

**AGENDA REQUEST FORM**  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)



Name: Debbie Keyser, County Administrator

Department or Organization: County Commission

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

Date Requested – 1<sup>st</sup> Choice: November 21, 2013

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

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

Subject (Wording to be placed on agenda):

**Website Relocation RFP – Update**

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

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

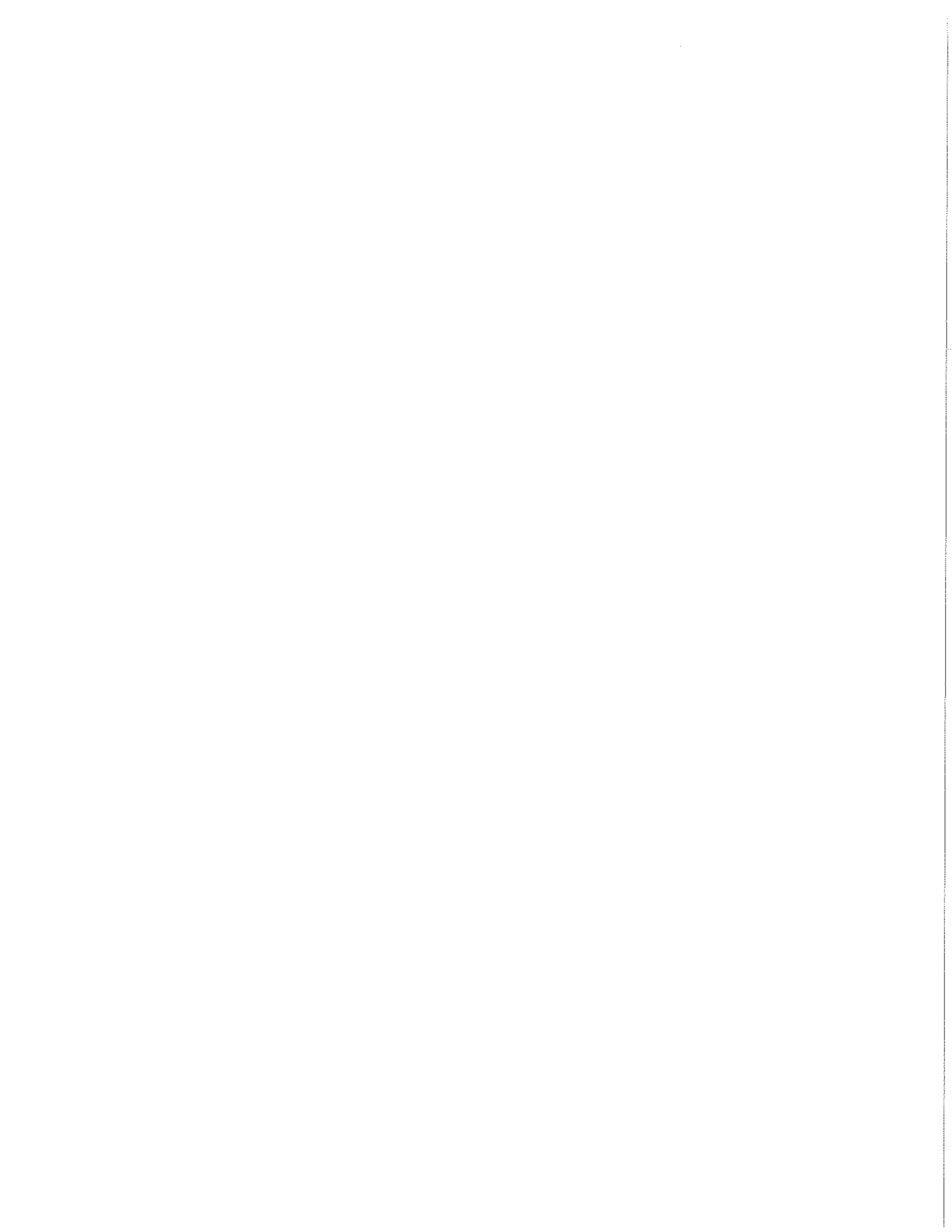
Are documents attachments? Yes      No  
If not, explain:

Is a projector needed? Yes      **XX**      No

Contact information:

Email address: \_\_\_\_\_

Phone number: \_\_\_\_\_



**AGENDA REQUEST FORM**

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

Subject (Wording to be placed on agenda):

**VoIP Summary Report – Update**

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

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

Are documents attachments? Yes      No

If not, explain:

Is a projector needed? Yes      **XX**      No

Contact information:

Email address: \_\_\_\_\_

Phone number: \_\_\_\_\_

## VOIP RFP Summary Report

The VOIP project began with an RFP that received a total of 7 responses. From there, a total of 2 vendors were selected and requested to provide a presentation to the VOIP Team.

There was a request from Mr. Polk to the Commission to allow Accurate System Inc. to assist with the selection and implementation of the telephone system from an IT perspective, which was approved by the Commission in the amount of \$13,650.00

One vendor was selected as being the outstanding vendor as a result of cost, customer service, ease of use and telephone features. At the time the bid was reviewed and considered by the VOIP Team, the quote was for \$250,000 for the Shoretel telephone system plus \$30,000 in switches which were needed to upgrade Jefferson County's IT infrastructure to support the phone system (for a total cost of \$290,000).

In summary the new phone system would:

- provide seamless transferring of citizen's phone calls from one department to another
- provide employees with caller ID, with speaker phone capabilities, conference call capabilities, instant messaging for speedy communications internally, accommodate our hearing impaired employees, and overall provide a better tool for our employees to serve other employees and the public
- reduce annual phone costs from \$300,000 per year to \$33,000 per year

With this information being presented to the Commission, the request for \$290,000 for the new phone system was approved with monies from Capital Outlay.

The new switches were requested because our internal IT infrastructure had not been upgraded for years and would not support the telephone system. It was felt the new switches would be all that was needed along with the phone system. However, once Accurate Systems, the IT leader of the project, saw the lack of infrastructure and issues with our IT arena, it became apparent there were many other IT items that would need to be addressed in order to implement the new phone systems. Just prior to the upgrade of our infrastructure for the phone system, we had experienced the following problems throughout the county:

- downtime (on one occasion for one full week) where employees did not have access to the internet or their email; and due to the many issues with our system we weren't able to find the problem, diagnose it, nor fix it in many instances
- inability to download agenda packets or large documents because our bandwidth was not sufficient

--our citizens could not access our website or download large documents.

--realization that cabling wasn't provided to each department so we had one solid line of communication between all offices. All offices had connections to their vendors such as SSI or CSSI, but there wasn't a central source of cabling connecting everyone. And if we were going to connect everyone, we needed to consider consistency between the two campuses so we can all communicate easily and effectively now and in the future.

Due to all of the issues above there was a significant amount of downtime in lost employee productivity and high frustration from citizens, Commissioners and employees as a result of the internal IT issues we faced. In reality, our infrastructure issues had not been addressed for at least 5 years, if not longer.

There were multiple and creative efforts which were put into motion to upgrade our infrastructure at the least cost, such as Accurate Systems donating some of their time to assist with some of the unforeseen issues, our Maintenance personnel working diligently to run new cabling throughout a number of buildings so the switches could be installed so phone calls could be transferred between departments. There were meetings with myself, Sandy McDonald, Bill Polk, and Accurate Systems to ensure we utilized the current equipment as much as possible. It took time and money to organize and label cabling that had been thrown into piles for years. We conferred with SSI and local counties for brainstorming ideas to ensure we were approaching this project as frugally and conservatively as possible while meeting the needs of the new system requirements. Once we had the majority of items in place, the infrastructure was left to work on its own accord for a number of weeks to ensure everything was properly configured before we added the complexity of the VOIP system, so that should an issue arise with the implementation of VOIP, we could quickly diagnosis and fix the problem.

The VOIP system was first installed at the Bardane campus as the majority of the systems there were current and needed little upgrades or revisions. The implementation was completed with success and no issues. With that, the phone system was installed at the downtown campus. The downtown campus is much more complicated since we have a number of vendors that needed to be involved in the process, i.e. SSI, CSSI, and the Supreme Court. Weekly phone calls were completed with vendors and our internal IT department representatives so everyone was clear on the action steps taking place, what would be changing and what needed to be done. It was from this venture that the IT Squad originated which will be a great tool now and in the future to assist with our continued IT growth.

In summary, here is the total that was spent and the savings:

Original Request	Actual		
\$ 250,000	\$ 250,000	Phone System	
\$ 30,000	\$ 38,500	Switches	
\$ 13,650	\$ 22,500	Accurate System	
	\$ 3,215	Misc. Equip.	
	\$ 18,267	Fiber Cabling	
	\$ 2,652	GDC Labor	
	\$ 3,140	Air Fiber - JC	
	\$ 12,000	Air Fiber - CA	
	\$ 1,087	Travel Costs	Delay from Frontier
	\$ 1,125	Travel Costs	Negotiating Charges
\$ 293,650	\$ 352,486	Total	
Overage	\$ 58,836		

Potential Savings

Original Mo. Costs	Projected Mo. Costs	Mo. Savings
\$ 27,500	\$ 12,000	Nov. 2013
\$ 27,500	\$ 9,000	Dec. 2103
\$ 27,500	\$ 8,000	Jan. 2014
\$ 27,500	\$ 7,000	Feb. 2014
\$ 27,500	\$ 6,000	Mar. 2014
\$ 27,500	\$ 5,000	Apr. 2014
\$ 27,500	\$ 5,000	May. 2014
\$ 27,500	\$ 5,000	Jun. 2014
\$ 220,000	\$ 57,000	
Difference	\$ 163,000	

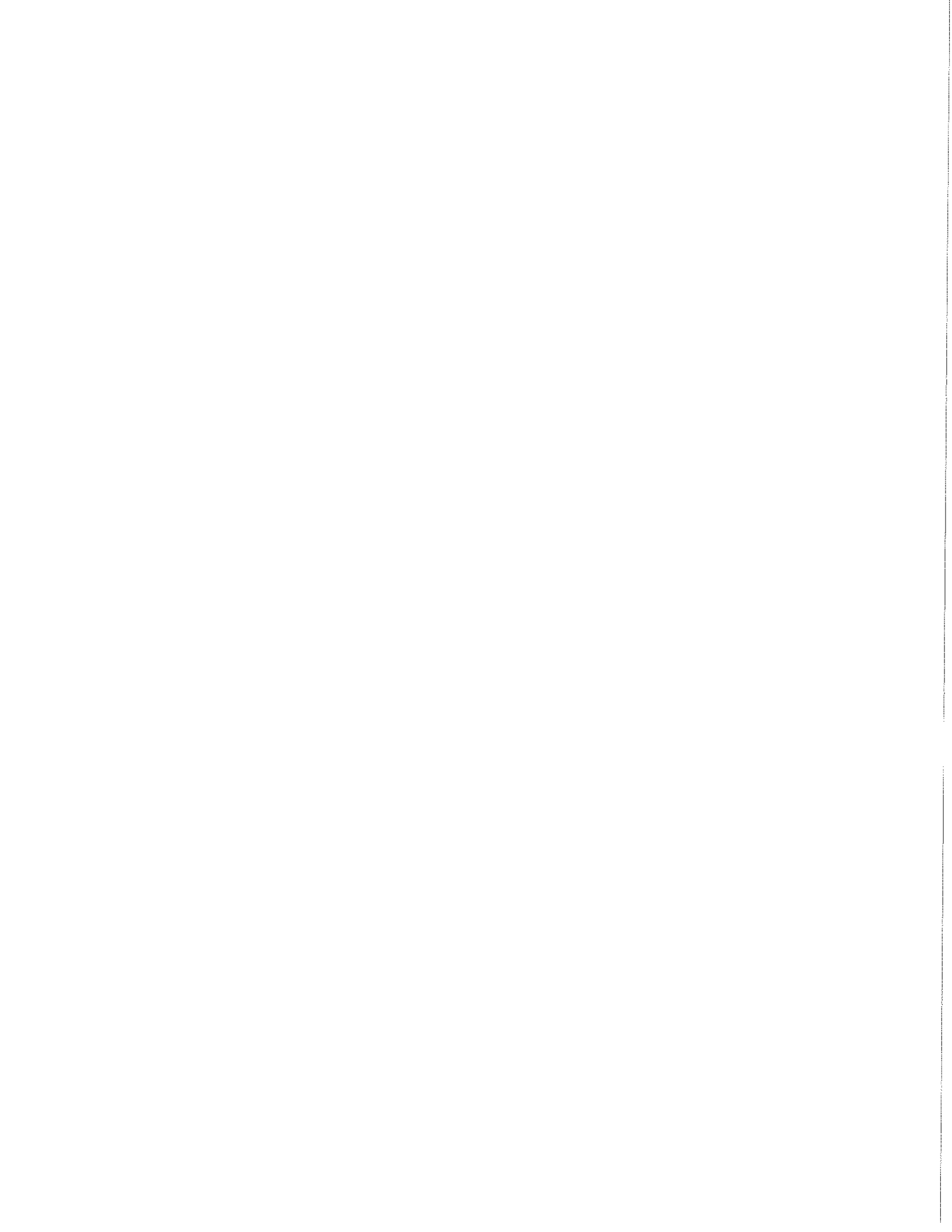
The original request of \$250,000 was to be paid from Capital Outlay with the remaining monies to be paid from Coal Severance.

Since the upgrade of the cabling and switches we have not experienced downtime except for weather or Comcast related issues, which are outside our control. Our bandwidth has improved so downloading large documents has improved for both citizens and employees. While we certainly have other IT issues to address and our system still needs additional work, the investment of the additional \$58,836 has provided a solid base we desperately needed for our future IT growth and eliminated downtime. One hour of downtime at an average salary of \$37,000 for 183 employees is worth approximately \$3,110 per hour.

In the end, the additional monies were spent wisely and frugally. We have gained an IT Squad to work together to better achieve their department and Jefferson County's IT goals, we have a new phone

system that improves our employee productivity and service to the citizens, we have an IT infrastructure to support our future growth and needs, should there be problems or issues we are in a better position to diagnose and repair the issue for a speedy recovery, and we have great employees like Laura Kuhn, Ryan Milbourne, and Jeff Polczynski, along with Tom Reilly from Accurate Systems and Project Manager Bill Polk that made this project successful because of their dedication, hard work and support to this important project.

Debbie Keyser



*[Please run ad twice: 10-30 and 11-06]*

**NOTICE OF PUBLIC HEARING  
COUNTY COMMISSION OF JEFFERSON COUNTY  
THURSDAY, NOVEMBER 21, 2013 AT 7:00 pm**

The County Commission of Jefferson County has scheduled a **Public Hearing for a proposed Zoning and Land Development 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 hearing, **7:00 PM, Thursday, November 21, 2013** during the regular scheduled County Commission meeting **in the Charles Town Library meeting room at 200 E. Washington St., at the side entrance on Samuel Street.** In addition, you may provide written comments to [info@jeffersoncountywv.org](mailto:info@jeffersoncountywv.org), or mail to PO Box 250, Charles Town, WV 25414, or fax to 304-728-8126.

Copies of the proposed text are available on the Departments of Planning and Zoning webpage within the County's website – [www.jeffersoncountywv.org](http://www.jeffersoncountywv.org). Questions related to the proposed new zoning categories may be directed to the office of the Departments of Planning and Zoning at 304-728-3228 or [zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org).

By Order of the County Commission of Jefferson County  
Dale Manuel, President

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

## AGENDA REQUEST FORM

Name: Jennifer Brockman

Department or Entity: Planning and Zoning

Estimation of amount of time needed for appointment: 1 hour

Date Requested – 1<sup>st</sup> Choice: November 7, 2013 1:30 pm

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

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

Subject: **Work Session for the County Commission Regarding Proposed Zoning Ordinance Text Amendment Related to New Commercial and Industrial Zoning Categories**

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

**On September 6, 2012, the County Commission held a public hearing to receive public input and comments on the proposed new Commercial and Industrial Zoning Categories:**

**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**

**Public comment was left open for written comments until September 20, 2012.**

**At that time, Staff summarized all verbal and written comments received in the attached matrix and provided staff response to the comments. Staff met with the County Commission on October 18, 2012 and October 25, 2012 to discuss the comments received and request direction regarding incorporation of the comments into the draft Amended Ordinance. The purpose of this Work Session is to review the comments received and the proposed staff revisions to the original draft text.**

**On October 25, 2012, the County Commission voted to postpone approving the new Commercial and Industrial Zoning categories until the work on the Comprehensive Plan begins and to incorporate them into the Comprehensive Plan. (Motion passed on a vote of 3-2 with Ms. Noland and Mr. Pellish opposing the motion.)**

**At their July 9, 2013 meeting, the Planning Commission requested that the County Commission revisit their motion of October 25, 2012 and take up the Zoning Text amendment at the point in the process where it was suspended, for approval of the County Commission. In August 2013, the County Commission determined that they would like to hold another public hearing on the revised version of this text amendment. This Public Hearing has been set for November 21, 2013 at 7:00 pm. This workshop is in preparation for that Public Hearing.**

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

**Not at this time**

Attachments:

- **Memo from Steve Barney to PC dated June 7, 2013 updating them on the Status of the Draft Zoning Ordinance Amendments – Proposed Commercial and Industrial Districts and Related Changes**
- **Matrix of Public Hearing Comments**
- **Key to Formatting of Amendments**
- **Changes to Draft Zoning Text Amendments – Proposed Commercial and Industrial Districts and Related Changes**
- **Revised draft of the ordinance amendments, including Appendices A, B, and C and revisions to Section 2.2 (Definitions).**
- **Study Area Map from the adopted 2004 Comprehensive Plan.**

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

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

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

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**MEMO**

**TO:**       Jefferson County Planning Commission  
**FROM:**   Steve Barney, Zoning Administrator  
**DATE:**   June 7, 2013  
**RE:**       Draft Zoning Ordinance Amendments – Proposed Commercial and Industrial Districts  
              and Related Changes

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**Background**

In 2011 and 2012, the Planning Commission and County Commission both identified as a high priority 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, at the direction of the County Commission, staff undertook a year-long effort to develop additional commercial and industrial zoning categories, including districts that would allow appropriate limited commercial ventures in suitable locations.

**Status of Draft Amendments**

The Planning Commission has reviewed the draft recommendations during five of its meetings, solicited public input during a February 14, 2012 workshop, and conducted a public hearing that spanned two meetings in April 2012. 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 12, 2012 meeting, the Planning Commission voted to recommend the draft ordinance amendments to the County Commission for adoption, including proposed changes as a result of public comment.

Staff briefed the County Commission on the amendments in August, 2012. The County Commission conducted a public hearing in September, 2012, and extended the time period for public comment for two additional weeks after the meeting.

On October 11, 2012, staff briefed the County Commission on public comments received, and recommended changes to the amendments to address the comments. On October 25, 2012, the County

Commission voted 3-2 to postpone consideration of the amendments until after the adoption of the Comprehensive Plan.

At the May 14, 2013 Planning Commission meeting, in response to comments by Commissioner Pellish, the Planning Commission directed staff to brief the Commission regarding the draft amendments at its June 11, 2013 meeting.

**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.

**Proposed New Land Use Categories**

Together 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. 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 definitions (Section 2.2).

## **Changes Following Planning Commission Action**

Based on comments received from members of the public as well as County Commission members at the County Commission public hearing (or submitted in writing), staff has recommended several changes to the draft ordinance since the Planning Commission last reviewed it in June 2012. The revised version of the ordinance in the current Planning Commission packet reflects these recommend changes.

One of the most significant changes is to the proposed location criteria – i.e. the language specifying where in the County each district would be appropriate. As a result of feedback that the intended use of the districts should be clearly linked to the Comprehensive Plan, staff recommends deleting the detailed location criteria (proposed previously) and replacing it with language that specifies that each of the new zoning categories is intended for use on properties:

- in the Growth Area as shown in the most recently adopted Comprehensive Plan, if the plan does not include a future land use map; or
- in locations where the appropriate land use category is designated on the future land use map (and related text) in the most recently adopted Comprehensive Plan.

This language defers to the existing Comprehensive Plan, and also provides that a future land use map in a subsequent Comprehensive Plan will guide the appropriate locations of the land use categories that correspond to the zoning districts.

A document included in the agenda packet for this meeting provides a list of the significant changes, including those changes based on the input received at the County Commission hearing (in addition to written comments), as well staff recommendations for edits to refine the draft ordinance. These changes are also highlighted in yellow in the draft ordinance.

Amendments to some sections will be addressed by the smaller set of amendments for which the Planning Commission will conduct a public hearing on June 11<sup>th</sup>, and have been so noted in the new draft of the New Commercial and Zoning Districts amendments.

## **Attached Information**

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

1. A list of amendments related to the proposed new commercial zoning districts, including additional recommended changes following the County Commission public hearing.
2. A revised draft of the ordinance amendments, including Appendices A, B, and C and revisions to Section 2.2 (Definitions).
3. A memo providing staff recommendations regarding consistency of the proposed amendments with the Comprehensive Plan.
4. Study Area Map from the adopted 2004 Comprehensive Plan.

## **Next Steps**

The amendments have been reviewed at a Planning Commission public hearing, as well as at a County Commission public hearing. If the Planning Commission finds it appropriate for the amendment to proceed, the Commission can recommend that the County Commission review the current version of the draft ordinance for possible action.

If the Planning Commission finds that there have been significant changes to the ordinance following the Commission's June 2012 affirmative vote to recommend the ordinance, it may choose to conduct an additional public hearing prior to making a new recommendation to the County Commission.

For more information, please contact me at [zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org).

Att: Summary descriptions of each proposed zoning district  
Changes to Draft Zoning Text Amendments – Proposed Commercial and Industrial Districts and Related Changes  
Revised draft of the ordinance amendments, including Appendices A, B, and C and revisions to Section 2.2 (Definitions).  
Study Area Map from the adopted 2004 Comprehensive Plan.

