew in to Raymond Pond, where we were stationed. Before we left, there were upwards of 500 egrets getting ready for the night, an awesome sight.

We headed out the next morning, hoping for a Marbled Godwit, either at the "Hook" or Taylor's Gut, our last stop. Last year, we saw this elegant bird, which stands 18 inches tall with a long, upturned bill at Taylor's Gut and hoped for a look this year. It turned out to be as elusive as the Piping Plover but we did have compensatory species: Tundra and Mute Swans, Pied-billed Grebes, Tri-colored Herons, Black-crowned and Yellow-crowned Night Herons, a Peregrine Falcon catching supper while we watched, Clapper Rails, Stilt Sandpipers, a Great-horned Owl hooting from across the Raymond Pond, a few Bald Eagles and many other birds.

After a quick lunch, we headed home grateful for another successful visit to the Eastern Shore. - *Sandy Sagalkin*

Don't Miss Cathedral State Park Trip

PVAS is planning a field trip to West Virginia's Cathedral State Park on Saturday, September 15. The trip will be led by Master Naturalist Clark Dixon and include a guided park tour led by the park's naturalist. The guided tour will start at 11:00 a.m. and last about one-and-a-half hours. Afterwards, the trip group will travel to nearby Blackwater Falls State Park for a lunch before departing for home.

Located in southeastern Preston County, WV, Cathedral State Park contains the only stand of mixed virgin timber left in West Virginia. The park gets its name from its many ancient hemlocks, which reach majestic proportions and form spectacular natural cloisters. They are one of the last remnants of a vast hemlock forest that once flourished in the Appalachian highlands. It was entered in the National Registry for Natural Historical Landmarks in 1966 as "an area that possesses exceptional value in illustrating the natural history of the United States."

The drive to the park from the Eastern Panhandle is about two-and-a-half hours long. Those who wish to carpool should plan to meet at the Food Lion supermarket parking lot on Route 51 in Inwood, just off I-81; carpoolers will depart from there at 8:00 a.m.

For those who prefer to drive on their own to the park, take I-81 south to the Route 37 bypass around the west side of Winchester; from there, take Route 50 west all the way through the Maryland panhandle and back into West Virginia. The park is approximately five miles west of Red House, MD.

Trip participants should wear comfortable walking shoes and dress for the season. Because of the park's altitude, air temperatures there are likely to be significantly cooler than in the Eastern Panhandle.

Anyone with an interest is welcome to participate, including families with children. However, space will be limited to only 20 people so pre-registration is essential. You can register online on the PVAS website or contact Kelly Wolf at 304-229-6229 or kehldreth@hotmail.com. For more information about the trip, contact Kelly. For more information about the park, see its website at www.cathedralstatepark.com.

Birding Festival Set for Sept. 21-23

The Fifth Annual Berkeley Springs Fall Birding Festival will be held in and around Berkeley Springs the weekend of September 21-23 Most of the festival's events will be free and everyone is invited to attend. The festival is timed to coincide with the annual fall bird migration, which should be in full swing at that time. The festival will include Friday and Saturday evening programs, bird walks and workshops during the day Saturday, and a bird walk Sunday morning. PVAS is the lead festival sponsor.

This year's featured presenter will once again be Sharon Stiteler, the Minnesota naturalist who participated in last year's festival. Sharon authors the popular "Birdchick.com" blog, which has been recognized in the *Wall Street Journal*, the *New York Times*, and on NBC Nightly News. She has a national reputation as a very engaging and entertaining speaker.

The first event will be a program at the Ice House the evening of Friday, September 21. The program will begin at 7:00 p.m. with a presentation about raptors by Northern Virginia raptor expert Liam McGranaghan. At 8:00 p.m. Sharon Stiteler will give a talk entitled "Today's Office," explaining that for birders, an office is an increasingly mobile and flexible concept.

Saturday's events will begin with a free morning bird walk with Liam and Sharon that will start at 8:00 a.m. at the scenic Panorama Overlook on Route 9 west of Berkeley Springs. Bald Eagles can frequently be seen here.