**Public Comments Received at 9/6/12 County Commission Public Hearing and during public comment following the public hearing  
(includes comments from 8/16/12 and 9/6/12 County Commission Workshop)  
Proposed Zoning Text Amendment regarding New Commercial Zoning Districts (and Related Amendments) -  
Zoning and Land Development Ordinance**

#	Source	Section or Topic	Request	Comment	Staff Recommendation
1	Lyn Widmyer; Mike Cassell; Rebecca L. Harriet (NPS); David Hammer; Joe Anderson (Harpers Ferry)	Location criteria	Location criteria are too broad. (Various comments re: the Neighborhood Commercial District, General Commercial District, Highway Commercial District.)	Staff finds that the Comprehensive Plan includes guidance for the location of new development; as such, location criteria are not necessary.	Recommend deletion of locational criteria in accordance with 9/27/12 memo to County Commission, and renumbering accordingly.
2	Mark Dyck	Location criteria	Location criteria are too limiting. (Various comments re: the Major Industrial District, Planned Neighborhood Development District.)	Staff finds that the Comprehensive Plan includes guidance for the location of new development; as such, location criteria are not necessary.	Recommend deletion of locational criteria in accordance with 9/27/12 memo to County Commission, and renumbering accordingly.
3	Dale Manuel	Location criteria	Clarify whether references to "growth area" would also include a future land use map.	Staff finds that the Comprehensive Plan includes guidance for the location of new development; as such, location criteria (including the reference to "Growth Area") are not necessary.	Recommend deletion of locational criteria in accordance with 9/27/12 memo to County Commission, and renumbering accordingly.
4	Lee Snyder (letter), Mike Cassell, Dr. and Mrs. James Gibson (letter)	Procedural	Comment: There is no map that designates where each zoning district should be placed. West Virginia State Code, as amended, requires that boundaries of all zones be placed on the zoning map. This is found in 8A-7-3 (g): "The boundaries of each zone and the designated classifications must be shown on a zoning district map."	Staff concurs that the boundaries of any property which has been to zoned a particular district must be shown on a zoning map. However, staff finds that the intent of 8A-7-3 is not to preclude the establishment of new zoning districts in a Zoning Ordinance, in the absence of an action to simultaneously rezone property to these districts.  Following the adoption of the proposed amendments, the new districts would, in effect, be shown on the zoning map as covering no land currently.  Staff also finds that the Comprehensive Plan includes guidance for the location of new development.	No change recommended.

#	Source	Section or Topic	Request	Comment	Staff Recommendation
5	Mike Cassell, Dr. and Mrs. James Gibson (letter)	Procedural	Comment: The 2004 Comprehensive Plan does not designate the areas for these proposed new zones. Wait until the Comprehensive Plan is finished before creating these additional districts.	Staff finds that the Comprehensive Plan includes guidance for the location of new development in the form of the Growth Area shown on the Study Area Map in the 2004 Comprehensive Plan.	No change recommended.
6	Dr. and Mrs. James Gibson (letter)	Procedural	PND-type districts are usually only permitted in States that particularly authorize them in their state enabling legislation.	Per Chapter 8A of the West Virginia Code, a Zoning Ordinance may "authoriz[e] planned unit developments to achieve more efficient use of land and setting standards and regulations for the developments" and may "authorize[e] flexible planning standards to create, redevelop, reuse, protect, and enhance the physical qualities of the community."  Chapter 8A also states that a Zoning Ordinance may make specific provisions to allow non-uniformity in rules, regulations and standards in a zone.  Examples of other West Virginia communities with similar districts include Fairmont, Morgantown, Charleston, and Putnam County.	No change recommended.
7	Lyn Widmyer	Section 5.11, Neighborhood Commercial (NC)	Submittal of a development plan should be required for a zoning map amendment request for the Neighborhood Commercial (NC) district.	Staff finds that this requirement could be a disincentive for property owners to apply for the NC district instead of another, more permissive district.	No change recommended.
8	Mike Cassell, Lyn Widmyer, Mark Dyck	Section 5.11, Neighborhood Commercial (NC)	The Neighborhood Commercial (NC) district should not include multi-family residential uses.  (Mark Dyck:) Consider removing residential uses, or write a definition of accessory residential use that would allow for a small apartment to be attached. The ability to put multifamily in this zone undermines the public trust that it will be used for the intended purpose.	Staff concurs that multi-family should not be a permitted standalone use in this district.  However, staff recommends that residential uses should be permitted above retail uses.	In Appendix C, In the rows labeled "Multi-Family" and "Townhouse", change the designation for the NC district to " <u>NP</u> " (i.e. not permitted).  In Section 5.11.C (Permitted Uses), add:  <u>3. A non-residential land use in this district may include residential uses on building levels located above the ground floor.</u>

#	Source	Section or Topic	Request	Comment	Staff Recommendation
9	Mike Cassell	5.11, Neighborhood Commercial (NC)	NC uses should be more consistent with purpose statement (i.e. be more compatible with neighborhoods) – especially group homes, vocational training centers, multi-family dwellings, country inns, heliport, building maintenance, nursing homes, bars nightclubs, campgrounds	<p>Staff concurs that “Not Permitted” would be the more appropriate land use status for a heliport in the NC District.</p> <p>Group Residential Facility/Home – required by West Virginia Chapter 17 to be permitted.</p> <p>Vocational and/or Training Facility for Adults – this land use is currently permitted in the Rural District; as such, it should be permitted in the NC district.</p> <p>Country Inns – This land use is intended to be Rural in character. Staff finds this use to be appropriate in the NC district.</p> <p>Heliport, Building Maintenance Services, Nursing Home, Bar/Nightclub, Campground – these are all conditional land uses that would require a Compatibility Assessment Meeting and approval by the Board of Zoning Appeals (following public hearing) in order to establish.</p>	In Appendix C, in the row labeled “Heliport”, change the designation for the NC district to “ <u>NP</u> ” (i.e. not permitted).
10	Brian Goodman	5.11, Neighborhood Commercial (NC)	Address alcohol sales; hours of operation (should not be 24-hour)	The land use Convenience Store, Limited is a permitted use in the NC district. However, by definition, this store is limited to 1,500 square feet. Staff concurs that a Convenience Store, Limited should have limited hours of operation.	<p>Amend definition of “Convenience Store, Limited” as follows:</p> <p>“A <u>convenience food</u> store not exceeding 1500 square feet of retail floor space, <u>with hours of operation limited to the period between 6:00 AM and 11:00 PM.</u>”</p>
11	Maral P. Strathearn	5.11, Neighborhood Commercial (NC)	Concern regarding permitted or conditional uses such as heliports, taverns, shooting ranges, campgrounds, convenience stores	<p>Shooting Ranges are not permitted in the NC district. Outdoor shooting ranges are not proposed to be permitted outright in any districts; this land use would be a conditional use in industrial districts only.</p> <p>See above responses regarding Heliport, Bar/Nightclub, Campground, and Convenience Store, Limited.</p>	See above responses regarding Heliport, Bar/Nightclub, Campground, and Convenience Store, Limited.

#	Source	Section or Topic	Request	Comment	Staff Recommendation
12	Mark Dyck	5.11, Neighborhood Commercial (NC)	A gas station is a critical community business and should be permitted within the NC district as a PC use. The limited gas station definition is too small to be commercially viable.	The Neighborhood Commercial District is intended for a limited set of commercial uses that may be appropriate in locations where more intensive development is not appropriate. Staff recommends that a Gas Station and a Gas Station, Large not be included as a permitted or conditional use in this district. (Property owners would continue to have the option of a Conditional Use Permit.)	No change recommended. Continue to show Gas Station, Limited as a permitted use in this category.
13	Bernard Simmons (letter)	5.11, Neighborhood Commercial (NC)	Concern that the NC district does not require setbacks.	Setbacks are required in the NC district, with the exception of side yard setbacks when a non-residential NC development is adjacent to a commercial or industrial use.  Staff concurs that this allowance should be clarified in Appendix C.	Add a footnote to Appendix B to the side yard setback for the NC and Office/Commercial Mixed Use districts, stating: <u>"For a non-residential use abutting a commercial or industrial use, no side yard setback is required, unless required by Building Code or other law or regulation."</u>  In Appendix B, amend rear yard setback for the NC and Office/Commercial Mixed Use districts to <u>25'</u> and add a footnote stating: <u>"A rear yard setback may be reduced to 10' for a non-residential use abutting a commercial or industrial use at a rear lot line."</u>
14	Mike Cassell	5.11, Neighborhood Commercial (NC)	NC limit of 3,500 square feet per building footprint is too permissive for "small commercial" development.	It should be noted that no Jefferson County commercial zoning categories currently have a building footprint limit. As such, the NC district would be the County's most restrictive commercial district. Other stakeholders have stated that this footprint size is too small.	No change recommended.
15	Mark Dyck, Fred Blackmer	5.11, Neighborhood Commercial District	The maximum building footprint of 3,500 square feet is restrictive. (Mark Dyck:) A 7,500 square foot limitation would be appropriate and would limit oversize commercial development.	The Neighborhood Commercial District is intended for limited-scale development that may be appropriate in locations where more intensive development is not appropriate.  The original staff recommendation was to limit total square footage (per building) to 3,000 square feet. Based on Gordon & Associates previous comment (increase square footage to allow for a multi-level building) staff changed the recommendation to a building footprint of 3,500 square feet.	No change recommended.

#	Source	Section or Topic	Request	Comment	Staff Recommendation
16	Mark Dyck	5.11.E.3, Neighborhood Commercial District	<p>The requirement of a 10' landscape buffer in front of the commercial buildings seems out of context. A buffer would visually screen the proposed building from the right-of-way. A 10' landscape area is a good idea but not a screen along the frontage.</p> <p>Existing language:</p> <p>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...</p>	Staff concurs. The landscaping requirement is not intended to establish an opaque screen but is intended to create a walkable streetscape area.	Amend Section 5.11.E.3 to add: <a href="#">“The landscaped buffer yard may consist of shrubs, ornamental plants, and vegetative ground cover, and need not screen the view of the development from the adjacent street(s).”</a>
17	Mark Dyck	Section 5.13 Highway Commercial (HC)	This district is essentially the same as the GC district for permitted uses.	The HC district is distinct from the GC district in that it permits large gas stations and large retail stores.	No change recommended.
18	Mark Dyck	Section 5.14 Light Industrial	If this is to be an employment based zone the majority of retail uses should not be permitted in this zone. The elimination of these uses would allow for a full public expectation of what would occur in this zone.	As currently proposed, the Light Industrial District is intended for employment-oriented land uses but would also allow a variety of retail uses. The intent was that a property owner would be able to substitute a retail use during periods in which a lease space was unoccupied by an employment-oriented tenant.	This is a policy decision for the County Commission. The benefit of restricting retail uses is that a Light Industrial development would be more likely to have a higher percentage of uses that are employment-oriented. The disadvantage of restricting retail uses is that units may be more likely to be unoccupied when employment tenants are not available.
19	Mark Dyck	Section 5.14 Light Industrial	This zone should be re-titled and modified to become a flex commercial and R&D zone. This category would include the light industrial as noted but provide a much broader economic base... This zone would specifically address the Summit Point Advanced Training Center and would allow for auto related research and light manufacturing. Typically these businesses would include a building with a front office area, a back area that would support light manufacturing or research and minimal outdoor storage. These businesses... have very little impact on the community other than being excellent employment centers. We know that these businesses want to come here today and that our ordinance	Establishing an additional new zoning district may not be feasible at this stage of the ordinance amendments. However, this district could be incorporated into future amendments.	Consider as part of future amendments.

#	Source	Section or Topic	Request	Comment	Staff Recommendation
			<p>does not permit it.</p> <p>Alternatively a zone could be written specifically for flex commercial and R&amp;D.</p> <ol style="list-style-type: none"> <li>1. Purpose should be modified to reflect a broader employment based zone. This would include revising the requirements for water and sewer as well as the four lane road distance. Proximity to existing employment centers and research facilities is important.</li> <li>2. The location requirement should be revised to include planned parks located adjacent to the Summit Point Advanced Training Center.</li> <li>3. A focus should be on employment based development, not retail.</li> </ol>		
20	Mark Dyck	Section 5.15, Major Industrial District	Similar to the comment in the light industrial district, uses should only permit those associated with major industrial. If other uses are desired a separate zone should be applied.	As currently proposed, the Major Industrial District is intended for employment-oriented land uses but would also allow a variety of retail uses. The intent was that a property owner would be able to substitute a retail use during periods in which a lease space was unoccupied by an employment-oriented tenant.	This is a policy decision for the County Commission. The benefit of restricting retail uses is that a Major Industrial development would be more likely to have a higher percentage of uses that are employment-oriented. The disadvantage of restricting retail uses is that units may be more likely to be unoccupied when employment tenants are not available.
21	Ted Schiltz	5.16 Planned Neighborhood Development (PND)	PND district - Size of 3 acres or more is required in PND district – this is too small a parcel size to incorporate all required land uses such as med/high density residential, roads, commercial activities, etc.	<p>It is anticipated that on a small site, some land uses may be integrated vertically – i.e. residential units built over shops. Also, low density residential units are not required.</p> <p>While some development proposals may not be accommodated on a 3-acre site, it may be advisable to allow property owners the option to design a development with a layout sufficiently compact to be developed on a 3-acre site.</p> <p>No other zoning district has a minimum acreage requirement, although some land uses have minimum lot sizes.</p>	No change recommended; however, staff recommends monitoring the performance of proposed PND developments to determine if the area limit should be adjusted.

#	Source	Section or Topic	Request	Comment	Staff Recommendation
22	Dr. and Mrs. James Gibson (letter)	5.16 Planned Neighborhood Development (PND)	The proposed PND District allows the County Commission to approve a PND Rezoning Plan including any modifications (and variances) to the existing subdivision and land development regulations... Since it is so early in the development process, the public may not even be aware that deviations from the ordinances are being authorized at the rezoning approval.	Staff concurs that any proposed modifications of development requirements should be part of the public notice for both the Planning Commission and County Commission public hearings for a PND zoning case.  Staff also finds that the section of the ordinance describing the required site development standards in a PND District should be clarified.	Amend Sections 5.16F.3.b and 5.16F.3.d to add, " <a href="#">In addition to the notification requirements of Article 12, public notice for a PND shall include any requested modifications of development requirements.</a> "  Amend Section 5.16D.1 to add the following text:  1. <a href="#">If not otherwise addressed in the Preliminary PND Plan, 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. However, setbacks and other site development standards may be modified as part of the approval of a PND zoning map amendment request, as described in this article.</a>  Amend Appendix C to replace the site development standards information (with the exception of MLA) with the following text: " <a href="#">See General Commercial. Note: the Planning Commission may amend the site development standards for a development in the PND District pursuant to Article 5 of this ordinance.</a> "
23	Mark Dyck	5.16 Planned Neighborhood Development (PND)	A.8 - what are critical natural environmental and scenic features defined as.  Existing, proposed language (does not appear in currently adopted ordinance):  A. Purpose. The purpose of the PND District is to:  8. Preserve critical natural environmental and scenic features of the site;	While the language in Section 5.16A is a purpose statement and is non-regulatory, staff agrees that "critical natural environmental and scenic features" should be described in the ordinance.	Amend 5.16A.8 to read, "critical natural environmental <a href="#">features (including but not limited to wetlands, steep slopes, floodplains, woodlands, watercourse, and karst topography)</a> and scenic features <a href="#">(including but not limited to historic resources, mature trees, open spaces, and agricultural landscapes)</a> ).

#	Source	Section or Topic	Request	Comment	Staff Recommendation
24	Charles M. Ervin (email)	5.16 Planned Neighborhood Development (PND)	Any future large residential communities should be required to develop using PND district.	This is a broader policy issue that the County Commission may want to consider during the development of the Comprehensive Plan.	Recommend considering during development of 2014 Comprehensive Plan.
25	Mark Dyck	5.16 Planned Neighborhood Development (PND)	E.2.b – preservation of 20% of the existing tree canopy may be very difficult for sites with limited tree canopy. The final canopy should be the goal, how this is accomplished should be left to the developer.	To clarify, the requirement is for preservation of a percentage of existing tree canopy, rather than a requirement that a percentage of the site be forested. As such, a site with limited tree canopy will only be required to preserve 20% of its canopy area.	No change recommended.
26	Mark Dyck	5.16 Planned Neighborhood Development (PND)	E.3 – requirement should be reworded. If the proposed PND is next to a townhouse development is access to each townhouse lot required?  Existing, proposed language (does not appear in currently adopted ordinance):  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.	Staff concurs that this section should be clarified.  To each adjacent undeveloped property and/or property containing a non-residential or multi-family use, or to one or more streets in an adjacent residential subdivision.	Amend Section 5.16E.3 to read:  The development shall provide pedestrian and vehicular connections to each adjacent <u>undeveloped property and/or property containing a non-residential or multi-family use, or to one or more streets in an adjacent residential subdivision</u> . 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.
27	Lyn Widmyer	5.16 Planned Neighborhood Development (PND)	A Comprehensive Plan should outline compatibility standards for PND areas, including specific land use mixes in different PND areas.	The County Commission may want to consider establishing PND standards associated with the County's different geographic areas. While this effort is beyond the scope of the current amendments, establishing a variety of PND sub-areas could be considered during the 2014 Comprehensive Plan process.	Recommend considering during development of 2014 Comprehensive Plan.

#	Source	Section or Topic	Request	Comment	Staff Recommendation
28	Lyn Widmyer	5.16 Planned Neighborhood Development (PND)	The ordinance should state how the land use mix requirements in the PND district are measured (e.g. gross floor area) and should define high, medium, and low densities.	Staff concurs.	<p>Amend Section 5.16E.1 to read:</p> <ol style="list-style-type: none"> <li>1. A PND development shall include the following mix of uses, <u>as measured in gross floor area</u>: <ol style="list-style-type: none"> <li>a. 10-30% commercial</li> <li>b. 10-30% high density residential (<u>7+ units per acre</u>)</li> <li>c. 20-40% medium density residential (<u>4-6 units per acre</u>)</li> <li>d. 0-60% low density residential (<u>1-3 units/acre</u>)</li> </ol> </li> </ol> <p>Amend Section 2.2 to establish definition of <u>Gross Floor Area</u>:</p> <p><u>The sum of the total horizontal areas of every floor of every building on a lot. The measurement of gross floor area shall be computed as provided in the Jefferson County Subdivision and Land Development Regulations.</u></p>
29	Lyn Widmyer	5.16 Planned Neighborhood Development (PND)	PND developments can be of great benefit to developers; as such, the developments must be required to provide significant community benefits such as open space.	<p>While the ordinance would already require provision of significant public benefits for a PND development, staff concurs that the ordinance should require provision of a trail easement if an adopted plan identifies a trail intersecting the property.</p> <p>It should be noted that the draft ordinance requires a minimum of 20% of the total tract area of a PND development to be composed of common and open space. The review process for a PND development will also provide the Planning Commission and the County Commission with the opportunity to discuss other possible benefits (such as additional landscaping) with the applicant.</p>	<p>Add new subsection 5.16E.6: <u>For a PND development proposed to be located on a lot where a trail is shown on a plan adopted by Jefferson County, establishment of a trail easement shall be required prior to site plan approval.</u></p> <p>Additionally, staff recommends further clarifying the open space requirement as follows:</p> <p>Acres within the 100-year floodplain, as designated by the ... (FEMA) Flood Insurance Rate Maps (FIRM) <u>or acreage of critical natural environmental features (as defined in this article)</u>, may constitute up to <u>50% 25%</u> of the required common and open space area.</p>

#	Source	Section or Topic	Request	Comment	Staff Recommendation
30	Lyn Widmyer / Mark Dyck	5.17, Office/Commercial Mixed Use	The Office/Commercial Mixed Use district should include a maximum percentage of retail so that employment is the primary land use, and retail secondary.  (Mark Dyck:) Uses should be limited to those that would support the key objectives of this zone.	As currently proposed, the Office/Commercial Mixed Use district is intended for employment-oriented land uses but would also allow a variety of retail uses. The intent was that a property owner would be able to substitute a retail use during periods in which a lease space was unoccupied by an employment-oriented tenant.	Amend Section 5.17E.1 as follows:  Additional Requirements <u>At least 75% Of</u> the gross floor area of land uses in a development in this district, <u>at least 75%</u> shall be non-residential uses, <u>and at least 50% shall be office uses.</u>
31	Mark Dyck	Section 5.17 Office Commercial Mixed Use	Existing language: "At least 75% of the gross floor area of land uses in a development in this district shall be non-residential uses."  E.1 – consider revising this ratio... the residential is such a small component as to be inconsequential, it should be increased or removed.	The intent is for this district to be a primarily non-residential district, predominantly for employment. As such, only a moderate percentage of the gross floor area is proposed to be devoted to residential uses.	No change recommended.
32	Board of Zoning Appeals	Appendix A	Language in Appendix A that would allow reduced setbacks for decks on small townhouse lots in the Residential - Light Industrial - Commercial District should be more specific, and should apply only to situations in which the adjacent property located to the rear of the subject lot is a dedicated easement or common area and is not a residential lot.	Staff concurs.	Amend footnote marked $\phi$ in Appendix A to read, "... the rear setback of a deck for a townhouse may be reduced to <u>10'</u> <u>if the adjacent property located to the rear of the subject lot is a dedicated easement or common area and is not a lot that includes a residence.</u> "
33	Mark Dyck	Appendix C Permitted Uses	The initial sentence under Appendix C would appear to supersede Sections 4.3 and 4.4 which permit the Hollywood Casino and the Summit Point Advanced Training Center. It needs to be revised to defer to these sections.	SPARC is permitted in the Rural District under the "Vocational and Training Facilities for Adults" land use, and is shown as permitted in Appendix C.  The Summit Point racetrack is a nonconforming use identified in Section 4.3. Because Appendix C does not address the expansion of a nonconforming use, Section 4.3 will continue to govern the expansion of SPARC.  Regarding casinos, please see response to Phyllis LeTart (below).	See proposed changes in response to Phyllis LeTart's comments regarding casinos.