Saturday afternoon, there will be two free events at Cacapon State Park. The first event will be a 1:30 p.m. birding workshop at the Park Nature Center. The workshop will be aimed at children but also open to beginning birders of all ages. It will be led by Park naturalist Renee Fincham and Smithsonian Institution forensic ornithologist March Heacker, and cover such topics as identification basics, birding manners, and using guidebooks and equipment. At 3:00 p.m., in the lower conference room of the Park Lodge, Ron Perrone of the Three Rivers Avian Center in Brooks WV will give a presentation on raptors featuring live rescued birds. The Saturday evening event will include desert and coffee, and a silent auction of items donated by local artists and businesses.

Saturday evening will feature two presentations at the Ice House. At 7:00 p.m., Marcy Heacker, who also participated in the festival last year, will give a talk entitled "Birding Then and Now; More Tales From the Nation's Attic." At 8:15 p.m., Sharon Stiteler will talk about her experiences birding in other countries, most recently in Israel.

The festival will wrap up on the morning of Sunday, September 18, with a free 8:30 a.m. bird walk at Sleepy Creek Retreat, a mountainside meadowland property south of Berkeley Springs. The property offers sweeping views and a rich variety of habitats, and it will provide good opportunities to see migrating raptors, blue jays and warblers.

To help cover festival expenses, a $10 ticket will be sold for the evening programs. This ticket will be good for admission to both those programs. Advance tickets will be available at the Nature Niche store at 168 North Washington Street in Berkeley Springs. Tickets will also be available starting at the Friday evening program.

For more info contact the Nature Niche store at 304-258-0992 or natureniche@earthlink.net.

New "Master Birder" Program

Starting this fall, PVAS is offering a new "Master Birder" program. The program is intended for experienced birders who want to take their knowledge and skills to a higher level.

Instruction will be provided through workshops that include both classroom time and field experiences, with the emphasis on the latter. Each workshop will focus on a specific group of birds or a topic that cuts across groups, such as bird song. All of the workshop sessions will be conducted by one or more of the following instructors: Wil Hershberger, of Hedgesville; Bob Dean, of Martinsburg; and Matt Orsie, of Summit Point. All are highly regarded birding experts. Enrollments will be strictly limited to ensure that all participants receive close personal attention and are able to learn collectively.

After successful completion of a "baseline" set of workshops, successful students will be awarded a "Master Birder" certificate.

Applicants must be graduates of PVAS's "Birding 101" course or have commensurate experience (3 or more years of birding). There is no age requirement but participants under 16 must be accompanied a parent.

The program's first workshop will focus on raptors and begin Thursday, September 13 with a 7:00-9:00 p.m. classroom session at the National Conservation Training Center outside Shepherdstown. Session will be followed by four weekend field trips that will be held at various locations within a two-hour drive of Shepherdstown on a flexible schedule (depending on weather). The tentative dates for these trips are September 15 or 16, October 6, October 20, and November 3 or 4.

The main topics to be covered will be raptor migration, identification in flight and perched, behavior, distribution and population trends, and conservation goals.

The cost will be $75 per person for PVAS members and $100 per person for nonmembers. The nonmember cost includes a one-year household membership in PVAS. Registration is available on-line on the PVAS website at www.potomacaudubon.org or by contacting Matt Orsie at 304-261-5602 or wvbirder@comcast.net.

Future planned workshops include Warblers, Bird Song, Gulls, and Shorebirds.

Cape May Hawk-watch Trip

PVAS will sponsor a hawk-watching trip to Cape May, NJ, the weekend of October 13-14. Anyone with an interest is welcome to participate and there will be no fee. But participants will be expected furnish their own transportation and arrange for their own accommodations. Hotel and motel reservations should be made now, because Cape May is a very popular destination in October.

The trip will be led by local birder Sandy Sagalkin, and it will focus on several hawk-watching sites in the Cape May area. It will offer good opportunities to see Peregrine Falcons, Merlins, American Kestrels, Sharp-shinned Hawks, Coopers Hawks, Bald Eagles, Northern Harriers and other species of hawks.

Those who participate will also be able to take advantage of a variety of free educational opportunities offered by the Cape May Bird Observatory and the New Jersey Audubon Society. Their offerings include such events as a Mini-Hawk ID workshop for beginners, a Hawk-banding demonstration, a Monarch tagging demonstration and bird walks that are open to the public.

The Cape May Bird Observatory website (www.birdcapemay.org) contains a list of Cape May hotels and motels which offer discounts to birders who are members of the Observatory. The savings can be significant enough that trip participants who are not already members may wish to join; this can be done easily online. For those on a very tight budget, the most affordable accommodations may be in nearby Wildwood, NJ.

Those who wish to participate should pre-register by contacting Sandy by phone at 240-291-6465. For more information, contact him by email at monsansagalkin@myactv.net.

Don't Miss This Fall's "Insect Walk"!

PVAS will sponsor an evening "insect walk" along the C&O Canal across from Shepherdstown on Saturday, September 15. The walk will be led by local insect expert Wil Hershberger, who is coauthor of "The Songs of Insects," a book and audio CD published by Houghton-Mifflin Company.

These walks are family-oriented events that are especially popular with young children but anyone with an interest is welcome to participate. There is no fee.

Space will be limited so those who want to participate need to make a reservation as soon as possible. Register on the PVAS website or contact Kelly Wolf at kheldreth@hotmail.com or 304-229-6229.

The walking group will assemble at 7:00 p.m. in the large C& O Canal parking lot on Canal Road, three-tenths of a mile south of the Shepherdstown bridge. From there, Wil will lead an exploration of fields and roadsides near the Canal. Insects likely to be encountered include tree crickets, several species of meadow katydids, one or two species of round-winged katydids, northern true katydids, oblong-wing katydids, and perhaps some bush katydids.

Those who wish to participate should bring a flashlight and be prepared to walk through high grass and weeds. Tucking pants legs into socks and spraying them with a DEET-based insect repellent is recommended.

Potomac Valley Audubon Society

www.potomacaudubon.org

Calendar of Pending Events

September 1: Trip to view migrating shorebirds at various Eastern Panhandle locations. Meet at 7:30 a.m. inside the entrance to the Archer's Rock subdivision in Berkeley County (from Route 9 just north of the intersection with I-81, go right on Harlan Springs Road about 1.5 miles). From there, several ponds and wetlands will be visited. Free and open to anyone with an interest. No pre-registration required. Binoculars will be available for anyone who needs them. For more info contact Sandy Sagalkin, at 240-291-6465 or monsansagalkin@myactv.net.

September 5: Trip to view migrating shorebirds at various Eastern Panhandle locations. Meet at 7:30 a.m. inside the entrance to the Archer's Rock subdivision in Berkeley County (from Route 9 just north of the intersection with I-81, go right on Harlan Springs Road about 1.5 miles). From there, several ponds and wetlands will be visited. Free and open to anyone with an interest. No pre-registration required. Binoculars will be available for anyone who needs them. For more info contact Sandy Sagalkin at 240-291-6465 or monsansagalkin@myactv.net.

September 8: Outdoor Explore! C&O Canal Trek, 9am-12pm. This program is designed to help children entering grades 1-4 explore nature through unstructured but supervised exploration and play in a variety of settings and habitats around the Eastern Panhandle. Each month's theme is appropriate to the time of year and habitat of the specific location. This month, hike a portion of the C&O Canal and lok for signs of fall: caterpillars, changing leaves, dropping seeds, birds on the river, signs of animals, and LOTS of Canada Geese! For more information, contact Ellen Murphy at Ellen@PotomacAudubon.org or 304-676-8739. Pre-registration is required, $5/child. For details and registration, go to www.potomacaudubon.org.

September 13: Master Birder Workshop classroom session on raptors. 7:00-9;00 p.m. at the National Conservation Training Center outside Shepherdstown. To be followed by four field trip sessions on the same subject from September to November. The first of a planned series of workshops for experienced birders who want to take their knowledge and skills to a new level. Applicants must be graduates of PVAS's "Birding 101" course or have commensurate experience (3 or more years of birding). The cost will be $75 per person for PVAS members and $100 per person for nonmembers. The nonmember cost includes a one-year household membership in PVAS. Full information and on-line registration is available on the PVAS website. Or contact Matt Orsie at 304-261-5602 or wvbirder@comcast.net.