#	Source	Section or Topic	Request	Comment	Staff Recommendation
34	Phyllis LeTart (email) / Mark Dyck	Appendix C Permitted Uses	<p>PNGI Charles Town Gaming Limited Liability Company... is concerned about the language changes in the proposed ordinance as it pertains to gaming being an existing permitted use in the Residential/Light Industrial/Commercial District as stated under Section 4.4. versus what is proposed in Appendix C. Our concern is that the proposed change would have a negative impact on any proposed development by HCCTR of its property.</p> <p>Existing language:</p> <p>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 <del>Zone District and the Major Industrial District</del> and shall be processed through the Development Review System (Article 6 and 7).</p> <p>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 <u>in any zoning district other than the Industrial - Commercial District or the Major Industrial District.</u> <del>the Residential-Growth Zone, the Rural Agricultural Zone, the Village Zone, or the Residential/Light Industrial/Commercial Zone.</del></p>	<p>Please note that casinos are currently permitted only in the Industrial - Commercial District, and not in the Residential - Light Industrial – Commercial District (RLIC). As such, the proposed amendments will not change the nonconforming status of an existing casino in the RLIC district.</p> <p>However, staff agrees that the Appendix C should be more specific as to the statement in Section 4.4G regarding “betting on horses or pari-mutuel betting on horses.”</p> <p>Staff also notes that, to be consistent with current status, “Gambling Facilities” should be shown as a conditional use in the Industrial - Commercial District in Appendix C; this change should also be reflected in the Major Industrial District. This land use should be not permitted in the Light Industrial District.</p>	<p>Amend Appendix C to add a new land use name, <u>“Horse Racing Facility”</u> and to show this land use as permitted in the Residential - Light Industrial - Commercial District, the Industrial - Commercial District, and the Major Industrial District.</p> <p>Amend Section 2.2 to establish definition of <u>“Horse Racing Facility”</u>:</p> <p><u>A facility licensed by the State of West Virginia to offer, for public viewing and amusement, on-site horse racing events with on-site related wagering thereupon. This use can also include the conduct of other occasional special events. In addition to the race course and spectator areas, this use also includes accessory uses (including but not limited to eateries, off-street parking structures, public, community or private utilities, exhibits, and shops). This use may also include the provision of resident employee and guest lodging services for both humans and animals incidental to the visit or stay on the site. This use may also include veterinary care for animals kept or visiting the site.</u></p> <p>Amend Appendix C to show the land use “Gambling Facilities” as <u>“C”</u> (a conditional use) in the Industrial - Commercial District and the Major Industrial District, and <u>“NP”</u> (not permitted) in the Light Industrial District.</p>
35	Matt Knott, Dr. and Mrs. James Gibson	Appendix C	Ask that the phrase 'commercial uses' be reinstated as a permitted use in the Residential - Light Industrial - Commercial District and the Industrial - Commercial District.	Staff concurs.	In Appendix C, continue to show the use “Commercial Uses” as a permitted use in the Residential - Light Industrial – Commercial district and the Industrial -

#	Source	Section or Topic	Request	Comment	Staff Recommendation
					Commercial District.
36	Staff	Appendix C	One of the new land uses, Heavy Equipment Repair, is currently shown as conditional in the Industrial - Commercial District. Staff finds that this use is a standard industrial use and should be permitted.		In Appendix C, amend permitted status of Heavy Equipment Repair in the Industrial - Commercial District from PC to <u>P</u>
37	Staff	Appendix C	Clarify permitted use status of colleges and universities.		In Appendix C, amend list of land uses to add land use " <u>School, College or University</u> " and show as a permitted use in the following districts:  Residential - Light Industrial – Commercial, General Commercial, Highway Commercial, Light Industrial, Planned Neighborhood Development, Office/Commercial Mixed Use.
38	Staff	Appendix C, Section 2.2	Clarify permitted status of vocational schools.		In Appendix C, amend list of land uses to add land use " <u>School, Vocational or Professional</u> " and show as a permitted use in the following districts:  Residential - Light Industrial – Commercial, General Commercial, Highway Commercial, Light Industrial, Industrial – Commercial, Planned Neighborhood Development, Office/Commercial Mixed Use.  In Section 2.2, add the following definition:  <u>School, Vocational or Professional. A specialized or accredited instructional establishment that provides on-site training or education in business, commercial, and/or trade skills. This use includes a community college that primarily provides daytime services to commuter students.</u>  In Section 2.2, add the following sentence to the definition of School, University or College:  <u>The land use School, Vocational or Professional is not</u>

#	Source	Section or Topic	Request	Comment	Staff Recommendation
					<a href="#">included within this definition.</a>
39	Staff	Section 2.2	Change name of Retail Food Store, Limited to Convenience Store, Limited.	The purpose of this change is so that the land use name in the Definitions section matches the land use name in Appendix C.	In Section 2.2, change name of Retail Food Store, Limited to <a href="#">Convenience Store, Limited</a> .
40	Staff	Section 2.2	Revisit definition of Retail Store, Large  Existing, proposed language (does not appear in currently adopted ordinance):  A retail sales establishment located within one building with a gross floor area exceeding 50,000 square feet.	Based on market research, the threshold for the square footage of a large retail store should be increased.	In Section 2.2, amend the definition of Retail Store, Large to:  <a href="#">A retail establishment with any commercial retail uses or a combination of such commercial retail uses comprised of greater than 100,000 square feet of gross floor area. In calculating gross floor area, ancillary outdoor storage or merchandise display areas are included. For the purpose of determining the applicability of the 100,000 square feet of floor area, the aggregate square footage is included for all adjacent buildings operated by one company. A large retail store that sells to members only or that also offers merchandise at wholesale is included in this definition. Stores connected by common walls as part of a shopping center with shared parking facilities are not included in this definition.</a>  Amend the General Commercial purpose statement to include the following text:  The uses in this district may be characterized by medium-to-large buildings (up to <del>50,000</del> <a href="#">100,000</a> square feet of gross floor area ...
41	Mark Dyck	4.6	Consider deleting Section 4.6; redundant and confusing.	Elimination of all distance requirements is beyond the scope of the current amendments but could be considered as part of future amendments.	No change recommended.
42	Mark Dyck	4.6A	There is no reason for a 200' setback if the use does not have an adverse impact. Setbacks generally waste valuable land when visual and acoustical buffers are more effectively done in another manner.	Elimination of the existing requirement for a 200' buffer is beyond the scope of the current amendments but could be considered as part of future amendments.	No change recommended.

#	Source	Section or Topic	Request	Comment	Staff Recommendation
43	Mark Dyck	4.6A	Provide additional guidance as to whether the rural district is considered a residential district.	Staff concurs that additional clarity is needed regarding the term "residential district."  Based on the use of "Residential Growth District" in Section 4.6B, staff finds that a "residential district" means the Residential Growth District.	Amend Section 4.6A.1 to read:  "Any lot in <del>a</del> <u>the R</u> residential <u>Growth</u> district;"
44	Mark Dyck	4.6A	Is parking considered a use that falls under the 200' setback requirement.	Staff concurs that additional clarity is needed regarding parking in the 200' setback.	Amend Section 4.6A to read:  "Any uses <u>(not including parking)</u> or buildings subject to compliance with this section"  Amend Section 4.6B to read:  "Adjacent uses <u>(not including parking)</u> or buildings subject to compliance with this section"
45	Mark Dyck	4.11.B.2	If a screened buffer yard is provided, what is the purpose of the additional 185' buffer.	The Zoning Ordinance currently requires a 200' buffer for industrial uses. The purpose of the buffer is not only for visual screening but also to address potential issues of noise and odors associated with an industrial use.	No change recommended.
46	Staff	Section 6.3	Revisit proposed change to calculation of LESA points for sites with some existing development or ground disturbance.  <b>Existing, proposed language (does not appear in currently adopted ordinance):</b> A. The Soils Assessment of a proposed development is not applied when:  1. 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.	The intent of this proposed amendment is that the re-use (or modest expansion) of a developed site would not require soils evaluation as part of the LESA process for a Conditional Use Permit. However, this proposed amendment should be made more specific, so that it will be clear that the land use is limited to an existing building or paved area, or a modest expansion.	The Soils Assessment of a proposed development is not applied when:  2. the <u>land use development</u> is proposed to be <u>completely contained located</u> in an existing building, <u>or</u> on an existing paved <del>or disturbed</del> area, or entails an expansion of <u>an existing building and/or an existing paved area by the lesser of either (1) than up to</u> 1,000 square feet total <del>of an existing building and/or an existing paved area,</del> <u>or (2) up to 50% of an existing building and/or an existing paved area</u>

#	Source	Section or Topic	Request	Comment	Staff Recommendation
47	Dale Manuel	N/A	The amendments should include standards for shooting ranges.	<p>The proposed amendments would establish a definition of "Shooting Range, Indoor" and "Shooting Range, Outdoor". This definition clarifies that a shooting range must meet NRA standards.</p> <p>The definition could be further clarified to state that an outdoor shooting range must also meet the 150-yard setback and 150-acre minimum lot area standards of a Hunting, Shooting, and Fishing Club.</p>	<p>Amend Section 2.2. proposed definition of "Shooting Range, Outdoor" to add:</p> <p><u>"The operations and design of an outdoor shooting range meet National Rifle Association standards, and the range must meet the setback and minimum acreage standards for Hunting, Shooting, and Fishing Clubs as established in this ordinance."</u></p>
48	Dr. and Mrs. James Gibson (letter)	N/A	County should continue to pursue recreational use and tourism amendments.	There are a number of various types of ordinance amendments (such as sign regulations, residential accessory structures, and rural site plan standards) that have been identified as priorities. As time permits, staff may work on additional amendments during the Comprehensive Plan process; however, staff time will be limited until the plan is adopted.	Staff will continue to seek the guidance of County Commission and Planning Commission regarding the Department's annual work plan.
49	Lyn Widmyer	N/A	For all proposed districts, a traffic study submittal should be required for a zoning map amendment application.	<p>The Zoning Ordinance currently requires an application for a zoning map amendment to include "Discussion on . . . Any change of transportation characteristics and neighborhood from when the original ordinance was adopted."</p> <p>A traffic study, typically prepared by a transportation engineering firm, is a study that assesses the impact of a proposed development on the existing and future transportation network.</p> <p>Some communities require this type of assessment only at the development phase (e.g. submittal of site plan or subdivision). The Jefferson County Subdivision and Land Development Regulations require a traffic study if a development would traffic of more than 100 peak hour trips.</p>	<p>This is a policy decision for the County Commission.</p> <p>Such a study would require an up-front cost by the applicant but could provide the County Commission with additional information regarding potential traffic impacts.</p> <p>An additional option is to change the submittal requirements for a zoning map amendment to require some additional information regarding potential transportation impacts, such as roadway capacity, anticipated trip generation, etc. These elements would not require a traffic study by an engineering firm but would provide the Planning Commission and County Commission with additional traffic impact information.</p>

#	Source	Section or Topic	Request	Comment	Staff Recommendation
50	Corporation of Harpers Ferry, Joe Anderson	N/A	Consider traffic impact of development. This depends on the intensity of the proposed development and the characteristics of traffic conditions in the immediate vicinity. Consideration should be given to establishing some requirements that traffic analysis be completed and evaluated before approving more intensive zones. The Comprehensive Plan may be an appropriate forum to develop guidance for these requirements.	<p>The Zoning Ordinance currently requires an application for a zoning map amendment to include "Discussion on . . . Any change of transportation characteristics and neighborhood from when the original ordinance was adopted."</p> <p>A traffic study, typically prepared by a transportation engineering firm, is a study that assesses the impact of a proposed development on the existing and future transportation network.</p> <p>Some communities require this type of assessment only at the development phase (e.g. submittal of site plan or subdivision). The Jefferson County Subdivision and Land Development Regulations require a traffic study if a development would traffic of more than 100 peak hour trips.</p>	<p>This is a policy decision for the County Commission.</p> <p>Such a study would require an up-front cost by the applicant but could provide the County Commission with additional information regarding potential traffic impacts.</p> <p>An additional option is to change the submittal requirements for a zoning map amendment to require some additional information regarding potential transportation impacts, such as roadway capacity, anticipated trip generation, etc. These elements would not require a traffic study by an engineering firm but would provide the Planning Commission and County Commission with additional traffic impact information.</p>
51	National Parks Service, Rebecca L. Harriet	N/A	Rather than creating new commercial zones in addition to the existing zones, the NPS prefers to see all properties currently zoned "Residential-Light industrial-Commercial" re-designated into one of the newly proposed zones.	Rezoning properties with existing commercial zoning is beyond the scope of the currently proposed amendments. This is a broader policy issue that the County Commission may want to consider at a later time.	The County Commission may want to consider following development of 2014 Comprehensive Plan.
52	National Parks Service, Rebecca L. Harriet	N/A	It may also be useful to consider design standards that could accompany some of the new zoning categories. This would be especially useful for assigning categories for properties at key intersections and other high visibility areas. More specifics might best be developed during the forthcoming Comprehensive Planning process.		Recommend considering during development of 2014 Comprehensive Plan.
53	Charles Ervin	N/A	Developers should bear all costs associated with whatever upgrades are required by the State/County, such as: supplemental road development, traffic control, etc.	This is a broader policy issue.	This issue could be considered during the 2014 Comprehensive Plan process.
54	Bernard Simmons (letter)	N/A	No more development and no more sprawl; need for additional water treatment plants.	This is a broader policy issue.	This issue could be considered during the 2014 Comprehensive Plan process.

## **Changes to Draft Zoning Text Amendments – Proposed Commercial and Industrial Districts and Related Changes**

At its June 12, 2012 meeting, the Jefferson County Planning Commission voted to recommend to the County Commission for adoption a set of Zoning Ordinance amendments regarding proposed commercial and industrial districts and related amendments. The draft of the ordinance recommended by the Planning Commission included proposed changes as a result of public comment associated with a public hearing that the Planning Commission conducted in April 2012.

The County Commission also conducted a public hearing, in addition to accepting written comments. Staff has recommended changes to the ordinance in response to these comments, as well as edits to refine the draft ordinance.

Significant proposed changes are listed below. Please see the draft ordinance (available in the Planning Commission agenda packet) for all changes, which are highlighted in yellow in the draft ordinance.

### **Section 2.2**

- Changes to definitions, such as: Retail Food Store, Limited; School, College or University; Restaurant; Retail Store, Large; and Shooting Range, Outdoor
- New definitions, such as: Gross Floor Area; Horse Racing Facility; School, Vocational or Professional; and Shopping Center.

### **Section 4.6**

- Clarify what is meant by a “residential district”.
- Clarify that parking is not subject to the distance setback for industrial and commercial uses.
- Relocation of sentence regarding applicability of section.

### **Section 4.11**

- Additional text is added to this section to match the requirements shown in Table 4.11, such as the requirement of buffer yards for multi-family development and 20’ screened buffers for industrial development.
- Table 4.11: In response to public comments, staff is proposing to relocate to Appendix A and Appendix B all the requirements shown in Table 4.11. This move will consolidate setbacks, buffers, distance requirements and other site development standards into the same table.

### **Section 5.6**

- Relocation of the yard requirements of Section 5.6D to Appendix A and B.

## **Sections 5.11 – 5.17**

- The location criteria for each district has been deleted and replaced with language that specifies that each of the new zoning categories is intended for use on properties:
  - in the Growth Area as shown in the most recently adopted Comprehensive Plan, if the plan does not include a future land use map; or
  - in locations where the appropriate land use category is designated on the future land use map (and related text) in the most recently adopted Comprehensive Plan.

### **Section 5.11 (Neighborhood Commercial District)**

- Purpose (5.11A) – amend language to better reflect the intent of the district.
- 5.11C - In order to clarify that a commercial building in the NC District may include residential units, add the following text: “3. A non-residential land use in this district may include residential uses on building levels located above the ground floor.” (Please note that this district no longer allows standalone multi-family or townhouse uses.)
- 5.11E – add language to clarify that a landscaped buffer yard in the NC district need not screen the view of the development from the adjacent street(s).

### **Section 5.12 (General Commercial District)**

- Purpose (5.12A) – amend language to state that the district allows retail stores of up to 100,000 square feet for an individual building.

### **Section 5.13 (Highway Commercial District)**

- Purpose (5.13A) – amend language to state that the district allows retail stores that exceed 100,000 square feet for an individual building.

### **Section 5.14 (Light Industrial District)**

- Purpose (5.14A) – amend language to remove specific references to road classifications.

### **Section 5.15 (Major Industrial District)**

- Purpose (5.15A) – amend language to remove specific references to road classifications.

### **Section 5.16 (Planned Neighborhood Development District)**

- 5.16A.8 – Amend to clarify the intent of “critical environmental features” and “scenic features”.
- Add language to Section 5.16D.1 to clarify that development standards in the PND District may be modified.
- Amend 5.16E.1 to define high, medium, and low densities.

- Amend open space requirements of Section 5.16E.2 to allow for inclusion of acreage of critical environmental features.
- Amend Section 5.16E.3 to clarify requirements for pedestrian and vehicular connections.
- Add new subsection 5.16E.6 to require dedication of a trail easement under certain circumstances.
- In order to clarify public notice requirements for a rezoning request for the PND District, amend Sections 5.16F.3.b and 5.16F.3.d to add, “In addition to the notification requirements of Article 12, public notice for a PND shall include any requested modifications of development requirements.”

### **Section 5.17 (Office/Commercial Mixed Use District)**

- Amend Section 5.17E.1 to require a percentage of office uses.

### **Section 6.3**

- Add language to be more specific regarding the proposed exemption from the soils component of a LESA score for CUP developments that would entail little or no disturbed area.

### **Appendix A**

- Add footnote to establish a more flexible rear setback for some small lots in townhome communities.
- Addition of Parking / Drive Aisle Setbacks and Screened Buffers to table (from Table 4.11-1).
- Addition of note stating that the requirements in this table are in addition to any other applicable requirements in the text of the Ordinance, and referring users to Article 8 for site development standards for certain land uses.
- Adds an allowance for reduced rear setbacks for decks in townhome developments with small lots in the Residential - Light Industrial - Commercial district. *[Note: the amendment to this section is also under consideration in Agricultural Uses and Related Amendments currently under review].*

### **Appendix B**

- Addition of Parking / Drive Aisle Setbacks, Screened Buffers, and Distance Requirements to table (from Table 4.11-1) in order to consolidate setback requirements into one table.
- Clarifies buffer requirements by adding (U) for “unscreened” and (S) for “screened”.
- Various changes to footnotes, including:
  - Addition of note stating that the requirements in this table are in addition to any other applicable requirements in the text of the Ordinance, and referring users to Article 8 for site development standards for certain land uses.
  - Clarification of applicability of standards to churches
  - New or amended footnotes that reflect ordinance standards for uses in the Village District, Neighborhood Commercial District and Office/Commercial Mixed Use District.

## Appendix C

- For NC district, show Multi-family, Townhouse, and Heliport as “NP” (not permitted).
- Show the land use “Gambling Facilities” as “C” (a conditional use) in the Industrial - Commercial District and the Major Industrial District, and “NP” (not permitted) in the Light Industrial District.
- Amend permitted status of Heavy Equipment Repair in the Industrial - Commercial District from “PC” to “P”
- Show Retail Sales and Services, General as “NP” (changed from “P”) in the Neighborhood Commercial District.
- Amend permitted status of Restaurant, Fast Food in the RLIC District from “P” to “PC” to accurately reflect existing requirements.
- Consolidation of General Standards column into Additional Standards column; addition of several ordinance section numbers.
- Continue to show the use “Commercial Uses” as a permitted use in the Residential - Light Industrial – Commercial district and the Industrial - Commercial District.
- Amend list of land uses to add land uses “School, College or University”; “School, Vocational or Professional”; “Horse Racing Facility”; and “Custom Manufacturing”; and indicate in which districts the uses are permitted.
- Changes to notes:
  - Deletion of statement that table is for reference purposes only, and that the ordinance will prevail in the event of a conflict with the ordinance.
  - Amendment of header notes regarding conditional uses, limited permitted uses, and accessory uses to a planned residential community.
  - Addition of two footnotes regarding the PND District and the approval process for a Salvage Yard.

## Other

In addition, staff has recommended additional minor changes to address formatting, grammar, consistency, numbering, typographical errors, and similar changes.