September 15: Field trip to Cathedral State Park in Preston County, WV. Registered as a Natural Historical Landmark, this unique park gets its name from its many ancient hemlocks, which reach majestic proportions and form spectacular natural cloisters. They are one of the last remnants of a vast virgin hemlock forest that once flourished in the Appalachian highlands. The trip will be led by Master Naturalist Clark Dixon and include a guided park tour led by the park's naturalist. The tour will start at 11:00 a.m. and last about one-and-a-half hours. Afterwards, the trip group will travel to nearby Blackwater Falls State Park for a lunch before departing for home. Free and open to anyone, including families with children. However, space will be limited and pre-registration is essential. Register online on the PVAS website or contact Kelly Wolf at 304-229-6229 or kehldreth@hotmail.com. The drive to the park from the Eastern Panhandle is about two-and-a-half hours long.

September 15: Insect Walk on C&O Canal. The walk will be led by local insect expert Wil Hershberger, who is coauthor of "The Songs of Insects," a book and audio CD published by Houghton-Mifflin Company. These walks are family-oriented events that are especially popular with young children but anyone with an interest is welcome to participate. There is no fee. Space will be limited so those who want to participate need to make a reservation as soon as possible. Register on the PVAS website or contact Kelly Wolf at kheldreth@hotmail.com or 304-229-6229. The walking group will assemble at 7:00 p.m. in the large C& O Canal parking lot on Canal Road, three-tenths of a mile south of the Shepherdstown bridge. From there, Wil will lead an exploration of fields and roadsides near the Canal. Insects likely to be encountered include tree crickets, several species of meadow katydids, one or two species of round-winged katydids, northern true katydids, oblong-wing katydids, and perhaps some bush katydids. Those who wish to participate should bring a flashlight and be prepared to walk through high grass and weeds. Tucking pants legs into socks and spraying them with a DEET-based insect repellent is recommended. The walk

will not take place if it is raining. Wil who lives in Hedgesville, has been a naturalist all his life. He has been photographing and recording the natural world for more than a decade and his work has been published in magazines, calendars, and books. His recordings of birds, frogs and insects are archived at the Macaulay Library of Natural Sounds at the Cornell Laboratory of Ornithology. His website can be found at www.natureimagesandsounds.com.

September 15-16: Sharpsburg Heritage Festival. Look for the PVAS display at this event.

September 17: Hawk-watching trip to the Washington Monument State Park on South Mountain, outside Boonsboro, MD. A good opportunity to see migrating Broad-winged hawks in large numbers. This trip will begin at 8:30 a.m. Free and open to anyone with an interest but pre-registration is essential because space constraints at the viewing site will limit participation to just eight people. To register and get directions, contact Sandy Sagalkin at 240-291-6465 or monsansagalkin@myactv.net. Binoculars will be available for anyone who needs them.

September 17: Wee Naturalists - Footsteps in the Forest, 9:30-11am. Introduce your preschooler to the natural world and explore it together! What kind of feet walk in the forest besides yours? Learn more about different animals and the footprints they can leave behind. The Wee Naturalist Program is held at the Yankauer Preserve located on Whiting's Neck Road between Shepherdstown and Martinsburg, WV. Cost is $5 per child/adult partners. Pre-registration is required. Programs are conducted rain or shine and include activities in an open-air pavilion and nature walks. Everyone should wear sturdy shoes and dress for the weather. For more information and registration, go to www.potomacaudubon.org.

September 18: Wee Naturalists - Footsteps in the Forest, 9:30-11am. This is the same program as above, but repeated on a Tuesday morning. For more information and registration, go to www.potomacaudubon.org.

September 19: Hawk-watching trip to the Bolivar Heights section of the Harpers Ferry National Historical Park. A good opportunity to see Broad-winged hawks in large numbers. Migrating warblers should also be abundant. Meet at 7:30 a.m. at the Bolivar Heights parking area. From the Route 340 traffic light at the entrance to the National Park, turn north onto Washington Street and follow it for about ¼ mile, then turn north again (left) onto Whitman Avenue; the parking area is at the top of the hill. Free and open to anyone with an interest. No pre-registration required. Binoculars will be available for anyone who needs them. For more info contact Deb Hale at debhale72@gmail.com or 304-535-2346.

September 20: Hawk-watching trip to Snickers Gap, in Virginia on the Clark/Loudoun County line just below Jefferson County WV. Also a very good site for watching Broad-wings. Free and open to anyone with an interest. Children will be welcome. No pre-registration required. Binoculars will be available for anyone who needs them. Participants will meet to carpool to the site at 8:00 a.m. in the parking lot in front of the Martin's supermarket in the Jefferson Crossroads Shopping Center just off Route 340 east of Charles Town. For more info contact Sandy Sagalkin at 240-291-6465 or monsansagalkin@myactv.net.

September 21-23: Fifth Annual Berkeley Springs Fall Birding Festival. Sponsored by PVAS. Events will include walks, workshops and evening presentations for beginning and intermediate birders and families with children. Most events are free. This year's featured presenter will once again be Sharon Stiteler, a Minnesota naturalist who authors the popular "Birdchick.com" website. Also participating will be Northern Virginia raptor expert Liam McGranaghan and Marci Heacker, a forensic ornithologist with the Smithsonian Institution. Most events will be free. See the PVAS website for full details: www.potomacaudubon.org

September 28: Potomac Valley Nature Photographers. This meeting will be held at the National Conservation Training Center at 7pm and will feature a"show and share" theme on insects. Members are encouraged to submit electronically photos of that theme to share with the group by email to pvnpexec@gmail.com. A discussion of the images will follow, and photographers will be invited to share their insights and stories about their photos. Afterwards, PVNP member Joe Mikus will do a short presentation on the Nikon D800 DSLR, which has been called a "game changer" by world renowned photographers such as Jim Brandenburg.

September 30: Birding trip to Stauffer's Marsh Nature Preserve. The Preserve is located in Back Creek Valley in Berkeley County, one-half mile south of Shanghai, on the east side of Back Creek Valley Road (County Route 7). Meet in the parking area at the north end of the marsh at about 7:30 a.m. The trip will focus on migrating birds, including shorebirds, waders, and others. Free and open to anyone with an interest. Binoculars will be available for anyone who needs them. No pre-registration required. For more info contact Sandy Sagalkin, at 240-291-6465 or monsansagalkin@myactv.net.

The walk will not take place if it is raining.

Wil, who lives in Hedgesville, has been a naturalist all his life. He has been photographing and recording the natural world for more than a decade and his work has been published in magazines, calendars, and books. His recordings of birds, frogs and insects are archived at the Macaulay Library of Natural Sounds at the Cornell Laboratory of Ornithology. His website can be found at www.natureimagesandsounds.com.

June Reception A Great Success!

Thanks to the graciousness and generosity of hosts Bob and Tia McMillan, exceptional weather, and the efforts of many volunteers, our June 23 reception at the McMillan's beautiful Terrapin Neck home was a wonderful event that was enjoyed by all.

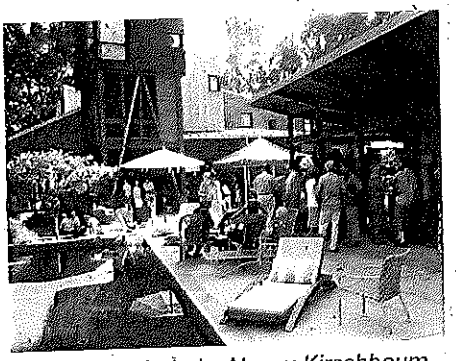


photo by Nancy Kirschbaum

Lots of volunteers deserve special mention. PVAS's event coordinating committee—Alice Barkus, Susan Brookreson, Gretchen Meadows, Diana Mullis, and Jane Vanderhook—once again did an impressive job. Year after year, these folks donate their time and talents to present food and beverages in ways that meet (and often surpass) the standards of the best professional caterers, and PVAS is very grateful to them for their assistance. Others who pitched in to help with food and beverage service and other arrangements included Neal Barkus, Diane Brookreson, Sean McGowan, Josh Meadows, Peter Smith, Gary and Diane Sylvester, and Jim and Ray Vanderhook.