## Key to Formatting of Amendments:

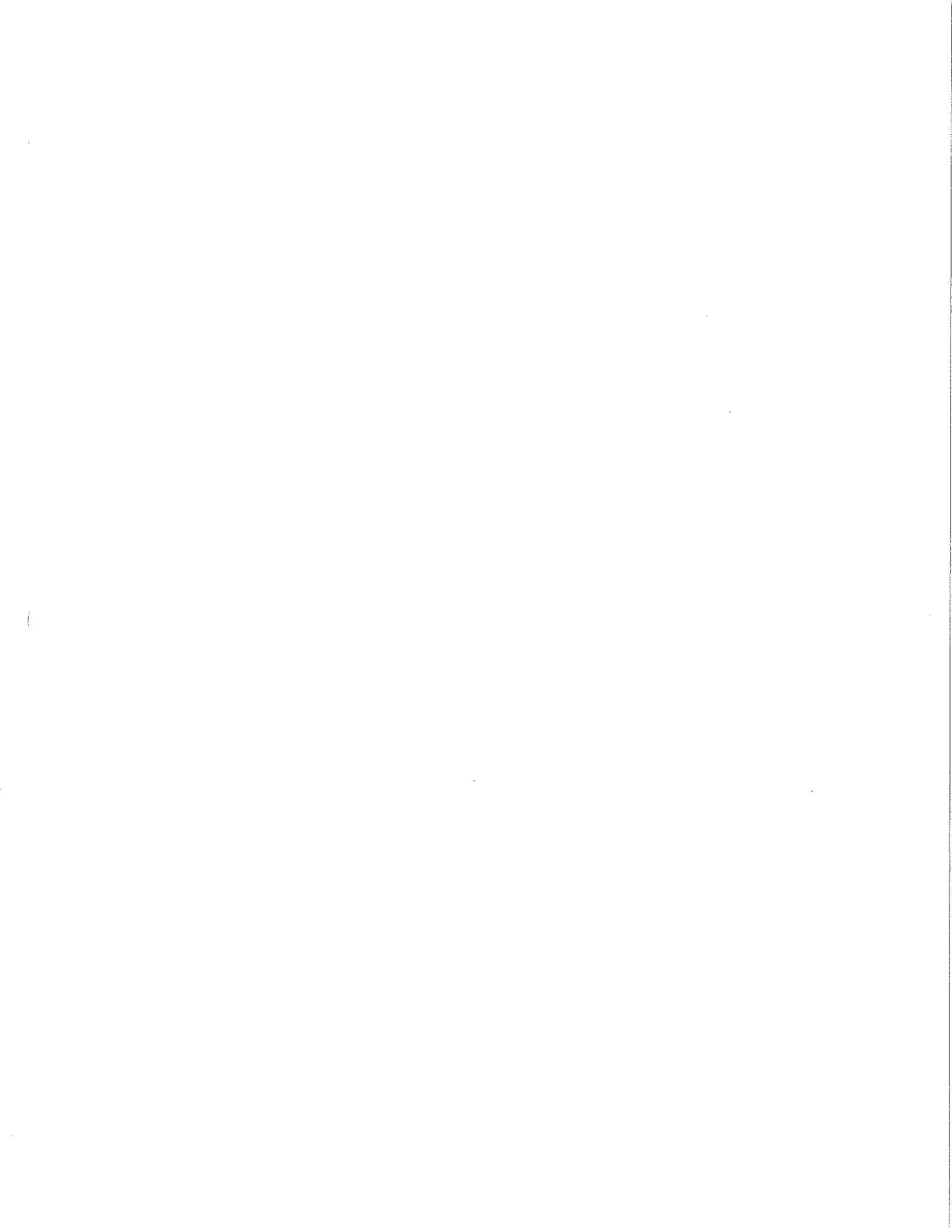
Black text = Existing, unchanged ordinance text

Blue Text = Text proposed to be added

~~Red text~~ = Text proposed to be deleted

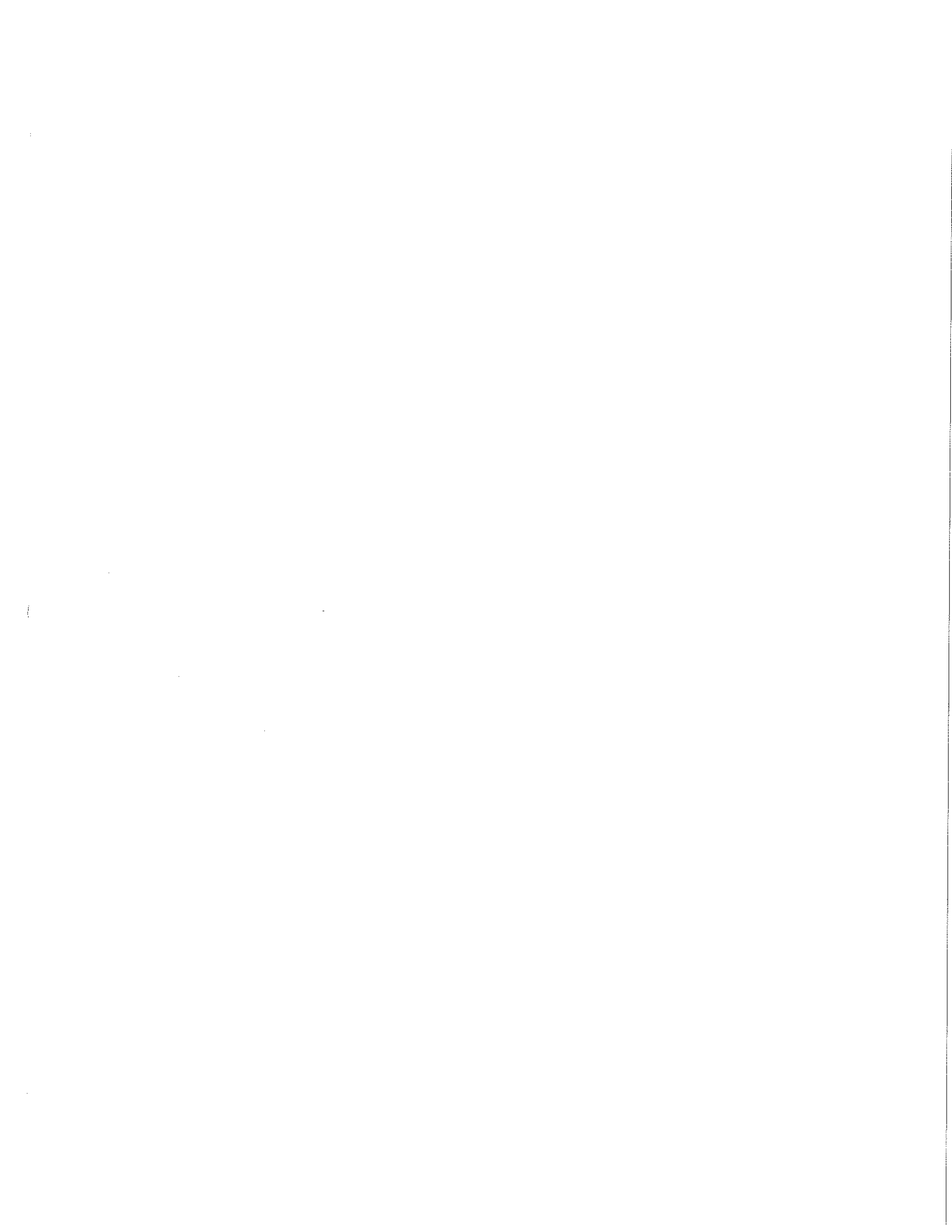
Highlighted text / ~~highlighted text~~ = Text changed following the most recent version of the draft ordinance amendments available to the public (in the 8/16/12 County Commission agenda packet)

[text in brackets] = Comments for the purpose of clarifying proposed amendments. These comments are not intended as changes to the ordinance and will not appear in the final version of the ordinance.



## Draft Zoning and Land Development Ordinance Amendments

1. Ordinance Language
2. Appendices A, B, and C
3. Section 2.2 (Definitions)



Residential <sup>1</sup>	Any detached or attached structure that is used for permanent living quarters and has kitchen facilities.
Residential Care Home <sup>23</sup>	The use of a site for the provision of a family-based facility in a single-family dwelling unit providing 24 hour care in a protected living arrangement with not more than two supervisory personnel and not more than six residents who are suffering from mobility, orthopedic, visual, speech, or hearing impairments, Alzheimer's disease, pre-senile dementia, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, autism, emotional illness, or similar conditions.
Restaurant, Fast Food, Limited <sup>23</sup>	Takeout pizza/sandwich shops not exceeding 600 square feet.
Restaurant, Limited <sup>23</sup>	A food service establishment not exceeding 2000 square feet and where the primary mode of food distribution is by server.
<del>Retail Food</del> Convenience Store, Limited <sup>23</sup>	A <del>retail convenience food</del> store not exceeding 1500 square feet of retail floor space, <u>with hours of operation limited to the period between 6:00 AM and 11:00 PM.</u>
Right-of-Way	A right which grants passage across or through a property. A right-of-way is also the (usually dimensioned) path along which the right of passage is granted.
Road	A prepared surface within a right-of-way which is intended for vehicular use. Road does not include shoulders.
School, Elementary or Secondary <sup>23</sup>	A public or private school meeting all requirements of the compulsory education laws of the state and providing instruction to students in kindergarten through grade twelve. Secondary schools consist of middle schools and high schools, generally grades six through twelve.
School, University or College <sup>23</sup>	An educational institution that offers specialized instruction in any of several fields of study and/or in a number of professions or occupations and is authorized to confer various degrees such as the bachelor's degree. Education uses may include a variety of uses such as classroom buildings, administrative offices, sports facilities, student housing, research facilities and other related uses operated by the governing board of the institution within the campus or on adjoining lots. <u>The land use School, Vocational or Professional is not included within this definition.</u>

## Section 4.4 Prohibited Uses

[Note: Proposed changes in this Section are for the purpose of clarifying the permitted / conditional / not permitted status of various land uses in the new zoning districts.]

- 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 ~~Industrial~~ Commercial ~~Zone~~ District and the Major Industrial District. The Development Review System does not supersede this prohibition.<sup>5</sup>
- 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).<sup>6, 23</sup>

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.~~<sup>23</sup>
- 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.<sup>5, 23</sup>

- 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.<sup>8, 23</sup>
- J. Vehicle signs left parked or standing on a public right-of-way, public property or private property.<sup>12</sup>
- 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.~~<sup>23</sup>  
 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.<sup>15, 16</sup>
- L. Salvage yards unless established in accordance with the Jefferson County Salvage Yard Ordinance.<sup>23</sup>
- 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.<sup>23</sup>

**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. Industrial uses are subject to this subsection, unless otherwise specified in this ordinance. Any uses (not including parking) or buildings subject to compliance with this section shall be located at least 200 feet from:
  1. Any lot in ~~a the~~ Residential Growth district;
  2. A dwelling, school, church or institution for human care not located on the same lot as the said use or buildings;<sup>1</sup>
  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. Commercial uses are subject to this subsection, unless otherwise specified in this ordinance. Adjacent uses (not including parking) or buildings subject to compliance with this section shall be located at least 75 feet from:<sup>7</sup>

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.<sup>23</sup>

~~3.~~

C. A commercial use (not including parking) 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.<sup>7, 22</sup>

#### **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.<sup>23</sup>

#### **Section 4.10 Site Plan Requirements**

A. ~~A site plan shall be s~~Submittal and approval of a site plan is requireded 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.<sup>23</sup> [Note: the amendment to this section is also under consideration in Agricultural Uses and Related Amendments currently under review]

- 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.<sup>23</sup>
- D. The Planning Commission has the authority to waive any site plan standards in accordance with the Subdivision and Land Development Regulations.<sup>10, 17, 21, 23</sup>

#### Section 4.11 Landscaping, Screening and Buffer Yard Requirements

Buffer yard requirements are as shown in Appendix A and B of this ordinance, and are summarized in this section.

##### A. Commercial development.

- 1. 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.
- ~~1.2.~~ 2. All commercial development adjacent to all other uses must maintain ten (10) foot side and rear yard landscape buffers.<sup>5</sup>

##### B. Industrial development.

- 1. All industrial development adjacent to any Residential district, or a residence, school, church, or institution for human care shall have ~~a~~an unscreened buffer yard of no less than two hundred (200) feet. No structures, stored materials, or vehicular parking shall be permitted within the buffer yard.

~~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~~

- 2. All industrial development adjacent to any use other than an industrial use shall have screened front yard buffers of no less than one-half (½) the front yard building setback, which may be included within the 200-foot buffer required in this subsection.<sup>5, 7</sup>

- ~~2.3.~~ 3. All industrial development adjacent to any use shall have 20' screened side and rear landscape buffers.

##### C. Multi-family development.

- 1. All multi-family adjacent to any Residential district, or any lot with a residence, school, church, or institution of human care shall have, along common property lines, screened green space buffers as follows:

a. Front and rear: a minimum of 15'

b. Side: a minimum of 12'

**Table 4.11 - 1 Setbacks, Buffers and Distance Requirements for Non-Residential Uses<sup>23</sup>**

**[Note: Buffer standards in Table 4.11-1 relocated to Appendix A and Appendix B]**

~~\*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.<sup>23</sup> [2<sup>nd</sup> sentence relocated to Appendix A and Appendix B]~~

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

~~C.E.~~ 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.<sup>7,23</sup>
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.F.~~ In any Commercial, Industrial, Institutional, or Residential development, all dumpsters shall be screened from any residences or from view of a public highway.<sup>23</sup>

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

~~F.H.~~ 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 - ~~2-1~~ below.<sup>23</sup>

**Table 4.11 - ~~2-1~~ Wetland Size in Acres<sup>5, 8, 23</sup>**

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.I. All required landscape plans shall contain the following elements:<sup>7</sup>

1. Deciduous street trees for shade and aesthetics, planted at the following average spacing:<sup>23</sup>
  - 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.

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

**Section 4.12 Design Standards for Multi-Family Developments<sup>23</sup>**

- 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<sup>23</sup>**

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

### **Section 5.1 Establishment of Districts<sup>1</sup>**

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<sup>23</sup>
- 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.<sup>23</sup>

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.<sup>23</sup>

#### 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<sup>23</sup>

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<sup>12</sup>~~

~~10. Church~~

~~11. Day Care Center, Small~~

~~12. Day Care Center, Large~~

~~13. Essential Utility Equipment~~

~~14. Public Safety Facility~~

~~15. Publicly Owned Facility<sup>23</sup>~~

~~16. Accessory Uses~~

- ~~17. Group Residential Facility~~
- ~~18. Home Occupation, Level 1<sup>8</sup>~~
- ~~19. Home Occupation, Level 2<sup>8</sup>~~
- ~~20. Nursing or Retirement Home~~
- ~~21. Model Homes/Sales Office<sup>12</sup>~~
- ~~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.<sup>23</sup>
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.<sup>5,23</sup>
- ~~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<sup>5,19,23</sup>~~  
[Note: The standards in this table are relocated to Appendix A and B.]

Development Type	Minimum Lot Area (MLA)	Required Yards (ft)				Maximum Building Height (ft) <sup>2</sup>
	Area per Dwelling Unit (ADU)	Front	Side	Street Side	Rear	
1 Single Family Dwelling	6,000 sq. ft. MLA <sup>**</sup>	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.~~ *[Note: Deleted text moved to 5.4.B.2]*

### C. Commercial Services in Residential Developments<sup>23</sup>

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.<sup>5</sup>

D. Standards for Commercial or Light Industrial Uses<sup>23</sup>

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.<sup>5</sup>
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<sup>23</sup>

Section 5.6 Industrial - Commercial District<sup>23</sup>

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<sup>23</sup>

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)<sup>23</sup>
- 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)<sup>23</sup>

C. Height Regulations

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

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

<del>1.</del> <u>Front yard building setback</u>	
Commercial sites	25 feet
Industrial sites	50 feet
<del>2.</del> <u>Side yard building setback</u>	
Commercial sites greater than 1.5 acres	50 feet
Commercial sites 1.5 acres and smaller	25 feet
Industrial sites	50 feet
<del>3.</del> <u>Rear yard building setback</u>	
Commercial sites greater than 1.5 acres	50 feet
Commercial sites 1.5 acres and smaller	25 feet
Industrial sites	50 feet
<del>4.</del> <u>Parking, Driveway and Internal Access Drive Front Setbacks</u>	
Commercial sites greater than 1.5 acres	15 feet
Commercial sites 1.5 acres and smaller	15 feet
Industrial sites	25 feet
<del>5.</del> <u>Parking, Driveway and Internal Access Drive Side and Rear Setbacks</u>	
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.  
[Note: Setbacks and footnote relocated to Appendix B]*

2. ~~6~~-Compliance with Sections 4.11 and 8.9(A)(1-9)<sup>7, 23</sup>

### 3. ~~7~~Distance Requirements

- a. Commercial shall comply with Section 4.6(b)
- b. Industrial shall comply with Section 4.6(a)<sup>7, 23</sup>

### ~~D.E.~~ 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.<sup>23</sup>

### ~~E.F.~~ E.F. Additional Commercial and Industrial Design Standards

#### 1. Commercial Design Standards<sup>23</sup>

- 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. Adequate provision shall be made for storage and collection of refuse. Refuse containers are subject to Section 4.11 eF.
- c. Permeable areas of the site shall be planted with ground cover, shrubs and trees.
- d. 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.<sup>23</sup>
- b. Adequate provision shall be made for storage and collection of refuse, subject to Section 4.11 eF.
- c. 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<sup>23</sup>

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.<sup>8, 23</sup>

### A. Principal Permitted Uses<sup>23</sup>

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<sup>7</sup>~~

~~2. Church~~

~~3. Elementary or Secondary School~~

~~4. Vocational and/or Training Facility for Adults<sup>12, 20</sup>~~

~~5. Dwelling, Single Family~~

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

~~7. Dwelling, Two Family<sup>8</sup>~~

~~8. Cottage Industry<sup>8</sup>~~

~~9. Home Occupation, Level 1<sup>8</sup>~~

~~10. Home Occupation, Level 2<sup>8</sup>~~

~~11. Day Care Center, Small<sup>12, 11, 15</sup>~~

~~12. Public Safety Facility~~

~~13. Cultural Facility~~

~~14. Farm Market (subject to the requirements for such a use in Article 8)<sup>8</sup>~~

~~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)<sup>7, 15</sup>~~
- ~~21. Publicly Owned Facility<sup>8</sup>~~
- ~~22. Wireless Telecommunications Facilities pursuant to Article 4B.<sup>10</sup>~~
- ~~23. Model Homes/Sales Office (subject to the requirements for such a use in Article 8)<sup>12</sup>~~
- ~~24. Non-profit Community Centers<sup>15</sup>~~
- ~~25. Landscaping business outside of Planning Commission approved subdivisions<sup>15</sup>~~
- ~~26. Veterinary services outside of Planning Commission approved subdivisions<sup>15</sup>~~
- ~~27. Feed and/or Farm Supply Center~~
- ~~28. Agricultural Repair Center<sup>15</sup>~~
- ~~29. Kennels (subject to the requirements for such a use in Article 8)<sup>15</sup>~~
- ~~30. Hunting, Shooting, Archery and Fishing Clubs (subject to the requirements for such a use in Article 8)<sup>20</sup>~~
- ~~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<sup>23</sup>**

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.<sup>5</sup>~~

*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.<sup>1,23</sup>~~

~~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.<sup>23</sup>~~

~~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).<sup>23</sup>~~

#### 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.<sup>8</sup>

1. A property owner may create one (1) lot for every fifteen (15) acres with a minimum lot size of three (3) acres.<sup>17,21</sup>

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.<sup>17,21</sup>

#### 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.<sup>17, 21, 23</sup>
  - (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.<sup>17, 21</sup>
  - (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.<sup>23</sup>
  - (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.<sup>17, 21</sup>
  - (e) Maximum lot size shall be 3 acres.<sup>17, 21</sup>
- iii. Procedures<sup>23</sup>
  - (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.<sup>17, 21, 23</sup>
  - (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".<sup>23</sup>

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<sup>1</sup>**

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.<sup>23</sup>

#### **A. Principal Permitted Uses<sup>23</sup>**

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<sup>12</sup>~~
- ~~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)<sup>12</sup>~~
- ~~39. Non-Profit Community Center~~
- ~~40. Non/Not for Profit Commercial Uses<sup>12</sup>~~
- ~~41. Preschool~~
- ~~42.1. Wireless Telecommunications Facilities pursuant to Article 4B~~

**B. Standards<sup>23</sup>**

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.<sup>23</sup>

2.3. Impervious surface coverage shall not exceed eighty (80) percent of the gross land area.

C. Site Development Standards ~~Other Regulations~~<sup>23</sup>

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.<sup>5,7,23</sup>
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.<sup>23</sup> This requirement shall not apply to a building located within a shopping center shown on an approved site plan.  
[Note: the amendment to this section is also under consideration in Agricultural Uses and Related Amendments currently under review]
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.<sup>7</sup>

**Section 5.9 Reserved**<sup>23</sup>

**Section 5.10 Village District**<sup>8,23</sup>

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

A. Principal permitted uses<sup>23</sup>

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<sup>12</sup>~~
- ~~8. Essential Utility Equipment~~
- ~~9. Medical/Dental/Optical Office, Small<sup>12</sup>~~
- ~~10. Group Residential Facility~~
- ~~11. Cultural Facility<sup>12</sup>~~
- ~~12.1. Wireless Telecommunications Facilities pursuant to Article 4B~~

B. Conditional Uses<sup>23</sup>

- 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<sup>12</sup>~~

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~~<sup>23</sup>

2. ~~Commercial~~

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

[combine sentence with 1. above.] Setbacks may be reduced as a result of a Compatibility Assessment Meeting based on other structures existing in the neighborhood.<sup>23</sup>

3.2. Existing Structures

a. ~~As exists not less than 6' on~~ The sides and rear yard setbacks are 6' for an existing structure to be used for a land use as provided in this article.

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.<sup>23</sup>

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.<sup>23</sup>

H. Other Requirements<sup>23</sup>

1. With the exception of setback requirements as 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 (NC) District

A. Purpose. The purpose of this district is to permit the development of small scale commercial uses in locations where a commercial use of the intensity permitted in the GC District (and not otherwise permitted in the NC District) is not appropriate. 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 appropriate in scale, designed, landscaped and buffered so as to be compatible with neighboring land uses 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 on properties:

1. in the Growth Area as shown in the most recently adopted Comprehensive Plan, if the plan does not include a future land use map; or
2. in locations where the appropriate land use category is designated on the future land use map (and related text) in the most recently adopted Comprehensive Plan.

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.
3. A non-residential land use in this district may include residential uses on building levels located above the ground floor.

#### 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-C 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. The landscaped buffer yard may consist of shrubs, ornamental plants, and vegetative ground cover, and need not screen the view of buildings from the adjacent street(s). The landscaping requirements in this subsection are in addition to any other applicable landscaping requirements of this ordinance. 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 meeting any applicable county requirements 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 (GC) 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 (including retail stores of up to 100,000 ~~50,000~~ square feet of gross floor area for an individual building as per the definition of Retail Store, Large in this ordinance), 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 on properties:

1. in the Growth Area as shown in the most recently adopted Comprehensive Plan, if the plan does not include a future land use map; or
2. in locations where the appropriate land use category is designated on the future land use map (and related text) in the most recently adopted Comprehensive Plan.

~~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.~~

#### 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, which may include very large including buildings that exceed 50,000 100,000 square feet of gross floor area for

an individual building and which may have a greater impact on surrounding areas as a result of significant truck traffic and other factors. 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 on properties:

1. in the Growth Area as shown in the most recently adopted Comprehensive Plan, if the plan does not include a future land use map; or
2. in locations where the appropriate land use category is designated on the future land use map (and related text) in the most recently adopted Comprehensive Plan.

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 on properties:

1. in the Growth Area as shown in the most recently adopted Comprehensive Plan, if the plan does not include a future land use map; or
2. in locations where the appropriate land use category is designated on the future land use map (and related text) in the most recently adopted Comprehensive Plan.

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 locations on properties:

1. in the Growth Area as shown in the most recently adopted Comprehensive Plan, if the plan does not include a future land use map; or
2. in locations where the appropriate land use category is designated on the future land use map (and related text) in the most recently adopted Comprehensive Plan.

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 features of the site (including but not limited to wetlands, steep slopes, floodplains, woodlands, watercourses, and karst topography) and scenic features of the site (including but not limited to historic resources, mature trees, open spaces, and agricultural landscapes);
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) on properties:

1. in the Growth Area as shown in the most recently adopted Comprehensive Plan, if the plan does not include a future land use map; or
  2. in locations where the appropriate land use category is designated on the future land use map (and related text) in the most recently adopted Comprehensive Plan.
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. If not otherwise addressed in the Preliminary PND Plan, 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. However, setbacks and other site development standards may be modified as part of the approval of a PND zoning map amendment request, as described in this article.
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, as measured in gross floor area:
  - a. 10-30% commercial
  - b. 10-30% high density residential (7+ dwelling units per acre)
  - c. 20-40% medium density residential (4-6 dwelling units per acre)
  - d. 0-60% low density residential (1-3 dwelling units per acre)
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) or acreage of critical natural

environmental features (as defined in this article), may constitute up to 25% 50% 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 undeveloped property and/or property containing a non-residential or multi-family use, or to one or more streets in an adjacent residential subdivision. 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.

6. For a PND development proposed to be located on a lot where a trail is shown on a plan adopted by Jefferson County, establishment of a trail easement shall be required prior to site plan approval.

#### 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. In addition to the notification requirements of Article 12, public notice for a PND shall include any requested modifications of development requirements. 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. In addition to the notification requirements of Article 12, public notice for a PND shall include any requested modifications of development requirements.
  - 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 amend 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 approved 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  $\pm 10\%$

b. A change in the area of any land use by  $\pm 10\%$

c. A change in the residential density by  $\pm 5\%$

### 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) on properties:

1. in the Growth Area as shown in the most recently adopted Comprehensive Plan, if the plan does not include a future land use map; or

2. in locations where the appropriate land use category is designated on the future land use map (and related text) in the most recently adopted Comprehensive Plan.

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-C 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, at least 75% shall be non-residential uses, and at least 50% shall be office 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.

4-7. 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.<sup>14, 17, 21, 23</sup>

### 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 applicable when one or more of the following circumstances applies:
  - 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 proposed land use will be development is proposed to be completely contained:
    - i. located in an existing building, and/or
    - ii. on an existing paved or disturbed area installed prior to the effective date of this Ordinance, and/or
    - iii. on an existing paved area installed at any time, for a non-residential purpose, in compliance with County regulations in existence at the time of the installation; or

3. a land use that complies with Sec. 6.3B.2 with the exception of entails an a one-time expansion of an existing paved area that meets the criteria described in Sec. 6.3B.2 and/or a one-time expansion of an existing building footprint by the lesser of either:
  - i. less than up to 1,000 square feet total, or
  - ii. up to 50% of the building footprint of an existing building and/or an existing paved area that meets the criteria described in Sec. 6.3B.2

A.C. \_\_\_\_\_ 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:  $100 \times .25 = 25$  pts. (For example, if a parcel receives the maximum point value of 100 points, in actuality only 25 points will be awarded for the Soils Component of the Development Review System.)
- B. The Amenities Assessment has a 75 point maximum point value.
- C. The combined maximum total for both Assessments is 100 points. The most agriculturally significant parcel would rate 100; the most developable parcel would rate 0. A total of 60 points or less advances the application to the Compatibility Assessment Meeting.<sup>14, 17, 21</sup>

~~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 6.3]~~

~~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.<sup>17, 21</sup>

6. Glare and Heat

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

7. Toxic Matter

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

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

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

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

8. Fire Hazards

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

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

<u>CAPACITY</u>	<u>STORAGE</u>
Liquids	60,000 gallons
Gasses	
- Above ground	150,000 SCF
- Below ground	300,000 SCF

SCF - Standard Cubic Feet at sixty (60) degrees Fahrenheit and 29.92 inches Mercury.<sup>1</sup>

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.<sup>5</sup>

### **Section 8.10 Model Homes/Sales Offices<sup>23</sup>**

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.<sup>17,21</sup>

Model homes without staffed sales offices are permitted internally within the subdivision.<sup>12</sup>

### **Section 8.11 Petroleum Products Refining or Storage<sup>23</sup>**

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<sup>23</sup>**

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 provided all other restrictions such as setbacks and the requirements of the Jefferson County Subdivision and Land Development Regulations are met.<sup>8</sup>

### **Section 8.13 Dormitory<sup>23</sup>**

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.<sup>17, 21, 23, 25</sup>

### Section 12.2 Procedure for Amendment by County Commission<sup>1, 25</sup>

- A. After the enactment of the Zoning Ordinance, the governing body of the County may amend the Zoning Ordinance without holding an election.<sup>17, 21</sup>
- 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.<sup>17, 21, 25</sup>
- 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;  
*[Note: the amendment to the following subsections is also under consideration in Agricultural Uses and Related Amendments currently under review]*
    - a.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
    - b.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 adjoining 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<sup>25</sup>**

#### **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.<sup>17, 21</sup>

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.

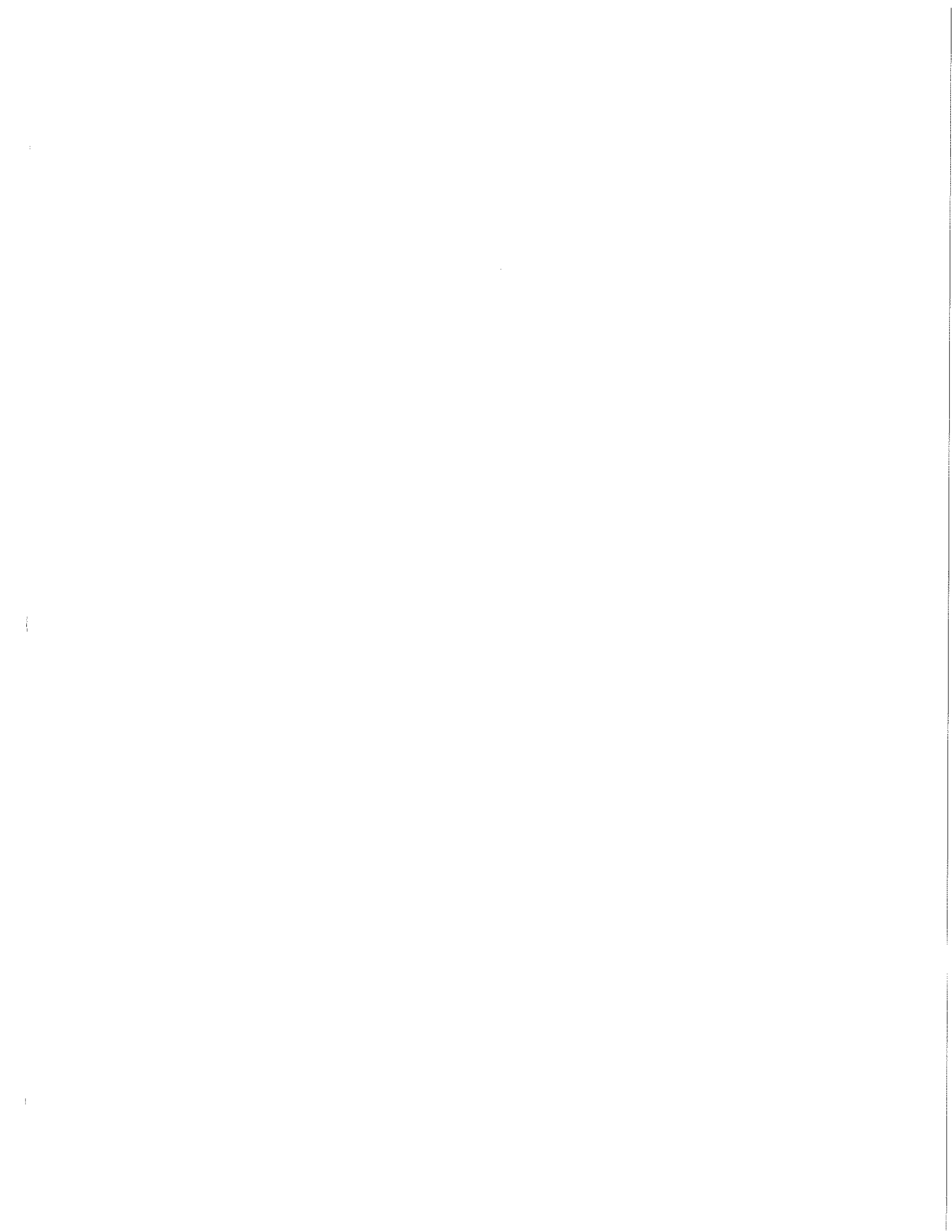
**B. Map Amendments by the Planning Commission**

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.<sup>17, 21</sup>

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



Appendix A, Residential Site Development Standards Table [DRAFT 6/5/13]

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 (feet)*	Setbacks (feet)				Parking / Drive Aisle Setbacks	Screened buffers (Sec. 4.11)		
							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	N/A	N/A		
		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			12' side, 15' front & rear	12' side, 15' front & rear
	Multi-family dwelling (See also Section 4.12)	Public/Central water and sewer	20,000	2,000	N/A	40	25	12**	15	30				
	Single-family dwelling with setbacks not previously stipulated by Planning Commission	Over 40,000 square feet --	N/A	N/A	N/A	40	25	12	‡	12			N/A	N/A
		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 (See also Sec. 5.7)	Dwellings		40,000	N/A	100	35	40	15	‡	50	N/A	N/A		
	Single-family dwelling with setbacks not previously stipulated by Planning Commission	Over 2 acres --	N/A	N/A	N/A	35	40	15	‡	50				
		40,000 sq. ft. to 2 acres --	N/A	N/A	N/A	35	25	12	‡	12				
		30,000 sq. ft. to 39,999 sq. ft. --	N/A	N/A	N/A	35	20	10	‡	12				
		under 30,000 sq. ft. --	N/A	N/A	N/A	35	20	8	‡	12				
	Cluster Subdivision	See Residential Growth												
	Residential use that complies with the Development Review System	See Residential Growth												
Village	Residential uses	See Residential Growth												
Residential / Light Industrial / Commercial	Residential uses	See Residential Growth*												
Industrial-Commercial	Residential uses	See Residential Growth												
Neighborhood Commercial	Residential uses	See Residential Growth. Article 5 also provide supplemental standards for certain development types in this district.												
General Commercial	Residential uses	See Residential Growth. Article 5 also provide supplemental standards for certain development types in this district.												
Highway Commercial	Residential uses	N/A												
Light Industrial	Residential uses	N/A												
Major Industrial	Residential uses	N/A												
Office / Commercial Mixed Use	Residential uses	See Residential Growth												
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 pursuant to Article 5 of this Ordinance.												

The requirements in this table are in addition to any other applicable requirements in the text of the Zoning and Land Development Ordinance. See also Article 8 of the ordinance for site development standards for certain land uses.

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."

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'. NOTE: All detached accessory structures under 144 square feet in size - 6' setback. (Res Growth District)

\*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',

if the adjacent property located to the rear of the subject lot is a dedicated easement or common area and is not a lot that includes a residence. [Note: the change to this section is also under consideration in other amendments currently under review]

Appendix B, Non-residential Site Development Standards Table [DRAFT 6/5/13]

Zoning District	Development Type <sup>Ⓐ</sup>	Min. Lot Area (MLA)	Min. Lot Width	Max. Building Height*	Imperious Surface Limit	Building Setbacks			Parking/Drive Aisle Setbacks <sup>‡</sup>			Distance (if Sec. 4.6 applies)	Buffers (Sec. 4.11) (Screened/Unscreened)						
						Front	Side	Rear	Front	Side	Rear		Front, Side, Rear	Adjacent lot is:					
														a Residential district, or any lot with a residence, school, church, or institution of human care			Commercial Use		
											Front, Side, Rear	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	50(U) or 15(S)						
	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	50(U) or 15(S)						
	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	200(U) and 20(S)						
Residential / Light Industrial / Commercial	Commercial or Industrial	N/A	N/A	60	80%	See Industrial - Commercial District													
Rural	Churches	2 acres	200	35	N/A	25	50	50				N/A	50(U) or 15(S)						
	Schools, Grades K-12	Grades K-4: 10 acres+ Grades 5-8: 20 acres+ Grades 9-12: 30 acres+	500	35	N/A	100			See Parking/Drive Aisle Setbacks for commercial sites (greater or less than 1.5 acres, based on lot size) in the Industrial - Commercial District.			N/A	N/A						
	Hospitals	10 acres	500	35	N/A	100						N/A	N/A						
	Other Rural principal permitted uses	40,000 sq. ft.	100	35	N/A	40	50	50				N/A	If a commercial or industrial use, see Industrial - Commercial District; otherwise N/A						
	Commercial or Industrial**	See Industrial-Commercial District																	
Village District	Commercial <sup>Ⓚ</sup>	N/A	N/A	35	N/A	25	10	40	See Industrial-Commercial										
	Industrial**	See Industrial-Commercial District																	
Residential Growth	Commercial or Industrial**	See Industrial-Commercial District																	
Neighborhood Commercial <sup>Ⓚ</sup>	Commercial	N/A	N/A	35	70%	15' (min) 25' (max)	10 <sup>Ⓔ</sup>	10 <sup>Ⓓ</sup>	See Industrial-Commercial District			25	See Industrial - Commercial District						
General Commercial <sup>Ⓚ</sup>	Commercial	N/A	N/A	60	80%	20	10	25	See Industrial - Commercial District										
Highway Commercial	Commercial	N/A	N/A	60	80%	25	25	25											
Light Industrial	Commercial or Industrial	N/A	N/A	60	80%	25	25	25											
Major Industrial	Commercial	N/A	N/A	75	90%	25	10	50											
	Industrial	3 acres***	N/A	75	90%	25	50	50											
Office / Commercial Mixed Use	Commercial	N/A	N/A	60	80%	15' (min) 25' (max)	10 <sup>Ⓔ</sup>	10 <sup>Ⓓ</sup>											
Planned Development	Commercial	3 acres	See General Commercial District. Note: Planning Commission may amend development standards for developments in the PND District (see Article 5).																

The requirements in this table are in addition to any other applicable requirements in the text of the Zoning and Land Development Ordinance. See also Article 8 of the ordinance for site development standards for certain land uses.

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 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. Side and rear yard setbacks - 6' for an existing structure to be used for a land use as provided in Sec. 5.10 [Source: 5-10e]

‡Setback may be reduced if adjacent to industrial use.

Ⓔ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.

ⒹA rear yard setback may be reduced to 10' for a non-residential use abutting a commercial or industrial use at a rear lot line.

ⒻFor a non-residential use abutting a commercial or industrial use, no side yard setback is required, unless required by Building Code or other law or regulation.

ⒼChurches in any district: (1) are treated as a commercial use on a lot of greater than 1.5 acres in determining buffer requirements and parking/drive aisle setbacks; (2) building setbacks are 25' (front) and 50' (side/rear); and (3) Distance requirements do not apply.

\*Article 5 also provide supplemental standards for certain development types in this district.

**APPENDIX C: PERMITTED USES TABLE *[DRAFT 6/6/13]***

*This table is for reference purposes only. In the event of a conflict with the text of the Zoning and Land Development Ordinance, the Ordinance shall prevail.*

P = Permitted use

NP = Not permitted use

PC = Use permitted conditionally subject to requirements of district and/or other requirements of this ordinance

\* = Limited permitted or conditional uses listed in Permitted Uses Table.

\*\* = Accessory use to a planned residential community, if permitted pursuant to Sec. 5.4

*[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 <sup>1</sup>	OC	R	RG	R-LI-C	I-C	V	Additional Standards
<b>Residential Uses</b>													
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	PNP	NP	NP	NP	NP	P	P	NP	P	P	NP	NP	
Dwelling, Multi-Family	PNP	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	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
<b>Home Uses</b>													
Home Occupation, Level 1	P	NP	NP	NP	NP	P	P	P	P	P	P	P	Article 4A
Home Occupation, Level 2	P	NP	NP	NP	NP	P	P	P	P	P	P	P	Article 4A
Cottage Industry	P	NP	NP	NP	NP	P	P	P	P	P	P	P	Article 4A
<b>Institutional Uses</b>													
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	Sec. 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	ENP	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	
School, College or University	NP	P	P	P	NP	P	P	NP	NP	P	NP	NP	
School, Vocational or Professional	NP	P	P	P	NP	P	P	NP	NP	P	P	NP	
Vocational and Training Facility for Adults	P	P	P	P	P	P	P	P	P	P	NP	NP	
<b>Industrial</b>													
Heavy Equipment Repair	NP	NP	NP	PC	P	NP	NP	NP	NP	NP	PCP	NP	
Heavy Industrial Uses	NP	NP	NP	NP	P	NP	NP	NP	NP	NP	P	NP	Sec. 8.9

<sup>1</sup> Note: the Planning Commission may amend the permitted uses for a development in the PND District per Article 5 of this ordinance

<sup>2</sup> Approval process is per the Salvage Yard Ordinance.

**APPENDIX C: PERMITTED USES TABLE /DRAFT 6/6/13/**

~~This table is for reference purposes only. In the event of a conflict with the text of the Zoning and Land Development Ordinance, the Ordinance shall prevail.~~

P = Permitted use

NP = Not permitted use

PC = Use permitted conditionally subject to requirements of district and/or other requirements of this ordinance

\* = Limited permitted or conditional uses listed in Permitted Uses Table.

\*\* = Accessory use to a planned residential community, if permitted pursuant to Sec. 5.4

[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 <sup>1</sup>	OC	R	RG	R-LI-C	I-C	V	Additional Standards
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	PC <sup>2</sup>	NP	NP	NP	NP	NP	PC <sup>2</sup>	NP	Sec. 4.4L
Shooting Range, Indoor	NP	PC	PC	P	P	NP	NP	NP	NP	PC	P	NP	
Shooting Range, Outdoor	NP	NP	NP	PC	PC	NP	NP	NP	NP	NP	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	
<b>Industrial Manufacturing &amp; Processing</b>													Sec. 8.9
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; Landfills	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
<b>Adult Uses</b>													
Adult Uses	NP	NP	NP	PNP	P	NP	NP	NP	NP	NP	P	NP	Sec. 4.4K, Sec. 8.1
<b>Recreational Uses</b>													
Hunting, Shooting, Archery and Fishing Clubs, public or private	NP	NP	NP	PC	PC	NP	NP	P	NP	NP	NP	NP	Sec. 8.8
<b>Commercial Uses</b>													Sec. 8.9
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	

<sup>1</sup> Note: the Planning Commission may amend the permitted uses for a development in the PND District per Article 5 of this ordinance

<sup>2</sup> Approval process is per the Salvage Yard Ordinance.

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\* = Limited permitted or conditional uses listed in Permitted Uses Table.

\*\* = Accessory use to a planned residential community, if permitted pursuant to Sec. 5.4

*[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 <sup>1</sup>	OC	R	RG	R-LI-C	I-C	V	Additional Standards
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	
<del>Branch</del> 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	
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 <i>[use was formerly shown as deleted]</i>	*	*	*	*	*	*	*	*	**	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	
<del>Retail Food</del> 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	<del>PPC</del>	P	NP	Sec. 5.8C (RLIC only)
Country Inn	P	P	P	P	NP	P	P	NP	NP	P	P	PC	
Custom Manufacturing	P	P	P	P	P	P	P	NP	NP	P	P	PC	
Dry cleaning and laundry services pick-up station; laundromat	P	P	P	P	PC	P	P	NP	NP	P	P	PC	
Dry cleaning and laundry facility 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	<del>PNP</del>	<del>PPC</del>	NP	NP	NP	NP	NP	<del>PPC</del>	NP	Sec. 4.4G
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	
Horse Racing Facility	NP	NP	NP	P	P	NP	NP	NP	NP	P	P	NP	
Kennel	NP	P	P	P	PC	P	P	NP	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	

<sup>1</sup> Note: the Planning Commission may amend the permitted uses for a development in the PND District per Article 5 of this ordinance

<sup>2</sup> Approval process is per the Salvage Yard Ordinance.

**APPENDIX C: PERMITTED USES TABLE *[DRAFT 6/6/13]***

*This table is for reference purposes only. In the event of a conflict with the text of the Zoning and Land Development Ordinance, the Ordinance shall prevail.*

P = Permitted use

NP = Not permitted use

PC = Use permitted conditionally subject to requirements of district and/or other requirements of this ordinance

\* = Limited permitted or conditional uses listed in Permitted Uses Table.

\*\* = Accessory use to a planned residential community, if permitted pursuant to Sec. 5.4

*[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 <sup>1</sup>	OC	R	RG	R-LI-C	I-C	V	Additional Standards
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	PPC	P	NP	Sec. 5.8C (RLIC only)
Restaurant, Fast Food, Drive-Through	NP	P	P	P	PC	PC	P	NP	NP	PPC	P	NP	Sec. 5.8C (RLIC only)
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 Sales and Services, General	PNP	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	
Wireless telecommunications facilities	P	P	P	P	P	P	P	P	P	P	P	P	Article 4B
<b>Agricultural Uses</b>													
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	<del>NP</del> 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	
<b>Accessory Uses</b>													
Accessory Uses	P	P	P	P	P	P	P	P	P	P	P	P	

<sup>1</sup> Note: the Planning Commission may amend the permitted uses for a development in the PND District per Article 5 of this ordinance

<sup>2</sup> Approval process is per the Salvage Yard Ordinance.

**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 pottery; and/or (b) work space for one or more artists, 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. <b>This use is conducted indoors with no outdoor storage of vehicles to be rented.</b>
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/or 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. <i>[Note: redundant definition]</i>
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 and construction equipment dealerships, <del>and mobile home sales establishments.</del>
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 <del>gross floor area</del> .
Golf Course	A facility <del>other than a miniature golf course</del> 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. <del>A grocery store may include a pharmacy as an accessory use. [unnecessary]</del>
Gross Floor Area	The sum of the total horizontal areas of every floor of every building on a lot. The measurement of gross floor area shall be computed as provided in the Jefferson County Subdivision and Land Development Regulations.
Heavy Industrial Use	Manufacturing or other enterprises with significant external effects including but not limited to noise, dust, glare, odors or vibrations, or which <del>op</del> pose 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.
Horse Racing Facility	A facility licensed by the State of West Virginia to offer, for public viewing and amusement, on-site horse racing events with on-site related wagering thereupon. This use can also include the conduct of other occasional special events. In addition to the race course and spectator areas, this use also includes accessory uses (including but not limited to eateries, off-street parking structures, public, community or private utilities, exhibits, and shops). This use may also include the provision of resident employee and guest lodging services for both humans and animals

	incidental to the visit or stay on the site. This use may also include veterinary care for animals kept or visiting the site.
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 (replaces existing definition in ordinance)	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	An establishment for the performing arts with seating for audiences. Such establishments may

Theater	include related services such as food and beverage sales and other concessions. Incidental use of a performing arts theater for community events is permitted. This use does not include an adult use or a bar/nightclub.
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 (as defined in this ordinance); 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 restaurant or 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. <del>The area dedicated a Recycling Drop-Off Center is limited to 1,000 square feet.</del>
Restaurant	A commercial establishment where food and beverages are prepared, served, and consumed primarily within the principal building. <del>and where food sales constitute more than 50 percent of the gross sales receipts for food and beverages.</del> A restaurant may include the incidental sale of alcohol for on-premises consumption; however, sale of food and non-alcoholic beverages is the principal use of the site. This use does not include the use Bar / Nightclub.
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. This use may include the incidental sale of alcohol for on-premises consumption; however, sale of food and non-alcoholic beverages is the principal use of the site. This use does not include the use Bar / Nightclub.
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 up to 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. This use does not include Convenience Store, and does not include any other use specifically classified in another definition herein.