Bob Dean once again pulled together the very talented Harlan Spring Band, who—as always—provided first-rate musical entertainment. Rodney Woods once again lent his auctioneering skills for a lively auction of donated items. The donors of those items included Alice and Neal Barkus, Wayne Braunstein, Susan Carney, Susan Fluharty, Diane Mayhew, Gretchen Meadows, Diana Mullis, Jean Neely, Jane Vanderhook, and Ray Vanderhook.

In the end, the event netted more than $8,000 for our educational programs.

We can't thank Bob and Tia McMillan and all of the volunteers enough for all of their efforts to make this reception such a success. We also are very grateful to the 95 guests and additional donors who generously contributed to the event.

Birdseed Sale Reminder

Please remember that PVAS's annual fall birdseed sale will get underway in October. Watch your October Valley Views for your Birdseed Order Form. If you have any questions in the meantime, please contact Diana Mullis at DianaMullis@aol.com or 304-267-3482.

Day of Caring on September 11

This year's Day of Caring will be held Tuesday, September 11.

As usual, the day's events will kick off with a 7:30 am breakfast in Berkeley County at War Memorial Park in Martinsburg and in Jefferson County at the Inn at Charles Town. In Morgan County, breakfast will be held at 8 am at the War Memorial Hospital.

This year PVAS is spearheading projects at Yankauer from 8:30 am-3:00 pm. You may join PVAS at the Yankauer Preserve to work on invasive removal (like ailanthus, autumn olive and stilt grass), clean up the butterfly garden, trim the trails and parking lot, and final work on the accessible trail project. Lots of work AND fun to be had by all! We'll provide a delicious hot lunch (around 12) if you provide the labor! To pre-register to help at Yankauer, contact Tim Murphy at 304-876-8133 or timurf@comcast.net.

In Morgan County, Joe Gentile is spearheading a volunteer day on PVAS' behalf at the Nursing and Rehabilitation Center. If you'd like to help Joe, you may contact him at 304-258-3197.

After a hard day's work, enjoy dinner at the Clarion in Shepherdstown from 4:00-6:00 pm where you can celebrate a day of work for a good cause with fellow community members. Please pre-register to ensure enough food and t-shirts for all volunteers!

Eidolon Tower Demolition Delayed

The June issue of Valley Views reported that the Federal Aviation Administration was planning to demolish its tower at the Eidolon Nature Preserve during July. The timetable for the project has been pushed back several times since then and the latest word is that demolition will begin on or about September 10 and conclude around the end of September.

While it is underway, the demolition project will no doubt be disruptive and public access to the preserve may be compromised. PVAS will do its best to monitor the situation and keep the public informed through email and on its website.

If you have questions, contact Peter Smith at 304-876-1139 or pvsmith@frontiernet.net.

The tower was built by Western Union in 1962, as part of an upgrade of a nationwide network of some 400 towers that used microwave signals to relay radio signals from point to point. During the Cold War era, the network played a role in national defense communications as well as commercial communications. Western Union sold off its tower network in the 1980s, and the FAA acquired the Eidolon tower at that time.

PVAS Display at Festivals

PVAS will have displays at this year's Sharpsburg and Charles Town Heritage Festivals. The Sharpsburg Festival, which will commemorate the 150th anniversary of the Battle of Antietam (or Sharpsburg, depending on your perspective) will be held the weekend of September 15 and 16. The Charles Town Festival will be held the following Saturday, September 22.

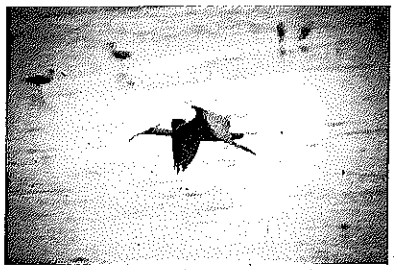
If you attend either or both events, please stop by and say hello.

September Birding Trips

PVAS has scheduled six local birding trips for September. All the trips will focus on migrating birds, with those in the middle of the month concentrating on the Broad-winged hawk migration. All are free and anyone with an interest is welcome to come along, regardless of their birding skills. Children will be welcome.