Retail Sales and Services, General

A commercial facility engaged in the indoor sale or rental, with incidental service, of goods or merchandise to the general public for personal or household consumption, or providing retail services or entertainment to the general public. Typical retail sales uses include department stores, apparel stores, discount retail stores, furniture stores, or establishments providing the following products or services: household cleaning and maintenance products; food, pharmaceutical products, cards, books, tobacco products, cosmetics, and specialty items; flowers, plants, pets and pet supplies, hobby materials, toys, and handcrafted items; apparel, jewelry, fabrics and similar items; cameras, photography services, household electronic equipment, video and music products, sporting equipment, home furnishings and appliances, art supplies and framing, arts and antiques, paint and wallpaper, hardware, carpeting and floor covering; interior decorating services; office supplies; mail order or catalog sales; bicycles; and automotive parts and accessories (excluding service and installation). Typical service-related uses include eating and drinking establishments; finance, real estate and insurance; amusement and recreational services or establishments such as bowling alleys and miniature golf courses; health, educational and social services. This use does not include Retail Store, Large, and does not include any other use specifically classified in another definition herein.

Retail Store, Large

A retail sales establishment located within one building with a gross floor area exceeding 50,000 square feet with any commercial retail uses or a combination of such commercial retail uses comprised of greater than 100,000 square feet of gross floor area. In calculating gross floor area, ancillary outdoor storage or merchandise display areas are included. For the purpose of determining the applicability of the 100,000 square feet of floor area, the aggregate square footage is included for all adjacent buildings operated by one company. A Retail Store, Large that sells to members only or that also offers merchandise at wholesale is included in this definition. Stores which would not otherwise be classified as a Retail Store, Large that are connected by common walls as part of a shopping center with shared parking facilities are not included in this definition. If a shopping center includes a store which meets the definition of Retail Store, Large, the entire shopping center shall be treated as a Retail Store, Large for the purposes of applicable ordinances.

School, Vocational or Professional

A specialized or accredited instructional establishment that provides on-site training or education in business, commercial, and/or trade skills. This use includes a community college that primarily provides daytime services to commuter students.

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 all applicable 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 all applicable National

Rifle Association standards, and the range must shall the setback and minimum acreage standards for Hunting, Shooting, and Fishing Clubs as established in this ordinance. This land use does not include Hunting, Shooting, Archery and Fishing Clubs and general hunting.

**Shopping Center** A group of retail and/or other commercial establishments that is planned, constructed and managed as a total entity.

**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.

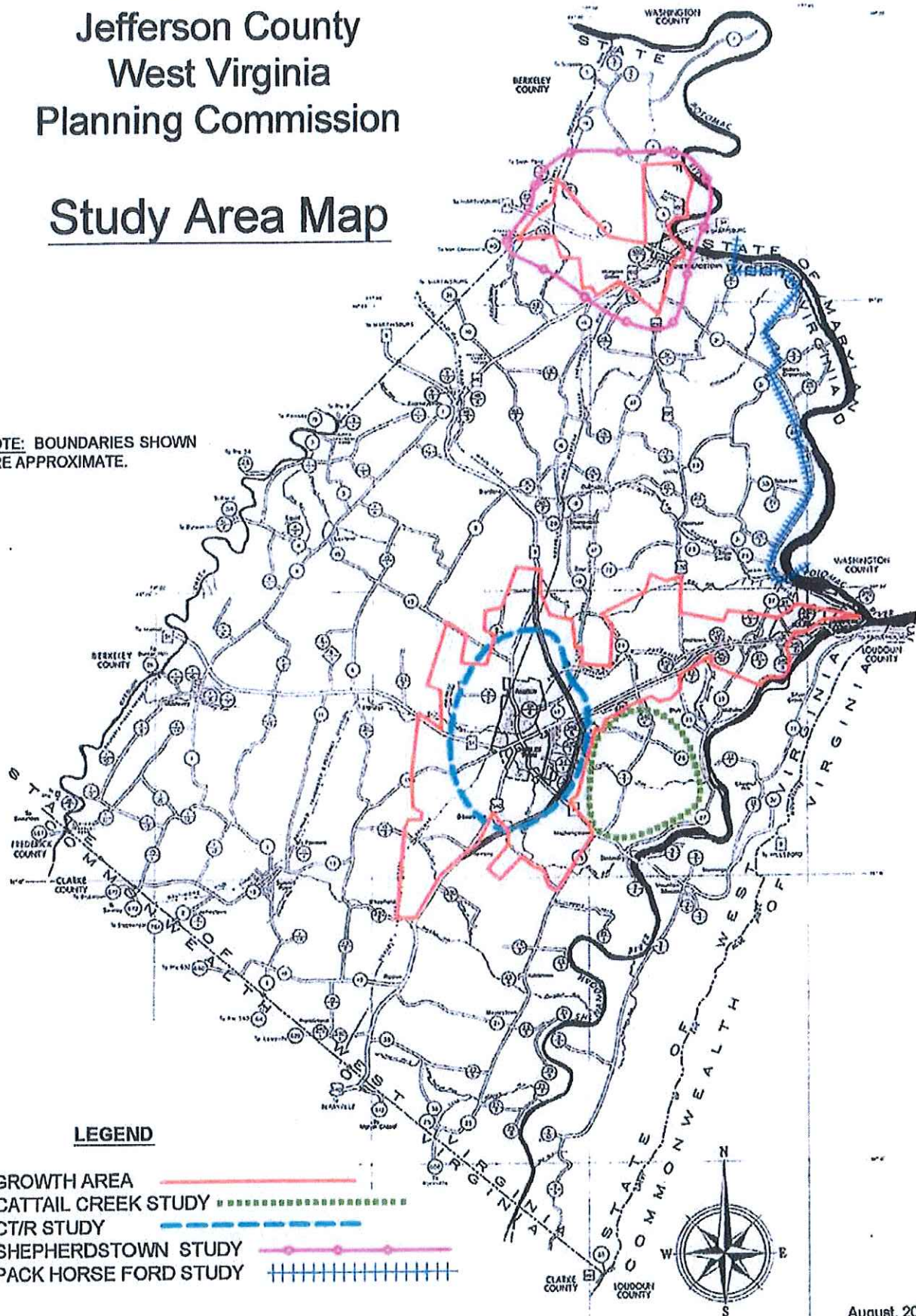
**Vehicle Storage** The use of a site for long term storage for vehicles. This use includes storage of vehicles towed from private parking areas and impound yards, but excludes dismantling or salvage.

**Warehousing and Distribution, General** Use of a site for the storage of goods, 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 of goods, and sale of goods to other businesses for resale. Wholesale and warehouse areas are 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 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





Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

## AGENDA REQUEST FORM

Name: Jennifer Brockman

Department or Entity: Departments of Planning and Zoning

Estimation of amount of time needed for appointment: if requested by CC

Date Requested – 1<sup>st</sup> Choice: 11/21/13

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

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

Subject: First Quarterly Report of the Planning and Zoning Departments, Planning Commission and Board of Zoning Appeals Report

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

**Attached is a summary of the First Quarterly Report regarding the work initiated, completed and/or pending for the Departments of Planning and Zoning, the Jefferson County Planning Commission and the Jefferson County Board of Zoning Appeals, for the first quarter of Fiscal Year 2014, as requested by the County Commission. Also attached is a condensed spread sheet detailing the numbers of customers served in this time period. The report and spreadsheet will have been reviewed by both the Planning Commission and the Board of Zoning Appeals at their respective meetings prior to being forwarded to the County Commission.**

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

N/A

Attachments:

- **1st Quarterly Report for Planning and Zoning Departments, Planning Commission and Board of Zoning Appeals for FY 14 (July – September, 2013) Summary and Spreadsheet**



# Jefferson County, West Virginia

## Departments of Planning and Zoning

116 East Washington Street, 2<sup>nd</sup> Floor  
Charles Town, WV 25414

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

Phone: (304) 728-3228

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

Fax: (304) 728-8126

### MEMORANDUM

**TO:** Jefferson County Commission  
**FROM:** Jennifer M. Brockman, AICP, Director, Planning and Zoning;  
Jefferson County Planning Commission;  
Jefferson County Board of Zoning Appeals  
**DATE:** November 7, 2013  
**RE:** 1<sup>st</sup> Quarterly Report for Planning and Zoning Departments, Planning Commission  
and Board of Zoning Appeals for FY 14 (July – September, 2013)

\*\*\*\*\*

#### 1. Projects Undertaken in 1<sup>st</sup> Quarter (New this Quarter):

a. Long Range Planning:

- On-going – Future Land Use for Envision Jefferson 2035 (2014 Comprehensive Plan) – see progress in “Projects Underway” section below

b. Major Site Plans or Subdivisions (PC):

- Morgan’s Grove Market Site Plan requested determination of completeness by Planning Commission prior to submission of all required documentation (conditionally and provisionally approved 6/11/13; PH scheduled for 7/9/13)

c. Zoning Text Amendments (PC):

- Proposed text amendments to the following sections of the Zoning and Land Development Ordinance: 2.2, 4.10, 5.7, 5.8, 8.5, 9.5, 10.5, 11.1, and 12.2 (PC Public Hearing 6/11/13; 8/15/13 County Commission agreed to hold Workshop and Public Hearing)
- Consideration of County Commission Motion requesting Planning Commission action related to a proposed draft amendment to the Residential-Light Industrial-Commercial Zone and the Commercial-Industrial Zone (6/11/13 – action continued; 8/15/13 County Commission agreed to hold Workshop and Public Hearing)
- Discussion regarding previously recommended proposed text amendments to the Zoning and Land Development Ordinance regarding the creation of new commercial and industrial zoning categories and related amendments (8/15/13 – County Commission agreed to hold Workshop and Public Hearing)

d. Subdivision Regulation Text Amendments (PC):

- Ongoing -- Stormwater Management Regulations and related Amendments to the Jefferson County Subdivision Regulations – see progress in “Projects Underway” section below; PC Workshop held 6/25/13

e. Zoning Certificates:

- 20 requests for Zoning Certificates undertaken in 4<sup>th</sup> Quarter FY 13 (see details below)

f. Zoning Map Amendments (PC):

- Land-owner initiated petition to amend the County Zoning Map for a 107 acre property owned by Ann, James and Ernest Hunter located on the north side of Route 115 (Old Rte 9 / Charles Town Rd), approximately 700 feet southeast of Berkeley/Jefferson County Line from Rural to the Residential-Light Industrial-Commercial (RLIC) zone – PC PH scheduled for 11/12/13

g. Conditional Use Permits/Neighborhood Compatibility Meetings (BZA):

- Peter S. Corum and J. Edward Slonaker, Morgan's Grove Market Conditional Use Permit – CUP Extension for 18 months, BZA Approval of CUP Extension Approved until June 28, 2015, 7/18/13
- Rippon Brewery, CUP Amendment to allow a four unit residential dwelling in addition to the microbrewery with tasting room; pub-style restaurant serving no more than 200 seats; store; country inn and office; NCM held 9/27/13; PH scheduled for 10/10/13

**2. Projects Completed (during the 1<sup>st</sup> Quarter):**

a. Long Range Planning:

- Envision Jefferson 2035 (2014 Comprehensive Plan)
  - draft Existing Conditions completed;
  - draft Goals and Objectives prepared for joint meeting with County Commission and July public input meetings
  - see progress in "projects underway" section below

b. Approval of Major Site Plans or Subdivisions (PC):

- Morgan's Grove Market Site Plan (approved 7/9/13)

c. Zoning Text Amendments (PC):

None

d. Subdivision Regulation Text Amendments (PC):

- Amendments related to Stormwater Management Regulations underway

e. Zoning Certificates Approved:

- ZC13-20 – Lisa Linn Arroniz (Owner/Applicant); Cottage Industry, Message Therapy Business; Kearneysville, WV
- ZC13-26 – Dynis, Inc (on behalf of AT&T)/ Thomas LaFerve; Wireless Facility Co-location; Kearneysville, WV
- ZC13-27 – Shenandoah Personal Communications/ John Darnall; Wireless Facility Co-location; Shepherdstown, WV
- ZC13-28 – Danie Armstrong (Owner/Applicant); Cottage Industry, Internet Bakery Business; Charles Town, WV
- ZC13-30 – WV340, LLC (Owner/Applicant)/ Ted Roser; Seasonal Halloween Shop; Jefferson Crossing/Martin's Shopping Complex
- ZC13-29 – Dan P. Aller (Owner)/Michael Shepherd (Applicant); Mobile Food Unit; Flea Market, Halltown Rd, Harpers Ferry.
- ZC13-31 – John Orem (Owner)/ Eric Burrell (Applicant); State Farm Insurance Agency; Martinsburg Pike, Shepherdstown, WV.
- ZC13-32 – SBA Communications Corporation (Owner)/ K-CO Enterprises, Inc; Tower Communication; Shepherdstown Pike, Shepherdstown.
- ZC13-33 – Phil McDonald/ Mr. Lucky, LLC (Owner); Greg McNabb/Artomatic @ Jefferson (Applicant); Art & Culture Event at the former Rock & Tile Store
- ZC13-34 – Caroline Litwack (Owner)/Belinda Lewis (Applicant); Thrift Shop; 154 Wolfcraft Way, Harpers Ferry.
- ZC13-36 – John Orem (Owner)/Eric Burnell (Applicant); Insurance Agency and Electronics repair shop; Jefferson Ave, Charles Town.
- ZC13-38 – Frank Hardy, Sr (Owner/Applicant) – Farmer's Market; Kearneysville, WV

Zoning Certificates Denied:

None

f. Zoning Map Amendments (PC)

None

g. Conditional Use Permits (CUP)/Neighborhood Compatibility Meetings (NCM) (BZA):

None

**3. Proposed Projects/Underway (during the 1<sup>st</sup> Quarter -- not completed):**

a. Long Range Planning:

- Envision Jefferson 2035 (2014 Comprehensive Plan):
  - Phase 1: 2014 Plan Start Up/Organization – including formation of Steering Committee and establishment of website (completed)
  - Phase 2: Existing Conditions Data Collection, Mapping and Trends Analysis – including coordination with Technical Advisory Committee (completed)
  - Phase 3: Issues Analysis and Visioning – including 17 Lunch and Learn Session with various service providers; a series of 4 Public Input meetings in February and March; an on-line survey (Completed)
  - Phase 4: Goals and Objectives (completed)

- Phase 5: Plan Recommendations and Implementation Strategies (underway – anticipated completion: April)
- Phase 6: Plan Adoption (Summer – Fall 2014)

b. Major Site Plans or Subdivisions Under Review:

- Morgan's Grove Market Site Plan requested determination of completeness by Planning Commission prior to submission of all required documentation (conditionally and provisionally approved 6/11/13; PH scheduled for 7/9/13)

c. Zoning Text Amendments:

- Proposed text amendments to the following sections of the Zoning and Land Development Ordinance: 2.2, 4.10, 5.7, 5.8, 8.5, 9.5, 10.5, 11.1, and 12.2 (PC Public Hearing 6/11/13; discussion and recommendation scheduled for 7/9/13)
- Consideration of County Commission Motion requesting Planning Commission action related to a proposed draft amendment to the Residential-Light Industrial-Commercial Zone and the Commercial-Industrial Zone (6/11/13 – action continued to November)
- Discussion regarding previously recommended proposed text amendments to the Zoning and Land Development Ordinance regarding the creation of new commercial and industrial zoning categories and related amendments (6/11/13 – action continued to November)

d. Subdivision Regulation Text Amendments (PC):

- Development of stand-alone Stormwater Management and related Amendments to the Jefferson County Subdivision Regulations (Engineering and their consultant is lead; but planning and PC input is required); PH scheduled for 7/9/13

e. Zoning Certificates Pending:

- ZC13-35 – Weese Rentals, LLC (Owner)/Richard Weese (Applicant); Cottage Industry, Full Service Nail Salon; Jefferson Ave, Charles Town.
- ZC13-37 – Michael Hampshire (Owner)/ Michael Hensley (Applicant) – Body Shop and maintenance to include State Inspections; Kearneysville, WV

**4. Items Requiring Commission Attention (Upcoming):**

- a. Envision Jefferson 2035 – 4<sup>th</sup> Series of Public Meetings -- Review draft recommendations and strategies; Finalize Future Land Use Map
- Late January 2014

**FY 2014 Work Plan 1st Quarterly Report to the County Commission (July - September 2014)**

<b>PROJECTS</b>	<b>TIME FRAMES from FY 13-14 Work Plan</b>	<b>Status or Number Completed (July 13 -- Sept. 13)</b>	<b>Status or Number Completed (Oct. 13 -- Dec. 13)</b>	<b>Status or Number Completed (Jan. 14 -- March 14)</b>	<b>Status or Number Completed (Apr. 14 -- June 14)</b>
<b>Day to Day Customer Service</b>	<b>on-going</b>				
Walk in Customers - general information, zoning requests, process questions		205			
Information Request Forms		65			
Pre-proposal Conferences		10			
Zoning Certificates Processed		12 Issued/0 Denied/2 Pending			
Call-in customers - general info, zoning, questions		472			
E-mail to general planning/zoning mailboxes (note: individuals receive over 100 per month each)		1127			
<b>Day to Day Development Review Responsibilities:</b>	<b>on-going</b>				
Minor Site Plans		2 Coast Guard and Summit Point Class room			
Major Site Plans, including Concept Plans		1 Cell Tower			
Merger Deeds, Lot Line Adjustments		2			
Minor Subdivision Plats		1			
Major Subdivision Plats (Concept, Preliminary, Final)		0			
Conditional Use Permits/Neighborhood Compatibility Meetings		0			
Zoning Variances (requirements, dimensional variances, CUP Time extensions)		10			
Appeal of Zoning Administrator's Decision		3			
Subdivision Waivers/Variances including requests related to time frames or requirements submittals		7			
Zoning Map Amendments (Rezoning)		1			
<b>Staff to Planning Commission meetings, including staff reports and presentations</b>	<b>on-going</b>	4 Regular Meeting; 7 staff reports related to land development applications			
<b>Staff to Board of Zoning Appeals meetings, including staff reports and presentations</b>	<b>on-going</b>	3 BZA meetings 13 staff reports for land development applications			
<b>Various non-PC and non-BZA Meetings including participation in County Commission; other agencies such as WAC, JCDA, Health Department, PSD, HEPMPO TAC, WIP II Work Group; other Region 9 Meetings as requested; and follow up meetings with applicants and their representatives</b>	<b>on-going</b>	JB - 140 meetings attended; SR - 83 meetings attended			

Jefferson County Offices will be closed  
Thursday, November 28<sup>th</sup> and Friday,  
November 29<sup>th</sup> for the Thanksgiving Holiday.



The Jefferson County Commission proposes to name persons to serve on the following Authorities, Boards, Commissions, or Committees on Thursday, December 5<sup>th</sup>, 2013, or as soon thereafter as the Commission may decide:

**Jefferson County Emergency Services Agency - (3) Three year terms ending November 2, 2016 as follows:**

- Two Citizen representatives
- One EMS representative

**Jefferson County Emergency Services Agency - (1) Unexpired term ending November 2, 2015 as follows:**

- One Citizen representative

**§7-17A-4**

(c) Only residents of the county in which the board is formed are eligible to serve on the joint emergency services board. At all times, the board shall consist of at least two representatives from the emergency medical services community, at least two representatives from the fire protection services community, and at least two citizen representatives from the county at-large. The citizen members may not be employed with the emergency medical services community, fire protection services community or the county commission and not more than one citizen member may be appointed from the same magisterial district in the county.

***Following Magisterial Districts Available for the Citizen Positions:***

Harpers Ferry District  
Shepherdstown District  
Kabletown District

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

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

The Jefferson County Commission proposes to name persons to serve on the following Authorities, Boards, Commissions, or Committees on Thursday, **December 5, 2013**, or as soon thereafter as the Commission may decide:

**Public Service District - One six year term ending December 1, 2019.**

**Appointee must be a residential, rate paying customer of the Jefferson County public service District.**

**Appointee must also be willing to attend monthly meetings at the Public Service District offices and travel to Charleston or another area in the State normally a few hours from Jefferson County for a two day Board Member Training class.**

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

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

**SPIRIT OF JEFFERSON:**

**PLEASE ADVERTISE ON:**

**November 6, 13, 20, 27 - 2013**

**THANKS - JEFFERSON COUNTY COMMISSION**

November 7, 2013

*Rec'd  
11/7/13*

To: The Jefferson County Commission  
From: George Rutherford  
Subject: Resignation

Please accept this letter as formal notification that I am resigning from the Eastern Panhandle Transit Authority (Pantran) Board effective today, November 7, 2013.

Thank you for the opportunity you provided me to serve on the Board to represent Jefferson County. I am sorry that I did not give you advance notice.

  
George Rutherford

11/12/13

Jefferson County Commissioners

We, Elizabeth Brown (304-268-8456) and Stephen Mangus (301-730-1097) own property at 539 Turner Rd. Shepherdstown. We are requesting a variance to the section of the barking dog ordinance that requires two separate residence's to file complaints

The adjacent property is a rental. The nearest other residence is approximately 1/4 mile farther. In the spring of this year renters moved in to the adjacent property with two large dogs that they began chaining in the yard app. 100 ft. from our residence. They are left outside most days for 10-12 hours and their incessant barking holds us hostage. The dogs bark for hours. We can not use our property without being barked at. We sit outside at night and listen to the dogs bark. We sit in our home at night and listen to the dogs bark. We have attempted to speak with both the renters and the property owners with little success. We have contacted the Sheriffs Dept. on several occasions though they can only request that the owner bring the dogs inside and on most occasions it is futile to contact the sheriff as we can see that no one is at home.

On Nov 7, 2012 we spoke with Corporal Williams of the Sheriffs Dept.. He said that he would contact the Prosecuting Attorney regarding our options and recommended that we petition the commision to examine the two party requirement within this ordinance. As a rural property owner within Jefferson County this requirement is keeping us from having a peaceful existance on our property and within our residence.

Thank you for your attention to this matter  
Stephen Mangus 301-730-1097

Nathan Frederick Farming and Leasing  
Swami Nathan, MD General Partner  
198 Thomas Johnson Drive  
Suite 207  
Frederick, MD 21702

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NOV 12 2013

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

November 9, 2013

Ms. Jennie Brockman, AICP  
Director of Planning and Zoning  
Jefferson County, West Virginia  
P.O. Box 338  
Charles Town, WV 25414

Dear Ms. Brockman,

Thank you for the opportunity to participate in the series of meetings regarding the proposed Comprehensive Plan for Jefferson County. As you know, I attended the meeting the proposed preferred growth areas at South Jefferson Elementary School on October 21, 2013. I have a great interest in the process because I have had an ownership interest in a large property along Route 340 since 1984. This property is approximately 236 acres and is described as Tax Parcel 30 on Tax Map 8 in the Charles Town Tax District. The property was formerly known as Walnut Hill Farm and is located between the parcel of land that contains Walmart and Country Club Road.

Even though I have owned this property prior to the implementation of Zoning in Jefferson County, the property was zoned as Residential Growth when zoning was adopted in 1988. This zoning district allows for any density of residential growth on the property. At some point, the property was also designated to be located in the Ranson Urban Growth Boundary (UGB). I don't specifically recall if I was ever officially notified of that designation or the process that led to that designation. However, now I understand that it may have an impact on the future development potential of my property.

As we discussed, the most logical use of this large property along Route 340 would be some form of mixed-use. This parcel and the County would be best served if the most flexible zoning district was applied to the property. We specifically discussed the possibility of a big box retailer and other commercial uses on the portion adjacent to Route 340; a possible mix of commercial and office deeper into the property; and, a mix of residential densities near the rear (north) of the property. Quite frankly, big box retailers are a needed use in a growing community, and this location may be the best location in the County for such use given its proximity to Walmart, Route 340, the proposed preferred growth areas and the UGB.

At the Comprehensive Plan meeting, several other things were brought up regarding this property. I have concerns that the existing zoning designation and the possibility that the property being located in Ranson's UGB may have an impact on how it is designated in the Comprehensive Plan. Therefore, I would ask that this entire property be designated as a preferred growth district on the future land use map in the new Comprehensive Plan. Although I have been assured that existing zoned properties will be protected in the new plan, it is vital for future Staff, County Commissions and Planning Commissions to recognize that this property has that protection in the new Comprehensive Plan. Accordingly, this

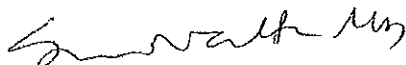
property in its entirety needs to be shown as a preferred growth district on the future land use map in the new plan.

Secondly, we discussed the possibility that since my property is located within Ranson's UGB, it will also most likely be protected for future growth. Although I understand that proposition, I still would like this property to be designated in the County's Comprehensive Plan as a preferred growth district. Since UGB lines are political lines that have been drawn to facilitate annexations, I may or may not want to annex into Ranson when development takes place on this property. I do plan to meet with Ranson officials in the near future, but since I had no direct input with respect to the location of the UGB, I very much would like to keep my options open as I master plan this property. Also, since this boundary is a political line, it may be revised from time to time without my input. Therefore, I again ask that my property is expressly shown within the Jefferson County's preferred growth area, regardless of its location within Ranson's UGB.

This property has been in my family for almost 30 years. Even though we chose to farm the property during several housing booms, we would like to continue to have the option of developing this property in the future. In order to do that, it is vital that it continues to be located in the preferred growth area in any Jefferson County Comprehensive Plan.

I look forward to your continuing efforts regarding the development of the new Comprehensive Plan. Please keep my name and address on file so that I am updated on any progress regarding my property's land use designation. Thank you for the opportunity to participate in the process.

Sincerely,



Dr. Swami Nathan  
General Partner  
Nathan Frederick Farming and Leasing

cc: Jefferson County Planning Commission  
Dale Manuel, President, County Commission of Jefferson County  
Patsy Noland, County Commissioner  
Walt Pellish, County Commissioner  
Jane Tabb, County Commissioner  
Lyn Widmyer, County Commissioner



Ann Hilton  
PO Box 751  
Charles Town, WV 25414

2013

Dear Jefferson County Commission Chair: Manuel +  
Members: Tabb, Roland, Widmyer + Relish,

I have enclosed a few pages of  
history from our racing industry in  
Charles Town.

80 years is pretty special! And a  
"positive". Thank you.

Yours truly,

Ann Hilton

**RECEIVED**

NOV 08 2013

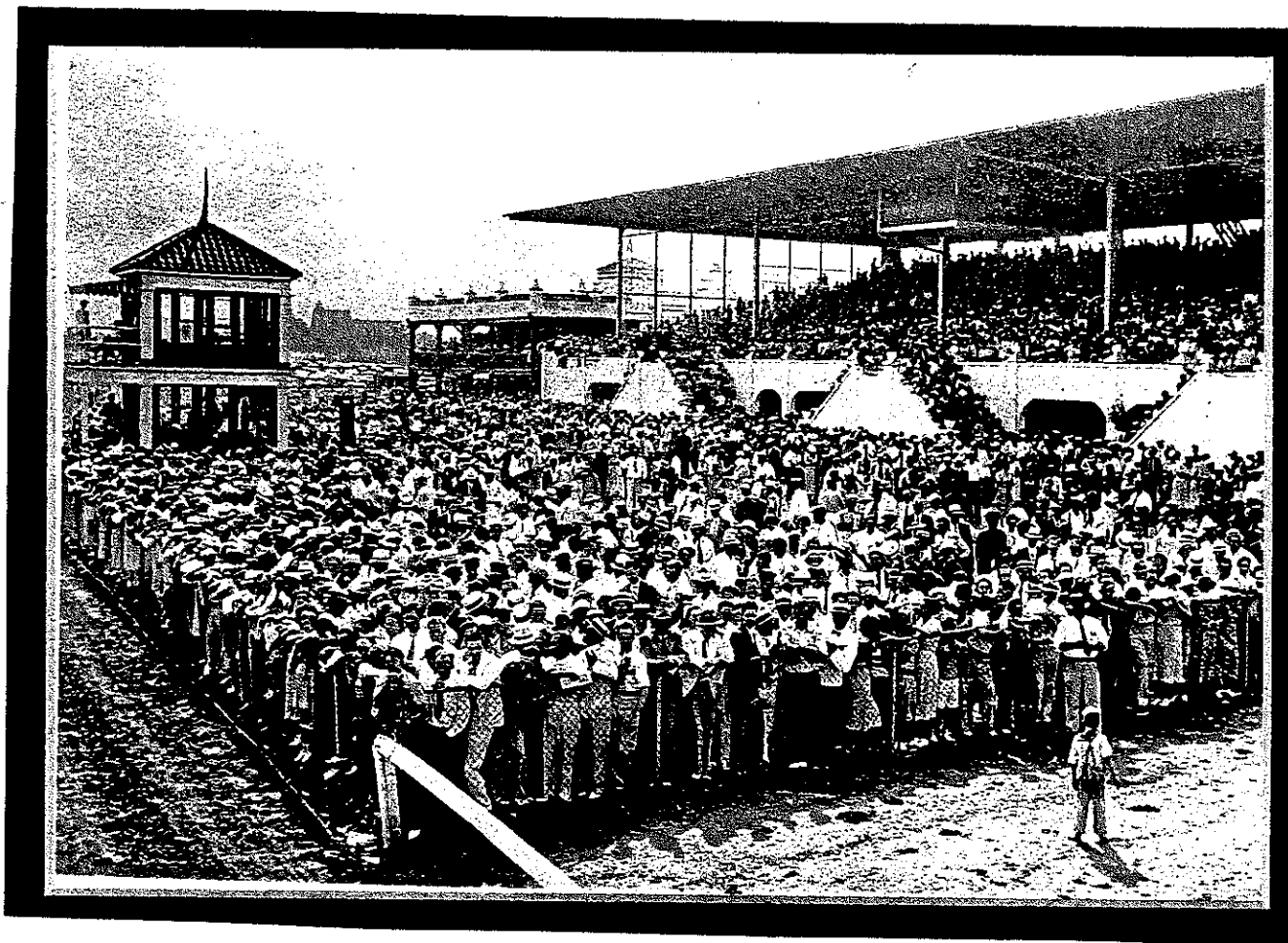
Jefferson County Commission

Eighty Years of History & Horseracing

1933-2013

**CELEBRATING 80 YEARS**

40's



A Healthy Racing Industry in Charles Town  
Benefits Everyone

80 Years of History and Horseracing  
at Charles Town

2013

# History Wall



1. Mezzanine Level



2. Longshots beside program stand



3. Racing Office

memo from Ann Hilton

- \* Updates in the Mezzanine
- \* Hall of Fame in Longshots

As a reminder of our tradition and history, please enjoy the enclosed pages, as we celebrate 80 years of horseracing in Charles Town.

Members of our racing community, tourists and visitors to Hollywood Casino at Charles Town Races have shown great interest in our History Walls and Hall of Fame displays. It has become a very popular project.

**HOLLYWOOD**  
*Casino*  
AT CHARLES TOWN RACES

**CHARLES TOWN RACING HALL OF FAME**

**CLASS OF 2011**



## **Ann Hilton**

### *Industry*

A longtime fixture at Charles Town, Ann Hilton has spent much of her life as one of the predominant horsemen in West Virginia's eastern panhandle. In addition to being an owner and taking an active role in the relationship between horsemen and management, she also served a stint as President of the Charles Town HBPA. In recent years, Hilton has made her presence felt at Charles Town through her creation and upkeep of the History Walls located throughout the grandstand.

IN THE CIRCUIT COURT OF  
JEFFERSON COUNTY, WEST VIRGINIA

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

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NOV 08 2013

JEFFERSON COUNTY  
CIRCUIT CLERK

v.

Civil Action No. 11-C-325

JEFFERSON COUNTY PLANNING COMMISSION,  
A public body,  
Respondent.

RECEIVED

v.

NOV 15 2013

FAR AWAY FARM, LLC,  
Intervenor.

Jefferson County Commission

ORDER GRANTING JEFFERSON COUNTY PLANNING COMMISSION'S  
"MOTION TO RECONSIDER"

I. BACKGROUND

This motion comes after the Court made a ruling on June 19, 2012 in the form of an Order Granting Petitioners' Motion for Partial Summary Judgment. The Court ruled that Respondents had violated the Open Meetings Act ["OMA"] when it held an executive session on July 26<sup>th</sup>, 2011 without providing either the required notice or minutes in a timely fashion. Following the entry of that order, Respondent held a "do-over" meeting in order to comply with the order on June 19, 2012 and its interpretation of OMA case law, notwithstanding Respondent's contention that it had never actually violated OMA.

Since June 2012, all parties have filed various motions in response to the actions taken by Respondent to cure the 2011 OMA violation. On October 18, 2013, the Court again considered the various orders submitted by the parties, including "Respondent's Motion to Reconsider." Respondent's grounds for the motion, and for the particular assertion that OMA was never violated in the first place, can be summarized as follows:

- A. Summary Judgment was in Error Because A Genuine Issue of Material Fact Exists on the Issue of When the Settlement was Concluded
- B. Summary Judgment was in Error Because the Court Failed to Apply the OMA Settlement Exception
- C. Summary Judgment was in Error Because the Court Ignored the OMA Exception for Confidential Advice
- D. Statutory Language in Surrounding Sections Support Exceptions 11 and 12
- E. Constitutional Separation of Powers Concerns Supersede the OMA
- F. The Common Law Recognition of Attorney-Client Privilege of Peters Superseded by Exceptions 11 and 12

Initially, the Court had been convinced that a violation of OMA had occurred, as reflected in the June 2012 Partial Summary Judgment. As such, the Court was poised at the hearing of October 18, 2013 to grant the Intervenor's Motion to Limit Remedy, since no sanction appeared to be merited in light of both the de minimis nature of said violation and the Respondent's efforts to cure the violation.

However, upon review of the legislative history of OMA, the Court finds that the prior Partial Summary Judgment was based on a misplaced reliance on Peters v. County Com'n of Wood County, 205 W.Va. 481, 519 S.E.2d 179 (1999). The West Virginia Supreme Court itself appears to recognize the newly-minted exceptions that were by that point added to OMA in the Peters opinion, and its congruence with the rules of ethical attorney conduct (in particular, attorney-client confidentiality rules). In a footnote of the opinion, the Court notes that:

The West Virginia Legislature amended significant portions of the Act, passing House Bill 2005 on March 21, 1999. Governor Underwood approved these amendments on April 8, 1999, and this new version of the Act **will take effect** ninety (90) days from its passage. **Significantly, the Legislature included more exceptions to the Act.** The new version of West Virginia Code § 6-9A-4(12) (1999) specifically provides that a public body may hold a closed executive session ‘[t]o discuss any matter which, by express provision of federal law or state statute or rule of court is rendered confidential, or which is not considered a public record within the meaning of the freedom of information act...’ However, the preceding subsection, West Virginia Code § 6-9A-4(11) (1999) provides, in pertinent part, that ‘[n]othing in this article permits a public agency to close a meeting that otherwise would be open, merely because an agency attorney is a participant.’ [Emphasis added].<sup>1</sup>

The curiously prospective language used in the footnote suggests that Supreme Court, in deciding Peters, was not using the more permissive version of OMA that is still in effect today.<sup>2</sup> For this reason, the exceptions to the general thrust of OMA’s sunshine mandates cited by Respondent, Exceptions 11 and 12, were ostensibly contemplated (per the footnote cited above) *yet not relied upon* by the Supreme Court when it decided Peters. Given the disconnect between the version of OMA controlling Peters and the more permission version that controls today, this Court’s reliance upon the holding of Peters—in particular, the three statutory requirements imposed upon closed executive sessions—is misplaced.

## II. REVIEW OF APPLICABLE LAW

### 1. The Standard: Rule 60(b)(6) / Motion for Relief from a Judgment or Order

According to the West Virginia Supreme Court, “[i]n the normal course of litigation, juridical policy strongly suggests that trial courts should be accorded initial

<sup>1</sup> *Id.* n7

<sup>2</sup> It is not clear to this Court why the Peters decision, dated July 14, 1999, states that the new version of OMA “will take effect ninety (90) from its passage” when such ninety-day mark would have by that point already occurred (on July 7, 1999). It appears to the Court that one cannot rely upon mere dates to reveal the version of OMA that controls Peters, due to the close timing between the two. Ultimately, it is the Supreme Court’s plain language which informs this Court’s position (that the new version of OMA took effect after the wheels of Peters were already set in motion, so that the old version still controlled Peters).

opportunity to correct errors of both judicial and clerical nature. Within the time limitations prescribed, Rules, 50, 52, 59, and 60, W.Va. R.C.P. provide a vehicle for the correction of such errors before resort to appeal is necessary.” Young v. Young, 158 W. Va. 521, 527, 212 S.E.2d 310, 314 (1975). As the Respondent’s Motion to Reconsider and Set Aside Partial Summary Judgment was filed more than ten days after the Partial Motion for Summary Judgment, the Respondent’s “Motion to Reconsider” is more appropriately characterized as a Motion for Relief from a Judgment or Order.<sup>3</sup> Powderidge Unit Owners Ass’n v. Highland Properties, Ltd., 196 W. Va. 692, 695-96, 474 S.E.2d 872, 875-76 (1996).

Since the motion is considered under Rule 60(b)(6) (and not under 60(b)(1), (2), or (3)), the fact that Respondent filed the motion in August 2013 does not bar relief, even though this was more than one year after the entry of Partial Summary Judgment: “The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.” W. Va. R. Civ. P. 60. This is because the Court finds that the motion was filed within a reasonable time, particularly because the Respondent’s dissatisfaction with the Partial Summary Judgment was noted in its Notice of Appeal that was filed on July 11, 2012.

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<sup>3</sup> A motion filed within ten days following the June 2012 Partial Summary Judgment could be characterized as a “Motion for Reconsideration;” however, such terminology has fallen out of favor with West Virginia Supreme Court: “Despite [the Supreme Court’s] repeated direction to the bench and bar of this State that a ‘motion to reconsider’ is not a properly titled pleading in West Virginia, it continues to be used... The reason for this may be partially our fault because we continue to treat a ‘motion to reconsider’ as either a motion to alter or amend judgment under Rule 59(e) of the West Virginia Rules of Civil Procedure, if served no later than ten days after entry of the judgment, or a motion for relief from judgment pursuant to Rule 60 of the West Virginia Rules of Civil Procedure.” Richardson v. Kennedy, 197 W. Va. 326, 329-30, 475 S.E.2d 418, 421 (1996). See also In re Chevie V., 226 W. Va. 363, 367, 700 S.E.2d 815, 819 (2010).

Under W. Va. R. Civ. P. 60(b)(6), the Court may vacate that previous judgment for the reasons cited in Respondent's motion: "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:... (6) any other reason justifying relief from the operation of the judgment." The misplaced reliance of this Court in deciding the Partial Summary Judgment, due to the tricky interface between the Peters holding and the legislative history of OMA, certainly qualifies as a "reason justifying relief from ... the judgment."

The West Virginia Supreme Court stated, "[i]n establishing the bounds of such motion, the weight of authority supports the view that Rule 60(b) motions which seek merely to relitigate legal issues heard at the underlying proceeding are without merit," Powderidge Unit Owners Ass'n v. Highland Properties, Ltd., 196 W. Va. 692, 705, 474 S.E.2d 872, 885 (1996). However, the Supreme Court was reviewing on appeal a circuit court's decision to deny a Rule 60(b) motion, and in making this statement, it had relied upon other cases in which an appellate court was likewise reviewing the decision of a lower court to grant or deny motions made pursuant to Rule 60(b).<sup>4</sup> Those cases are easily distinguished from the instant case in which the Circuit Court is vacating its own prior judgment. The long-standing liberty afforded by the West Virginia Supreme Court to circuit courts in reviewing *their own* previous orders and judgments under Rule 60(b) thus controls here: "A motion to vacate a judgment made pursuant to Rule 60(b), W.Va. R.C.P., is addressed to the sound discretion of the court and the court's ruling on such

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<sup>4</sup> Powderidge cited the following cases as support for this point: Johnson v. Nedeff, 192 W. Va. 260, 266, 452 S.E.2d 63, 69 (1994) ("We hold that the Rule 60(b)(1) motion was properly denied"); Smith v. Evans, 853 F.2d 155 (3d Cir. 1988).

motion will not be disturbed on appeal unless there is a showing of an abuse of such discretion.” Hooshyar v. Afshari, 12-0578, 2013 WL 2495138 (W. Va. June 7, 2013) (citing Toler v. Shelton, 157 W.Va. 778, 204 S.E.2d 85 (1974)). Therefore, this Court reconsiders its own Partial Summary Judgment under the liberal, discretionary standard.

2. The Court re-interprets the statute that is found in its written order from June 19, 2012 and thus now at issue: West Virginia Code § 6-9A-1 et seq. (1999)

In misplaced reliance upon Peters, the Court seized upon the three statutory requirements of the statute in its Partial Summary Judgment against Respondent. The Court’s re-interpretation now is based upon a more careful reading of both the statute and Peters, and as such has a cascading effect on the other points of law in the Partial Summary Judgment. Therefore the Court must contend with the following three issues:

- a. Was the closed executive session a meeting of such a nature as to warrant an exception to OMA per W.Va. Code § 6-9A-4(12) (“Exception 12”)?
- b. Did Respondent abide by the requirement of W.Va. Code § 6-9A-4(11) (“Exception 11”); namely, to report and enter into its minutes the terms of the settlement that was approved or considered in closed session “within a reasonable time after the settlement” was concluded?
- c. Was the built-in “exception to Exception 11” triggered by the Respondents actions on July 26, 2011? Put differently, did Respondent hold a closed executive session solely because an agency attorney was present and participating in the meeting?

**III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In answering whether Exception 12 was implicated by the Respondent's actions on July 26, 2011, the Court must look to the language of act: "A public agency may hold an executive session and exclude the public only when a closed session is required for any of the following actions: ... (12) To discuss any matter which, by express provision of federal law or state statute or rule of court is rendered confidential, or which is not considered a public record within the meaning of [FOIA]..." W.Va. Code § 6-9A-4 et seq. As Respondent noted in its motion, Supreme Court rulings regarding the West Virginia Rules of Professional Conduct, as well as the common law recognition of attorney-client privilege, require that attorneys promptly inform their clients about a settlement offer. The Court need not repeat here the details proffered by Respondent in its motion as to why the closed executive session of July 26, 2011 was required under West Virginia law. The meeting on that day was of such a nature as to warrant Exception 12 so that the public was not improperly excluded.

This Court has reviewed arguments as to when it can be said that the settlement was concluded. The Court need not at this juncture be convinced by Respondent that Respondent abided by the Exception 11 requirement—that Respondent reported and entered into its minutes the terms of the settlement within a reasonable time after the settlement was concluded—in order to grant the Respondent's motion. This is because the Respondent has persuasively argued in its motion that a genuine issue of material fact exists as to when the settlement concluded (not on July 26, 2011, but instead, upon the date the court entered the settlement order, August 3, 2011). Although this is only a matter of eight days, partial summary judgment as to this particular issue was improper.

Lastly, nothing in the record suggests that the Respondents used the presence of an attorney as an excuse to hold the closed executive session. Therefore, Exception 11 does not limit Respondent's ability to avail itself of Exception 12 to OMA.

**IV. CONCLUSION**

WHEREFORE, this Court GRANTS Respondent's Rule 60(b) Motion / Motion for Relief from a Judgment or Order, i.e. "Motion for Reconsideration."

It is further ORDERED that the Clerk of this Court shall transmit an attested copy of this Order, once entered, to all parties and counsel of record, so that the Order Granting Petitioners' Motion for Partial Summary Judgment is vacated, and that petitioners' request for remedies detailed in their RESPONSE TO FAR AWAY FARM'S MOTION TO LIMIT REMEDY AND COUNTER-MOTION FOR SUMMARY JUDGMENT GRANTING REMEDIES—including attorney fees and costs incurred in this civil action, an injunction compelling the Jefferson County Planning Commission to comply with all provisions of the Open Governmental Proceedings Act, and the annulment of the Jefferson County Planning Commission's decision to approve the Agreed Settlement Order in Civil Action No. 11-C-125—are rendered moot.

9 cc's:

ENTERED: 11/8/13

G. Capriatic  
L. Gutell  
JC Planning Comm.  
S. Gosh  
M. Gay  
For Query Farms c/o B. Gay  
Ship. Battledied Pres. Assoc.  
E. Moore  
E. Dunham



DAVID H. SANDERS, JUDGE OF THE  
23<sup>RD</sup> JUDICIAL CIRCUIT, WEST VIRGINIA

A TRUE COPY  
ATTEST:

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

BY B. Crank  
DEPUTY CLERK

11.8.13 BL



STATE OF WEST VIRGINIA

Department of Revenue  
State Tax Department

Earl Ray Tomblin  
Governor

Mark W. Matkovich  
Acting State Tax Commissioner

November 6, 2013

RECEIVED

NOV 15 2013

President, Jefferson County Commission  
Jefferson County Courthouse  
100 E. Washington Street  
Charles Town, West Virginia 25414

Jefferson County Commission

Dear Commission President:

This letter and attachment certify that Angela L. Banks, Assessor of Jefferson County, has substantially complied with the "assessor's additional duties" as delineated in West Virginia Code § 7-7-6a. Substantial completion of the additional duties entitles Ms. Banks to the additional compensation of \$15,000 as provided in West Virginia Code § 7-7-6b.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Matkovich".