Only one trip requires pre-registration: the hawk-watching trip to the Washington Monument State Park on the 17th. No pre-registration is needed for any of the other trips.

For each trip, participants should wear sturdy footwear, dress appropriately for prevailing weather conditions, and bring along water and bug spray. Binoculars will be available for anyone who needs them.



Glossy Ibis at Bombay Hook, taken by Nathan Snyder on August 5

Trips will cancelled in the event of steady rain. Various trip details could also change depending on weather or recent bird sightings.

Full details can be found on the PVAS website. Unless otherwise noted, the contact for more information about each trip is Sandy Sagalkin at 240-291-6465 or monsansagalkin@myactv.net. The specific dates, destinations and details are as follows:

Saturday, September 1 and Wednesday, September 5: Trips to view migrating shorebirds at various Eastern Panhandle locations. Meet at 7:00 a.m. inside the entrance to the Archer's Rock subdivision in Berkeley County (from Route 9 just north of the intersection with I-81, go right on Harlan Springs Road about 1.5 miles). From there, several ponds and wetlands will be visited.

Monday, September 17: Hawk-watching trip to the Washington Monument State Park on South Mountain, outside Boonsboro, MD. A good opportunity to see migrating Broad-winged hawks in large numbers. This trip will begin at 8:30 a.m. Pre-registration is essential because space constraints at the viewing site will limit participation to just eight people. To register and get directions, contact Sandy at the phone number or email address shown above.

Wednesday, September 19: Bird walk in the Bolivar Heights section of the Harpers Ferry National Historical Park. Various species may be seen, including migrating hawks and warblers. Meet at 8:00 a.m. at the Bolivar Heights parking area. From the Route 340 traffic light at the entrance to the National Park, turn north onto Washington Street and follow it for about ¼ mile, then turn north again (left) onto Whitman Avenue; the parking area is at the top of the hill. For more info contact Deb Hale at debhale72@gmail.com or 304-535-2346.

Thursday, September 20: Hawk-watching trip to Snickers Gap, in Virginia on the Clark/Loudoun County line just below Jefferson County WV. Also a very good site for watching Broad-wings. Participants will meet to carpool to the site at 8:00 a.m. in the parking lot in front of the Martin's supermarket in the Jefferson Crossroads Shopping Center just off Route 340 east of Charles Town.

Sunday, September 30: Bird walk at the Stauffer's Marsh Nature Preserve. Will focus on migrating birds, including shorebirds, waders, and others. The Preserve is located in Back Creek Valley in Berkeley County, one-half mile south of Shanghai, on the east side of Back Creek Valley Road (County Route 7). Meet at 7:30 a.m. in the parking area at the north end of the marsh.



PVAS trip to Canaan Valley National Wildlife Refuge on May 26. - photo by Lisa Kovatch

United Way/CFC Fund Drives Coming Up

The annual fundraising campaigns of the United Way of the Eastern Panhandle and the Combined Federal Campaign (CFC) get underway this month. Both campaigns will last into the winter.

PVAS receives funds from both agencies and encourages its members to give to their campaigns.

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

To designate United Way contributions to PVAS, look for the section of the United Way contribution form that asks how you want your donation invested and indicate that you want to make a "Restricted Contribution" to "Potomac Valley Audubon Society, PO Box 578, Shepherdstown, WV."

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

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

If you have any questions, please contact Kristin Alexander at Kristin@potomacaudubon.org or 304-676-3397.

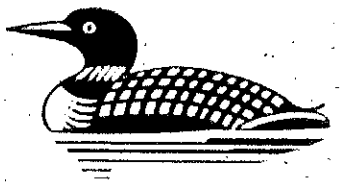
Annual Meeting and Elections

The PVAS annual meeting was held on June 9 at the Yankauer Nature Preserve. The end of the year was celebrated with a potluck, election of officers and board members, and recognition of volunteers.

After a delicious potluck supper, Peter Smith called the meeting to order to elect officers and board members. Bob Reynolds was elected President and Gary Heichel was elected Vice President. Don Briggs was elected to a second term as an at-large Board member and two new at-large members were elected: Sandy Sagalkin and Lou Scavnicky.

Following the election, Peter Smith, Wayne Braunstein, Rob Hoxton, and Georgia Jeppesen were recognized for their service on the board as they step down due to term limits.

The following volunteers were also recognized for outstanding contributions to PVAS over the last year: Alice Barkus, Kathy Bilton, Sandra Bloom, Joette Borzik, Susan Brookreson, Dan Cogswell, Bob Dean, Robin Dean, Carol Del Colle, James Dillon, Diana Gaviria, Joe Gentile, Jim Harden, Steve Hartman, Wil Hershberger, Georgia Jeppesen, Nan Johnson, Susan Jones, Elliott Kirschbaum, Nancy Kirschbaum, Gretchen Meadows, Wanda Miller, Diana Mullis, James Munnis, Suzi Munnis, Tim Murphy, Matt Orsie, Deb Patthoff, Sandy Sagalkin, Melanie Snyder, Gary Sylvester, Diane Sylvester, Carolyn Thomas, Marie Van Valkenburgh, Jane Vanderhook, Eldon Winston, Virginia Winston, Kelly Wolf.



LOONY FUN FACTS

- Known to dive 240 ft; among birds only penguins can dive deeper!
- Needs a large territory; a 100-acre lake will have only one nesting pair.
- Heavy body and far-back placement of legs are ideal for diving.
- Awkward walker; may actually fall forward when walking.
- State bird of Minnesota.
- Eskimo legend says loon is capable of magic.
- Downy chicks spend up to 65% of first week riding on the back of swimming adult.

Sources:
Laura C. Martin, ***The Folklore of Birds***, (1993) The Globe Pequot Press
Paul R. Ehrlich et al; ***The Birder's Handbook***, (1988), Simon and Schuster, Inc.

JOIN PVAS TODAY!

ALL of your dues will stay here to support local PVAS efforts and help us grow! And here's what you'll get:

- ☐ Access to a wide variety of PVAS programs and events for adults and children, including field trips, special events, workshops and courses, and environmental projects.
- ☐ A subscription to Valley Views, the PVAS newsletter
- ☐ E-mail alerts about events and programs of special interest
- ☐ Satisfaction of supporting conservation efforts, youth and adult nature education, individual and family recreation, and a wide array of programs in your community.

To become a local member, send in the form below and enclose a check for $20 ($15 for seniors and students). Make the check out to "PVAS." This fee covers membership for everyone in your household for one year.

Membership Form

Name: _____

Address: _____

City: _____ State: ____ Zip code: _____

Phone (optional): _____

E-mail: _____

To save postage costs, PVAS regularly sends its newsletter by e-mail. You can be assured that we do not share email addresses with anyone. If you would prefer to receive the newsletter by U.S. mail check here: __

Clip and mail this form to:

Membership Chair, PVAS
PO Box 578
Shepherdstown, WV 25443

Thank you for your support!

If you'd rather join the National Audubon Society:

Some people prefer National Audubon Society membership, which includes a subscription to the Society's Audubon magazine. To become a National member, go to the Society's website at www.audubon.org and click on "join." If you join National Audubon and reside in Berkeley, Jefferson or Morgan counties in West Virginia, or in Washington County Maryland, you will automatically become a member of PVAS and have access to our events, an e-mail copy of newsletter and e-mail alerts. However almost all of your dues payments will go to the National Audubon Society; only a small percentage will go to PVAS.

RED TEXT - DOT ALERT

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

If you are a National Audubon Society member, the National Society will notify you directly when your membership is up for renewal.

Potomac Valley Audubon Society
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A proud partner of the United Way of the Eastern Panhandle and the Combined Federal Campaign.

MAIL TO:

Jefferson County Commission
100 E Washington Street
Charles Town, WV 25414

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The Potomac Valley Audubon Society meets at 7:00 p.m. on the second Wednesday of each month, September through April. Programs are free and open to the public. For additional information about PVAS or its programs and activities, please call any of the board members listed her or see http://www.potomacaudubon.org. PVAS serves the Eastern Panhandle of West Virginia and neighboring Washington County, Maryland.

PVAS BOARD

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

PVAS Officers and Board Members

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