Mark W. Matkovich  
Acting State Tax Commissioner

MWM/jaj

Attachment

cc: Assessor of Jefferson County  
Clerk of Jefferson County

**ASSESSOR ADDITIONAL DUTIES - 2013**

**SUBSTANTIAL COMPLETION  
(PLACE AN "X" IN THE APPROPRIATE SPACE.)**

		YES	NO
1.	I have placed a map and parcel number on each entry in the current land book and ensured that all land book identifiers correspond to IAS/CAMA System identifiers.	X	
2.	I have completed a new appraisal card and map card for all land splits, adjusted the parent card, and made the appropriate entry to include all appropriate appraisal data on the computer network.	X	
3.	I have completed a list indicating that an appraisal change, mapping change or both have occurred to a parcel of property requiring this action during this calendar year. I have made the appropriate appraisal data change to the IAS/CAMA System record on the computer network for each appraisal change card. I have placed these cards in appropriate files for inspection. (Indicate the number of change cards completed this year. <u>114</u> )	X	
4.	I have prepared a listing of all new businesses added to the assessment rolls and all businesses that have ceased operations during the past year.	X	
5.	I have assisted the Tax Commissioner in determining if property owned by public utility companies is operating or non-operating, by completing the public utility property report.	X	
6.	I have entered sales information to the IAS/CAMA System for all real property sales that were registered in my county from October 1, 2012 through September 30, 2013.	X	
7.	I have occupied the office of Assessor during this entire calendar year. If no, provide explanation. _____ _____	X	

**STATEMENT OF COMPLETION**

State of West Virginia

County of Jefferson

I, the undersigned, Angela L. Banks, Assessor of Jefferson County, hereby certify that I have substantially completed each additional duty

described in West Virginia Code § 7-7-6a, in the manner prescribed by the West Virginia State Tax Commissioner.

**RECEIVED**

10-4-2013  
Date

NOV 15 2013

Angela L. Banks  
Signature of Assessor

**Jefferson County Commission**

*The Eastern Panhandle Conservation District  
cordially invites you to our:*

## ***ANNUAL LEGISLATIVE FORUM***

***December 4, 2013 4-6 pm.***

***USDA Service Center Conference Room  
151 Aikens Center, Martinsburg, WV***

*The purpose of this forum is to enhance the working relationship between the legislative branches of county and state government and the Eastern Panhandle Conservation District. We will discuss programs that the EPCD offers to both farmers and landowners, keeping in mind the goals of the Chesapeake Bay Initiative. We aim to provide insight to how we can work together to protect our natural resources.*

*Refreshments will be served.*

Please RSVP by November 29, 2013 by contacting the office at 304-263-4376 or by email to [sduncan@wvca.us](mailto:sduncan@wvca.us)

**RECEIVED**

NOV 08 2013

**Jefferson County Commission**



# Hospice of the Panhandle

November 6, 2013

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

Dear Patsy & Commissioners:

During this season of thanksgiving, please allow me to offer my sincerest thanks for your generous gift to Hospice of the Panhandle's Building the Dream project. These are such exciting times! We continue to prepare for our move into our new offices and inpatient unit. We anticipate the move in early 2014.

Because of your generosity, our capital campaign has been a roaring success, raising well over \$3.6 million, which is an amazing testament to the generosity of those who believe in and have been touched by Hospice care.

As you might imagine there's much to do before our move – packing, ordering furniture, equipment and appliances, deciding what we should repurpose and what we should discard. It's a fairly long to-do list. We've also been working diligently on creating an appropriate donor recognition program that will prominently display the names of our wonderful donors.

We are doing this in two ways. Those who have made pledges/gifts of \$5,000 and more will be listed on a large plaque outside the chapel in the inpatient unit. If a donor has opted to name a certain room or area, a separate plaque will be displayed there. These plaques recognize those whose gifts are \$15,000 or more. Those who made pledges/gifts of less than \$5,000 will be listed in a book that will be housed inside the chapel. Gift levels include:

**Cornerstone Society (\$50,000 and above)**

- Gold level (\$100,000+)
- Silver level (\$75,000-\$99,999)
- Bronze level (\$50,000-\$74,999)

**Pillars (\$25,000-\$49,999)**

**Framers (\$10,000-\$24,999)**

**Bricks and Builders (\$5,000-\$9,999)**

**Foundation Society (\$2,500- \$4,999)**

**Mortar Society (\$500-\$2,499)**

**RECEIVED**

NOV 15 2013

**Jefferson County Commission**

*Our records indicate that you have committed a gift of \$20,000. If you have any questions about your gift level, or if you are interested in adding to your gift before we finalize our recognition wall, please contact me, Maria Lorensen at (304) 267-1870, ext. 205, or [mlorensen@hospiceotp.org](mailto:mlorensen@hospiceotp.org), by **November 25**.*

**We also would like to invite you to join us for a late-construction tour at the inpatient unit and offices on Thursday, Dec. 12, at 3 p.m.** If you joined us in September, there will be much more to see! Again, thank you for all you have done to help Build the Dream. We are truly grateful for your confidence in Hospice of the Panhandle.

Sincerely yours,

Maria Lorensen  
Development Director



***SAVE THE DATE!***  
**February 9-11, 2014**



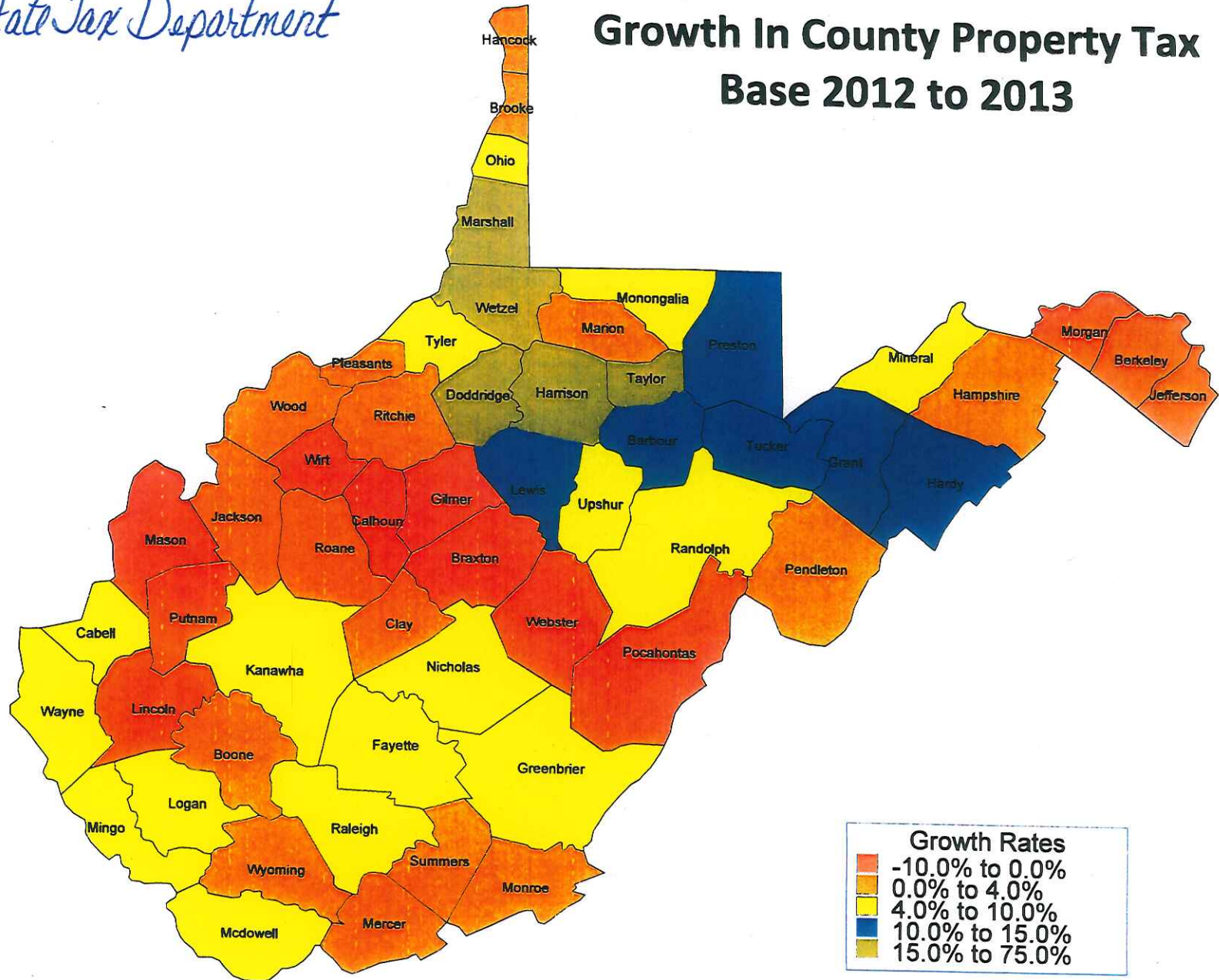
Looking ahead to a *brighter*  
**tomorrow**  **W**

**Registration information will be sent in early December 2013!**

West Virginia Association of Counties  
2211 Washington Street East  
Charleston, WV 25311  
Ph: 304-346-0591  
Fax: 304-346-0592  
Email: [wvaco@wvaco.org](mailto:wvaco@wvaco.org)

Source: State Tax Department

## Growth In County Property Tax Base 2012 to 2013



Average = 6 1/2 %  
growth

*From WV Economic Outlook 2014  
WVU College of Business*

## EXECUTIVE SUMMARY

West Virginia's economy continues to improve, and the pace of improvement has exceeded that of the United States by several measures recently. We expect the economic recovery in West Virginia to continue, although at a somewhat slower rate that will likely fall short of the national pace on several key dimensions in the near-term.

**Several key highlights concerning West Virginia's recent economic performance are as follows:**

- **Employment in the state has increased by approximately 3,000 jobs (0.4 percent) over the past year** and the overall level of employment in the state is down only slightly from the all-time high observed earlier this year.
- **The natural resources and mining sector has been the largest contributor to statewide net job growth over the past few years.** The sector added 2,300 new workers between the second quarters of 2012 and 2013. With the state's natural gas production more than doubling within the past two calendar years, drilling and extraction throughout the Marcellus and Utica Shale formations have provided a significant boost to payrolls.
- **Other areas of job growth are in retailing, construction, leisure and hospitality, and education and health services.** The public sector has been struggling to add jobs, dampening overall job growth in the state.
- **West Virginia's unemployment rate is at its lowest level since early-2009,** and the rate is significantly below the national average.
- **Per capita personal income in West Virginia has grown rapidly** over the past five years, reaching \$34,477 in 2012. However, despite this growth, per capita personal income in the state still ranks low, surpassing only three other states.
- **Overall, the state's real gross domestic product (GDP) expanded 3.3 percent during 2012, noticeably above the national rate.** West Virginia ranked 10th among all states in terms of state GDP growth during 2012.
- **Exports have grown dramatically in terms of their importance to the West Virginia economy.** In 2000, exports accounted for 5.4 percent of West Virginia's GDP; by 2012, that figure had exploded to 16.3 percent.

- **The state's exports grew an average of 5.2 percent per year between 2000 and 2009.** Over this same period, overall US exports declined at an annual rate of 0.2 percent. The strong growth in West Virginia's exports is primarily driven by strong growth in coal exports since 2008.

**However, the West Virginia economy is not without its problems. The following negatives have dampened West Virginia's recent economic performance:**

- **The share of the West Virginia population that either has a job or is looking for a job is low.** The figure is 54 percent in West Virginia, compared to 63 percent nationally.
- **Economic performance across West Virginia has varied significantly by county,** with some counties posting very little to no economic growth recently.
- **Population growth in West Virginia has been very slow** over the past decade, and population gains have been heavily concentrated in a few areas, such as the state's Eastern Panhandle and Monongalia County. Overall 39 of West Virginia's counties saw their population decline over the past decade.
- **West Virginia has some the highest death rates for heart disease, cancer, and diabetes in the country,** West Virginia ranks among the bottom tier of states across health risk factors like high blood pressure, physical inactivity, poor nutrition, smoking, and obesity.

**Highlights of our forecast for West Virginia's economy are as follows:**

- **Employment in West Virginia is estimated to increase 1 percent per year through 2018,** compared to expected growth at the national level of 1.6 percent annually.
- **Construction sector employment is expected to increase at an annual rate of 2.3 percent** over the next 5 years.
- **The service-producing side of the economy is expected to experience the strongest rate of job growth** during the outlook period. Education and health services payrolls are expected to expand at a rate of 2.1 percent annually for the next five years.

- **The state's unemployment is expected to continue to fall during the period,** reaching a low of 4.5 percent by the end of 2018. However, this decline is attributable to not only job gains, but also to demographic trends, since a larger share of the state's workforce will be retiring and exiting the labor force.
- **Per capita personal income is expected to grow at an annual average rate of 2.3 percent** over the next five years, below the national rate of 2.7 percent.
- **The state's population is expected to decline at a annual rate of 0.1 percent** over the next five years, driven by a continued slowdown in net in-migration and death rates that outnumber birth rates.
- **West Virginia's population is expected to grow increasingly older, at a rate that surpasses the national trend.**
- **Challenges exist that could threaten the expected growth for the US and West Virginia economies** These include: a potential slowdown in the economies of major US trading partners that could threaten exports; a high level of US federal government debt the potential for inflation to destabilize the economy as bank lending and the broader economy improve and the coming rise in interest rates.

There are also negatives associated with our forecast for the state. Consider the following:

- **Job growth in natural resources and mining is expected to drop off considerably** from the pace of gains observed in recent years, diminishing to a 0.3 percent annual growth rate.

FIGURE 0.1: West Virginia and US Forecast Summary

	West Virginia		United States	
	2002-12	2013-18	2002-12	2013-18
Population (average annual growth, %)	0.3	- 0.1	0.9	0.8
Employment (average annual growth, %)	0.4	1.0	0.2	1.6
Unemployment Rate (annual average at end of time period, %)	7.3	4.5	8.1	5.5
Real Per Capita Personal Income (average annual growth, %)	1.3	2.3	0.9	2.6

Sources: US Census Bureau; Workforce WV; US Bureau of Labor Statistics; US Bureau of Economic Analysis; WVU BBER Econometric Model; IHS Global Insight



# SYNERGY 2013

**October 28-29, 2013**

**Bridgeport Conference Center  
Bridgeport, Harrison County**

## Working Solutions Between Local Government and Natural Gas

*Synergy 13 is a coming together of local government and industry to enhance their working relationships and together discuss the challenges and the opportunities that Natural Gas is bringing to their communities.*

### WINGATE

Call: (304) 808-1000

### RATES: Room code: CGENER

Government Rate: \$88.00 per night plus tax

Standard Rate: \$129.00 per night plus tax

### MICROTEL INN & SUITES

Call: (304) 808-2000

Adjacent to the Bridgeport Conference Center

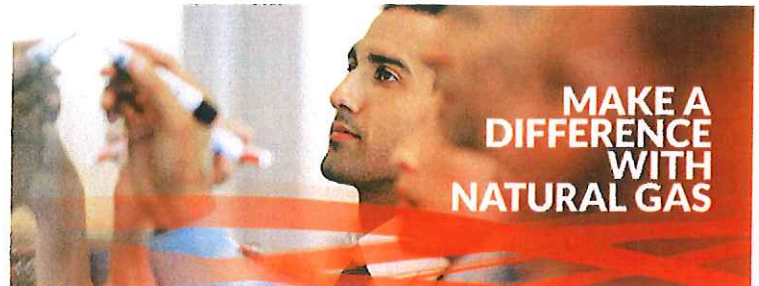
### RATES: Group code: 921-315-248

Government Rate: \$83.00 per night plus tax

Standard Rate: \$109.00 per night plus tax

### October 28 Agenda

- |               |                             |
|---------------|-----------------------------|
| 1 - 1:45pm    | Welcome and Introduction    |
| 1:45 - 3:15pm | Synergy Seminar: Government |
| 3:30 - 4pm    | Breakout Session 1          |
| 4:15 - 4:45pm | Breakout Session 2          |
| 5 - 7pm       | Reception                   |



### October 29 Agenda

8:00 – 8:15 **Opening Remarks**

8:15 - 9:45am **Synergy Seminar: Planning**

Shale Development through planning: Bringing local government stakeholders to the table with industry representatives.

- |                  |   |
|------------------|---|
| 10 - 10:30am     | Breakout Session 1                            |
| 10:45 - 11:15am  | Breakout Session 2                            |
| 11:30 - 12:30pm  | Group Luncheon                                |
| 12:45pm - 1:45pm | Natural Gas Education: What's Going on in WV? |
| 2 - 3pm          | Creating Synergy                              |

**Upon registration you will receive a \$25 invoice from the West Virginia Association of Counties. Come join us at Synergy13, changing the world with Natural Gas!**

**Name** \_\_\_\_\_

**Street Address** \_\_\_\_\_

**City** \_\_\_\_\_ **State** \_\_\_\_\_ **Zip Code** \_\_\_\_\_

**Email** \_\_\_\_\_

**What most concerns you about Natural Gas?** \_\_\_\_\_

\_\_\_\_\_



# SYNERGY 2013

October 28-29, 2013  
Bridgeport Conference Center  
Bridgeport, Harrison County

## Working Solutions Between Local Government and Natural Gas

The line-up of speakers covers a variety of issues and is designed to help local leaders find solutions to the challenges and make the most of opportunities.

### SPEAKERS

The line-up of speakers covers a variety of issues and is designed to help local leaders find solution to the challenges and make the most opportunities.

- ▶ **Mr. Lynn Helms**, *Director of the North Dakota Department of Mineral Resources*, is the keynote speaker for the event. Mr. Helms has worked in the industry for many years, including the principal person behind the North Dakota Oil & Gas trust fund.
- ▶ **Joseph Geiger**, *WV State Archivist*, will provide expertise on records management issues.
- ▶ **Sam Spofforth**, *Executive Director of Clean Fuels Ohio*, works with the issue of energy-saving transportation technologies and policies.
- ▶ **Joseph Shaeffer**, *an associate of Spilman Thomas & Battle, PLLC*, who has extensive experience on the land use challenges related to the natural gas industry.
- ▶ **Dick Gardner**, *Senior Fello with the Center for Rural Entrepreneurship*, specializes in rural development, economics and strategic planning.
- ▶ **Kathy D'Antoni**, *Associate State Superintendent of Schools with the WV Dept. of Education*, with an area of expertise in educated and skilled work force.
- ▶ **Tom Hart**, *Marshall County's Director of Emergency Management*, will address the public safety issue in the state's epicenter of shale activity.
- ▶ **Ted Boettner**, *Executive Director of the WV Center on Budget and Policy*, will provide expertise on the economic impact and opportunity for the counties with shale drilling activity and for those that might benefit from the downstream activities.

- ▶ **Fiscal Year** - the year beginning the first day of July and ending the thirtieth day of June of the next calendar year.
- ▶ **Net Proceeds** - the gross amount of tax collections less the amount of tax lawfully refunded.
- ▶ **Promotion of the Arts** - activity to promote public appreciation and interest in one or more of the arts. It includes the promotion of music for all types, the dramatic arts, dancing, painting and the creative arts through shows, exhibits, festivals, concerts, musicals, and plays.
- ▶ **Recreational Facilities** - includes any public park, parkway, playground, public recreation center, athletic field, sports arena, stadium, skating rink or arena, golf course, tennis courts and other park and recreation facilities, whether of a like or different nature, that are owned by a county.
- ▶ **Region** - an area consisting of one or more counties that have agreed by contract to fund a convention & visitor's bureau to promote those counties.
- ▶ **Regional Travel Council** - a non-stock, nonprofit corporation with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the region of this state served by the regional travel council.
- ▶ **Historic Site** - any site listed on the US national register of historic places, or listed by a local historical landmarks commission, established under state law, when such sites are owned by a city, a county or a nonprofit historical association and are open from time to time to accommodate visitors.

This booklet is a summary of:

WV Code Chapter 7  
 Article 18 Hotel Occupancy Tax  
 Sections 1-15

## What YOU Need to Know ABOUT Administering the Local Hotel Occupancy Tax

*The local hotel occupancy tax can provide an important source of funding for maintenance of a county's tourism program and can translate into economic development for the entire State.*

### Authorized Entities and Procedures

Counties are authorized to adopt a hotel occupancy tax throughout the county except within city boundaries. A county may implement a hotel occupancy tax by adopting an order calling for the levy of the tax.

All counties are now eligible to adopt a hotel occupancy tax rate of up to 6% of the consumer price paid for the use of a hotel room. Counties are authorized to collect a hotel occupancy tax if the hotel is not located within the corporate limits of a county. (If a county has already imposed a hotel tax and a hotel is subsequently annexed by the municipality, the county shall continue to collect the hotel tax unless the county commission ceases to impose the hotel tax.) The order imposing the hotel occupancy tax shall specify the minimum number of hotel rooms a hotel must have in order for the tax to be authorized, specify the tax rate (maximum of 6%), provide the manner that the tax shall be collected and remitted to the city, and any other provision necessary for the proper administration and enforcement of the tax.

### Who Charges The Tax

The following businesses are considered "hotels" and are required to charge the tax: boarding houses, hotels, motels, inns, courts, condominiums, lodges, cabins and tourist homes. Hospitals, sanitariums, nursing homes, and dormitories or other non-hotel housing facilities owned by institutions of higher education do not charge the tax.

The hotel occupancy tax may be imposed against any "person" (including corporations and other legal entities) who pays for the use of a room in a hotel. The price of the room does not include the cost of food served by the hotel or the cost of other personal services. The tax is imposed on the price of the room rate only.

Unlike the state tax, the local hotel occupancy tax may be assessed only against the use of a room that is ordinarily used for sleeping.

### Exemption From The Tax

West Virginia statutes allow an exemption from the hotel tax for persons who have contracted to use a hotel room for more than 30 consecutive days. Additionally, hotel room occupancy billed directly to federal, state or political subdivisions is exempt from the tax. Rooms paid for by these employees and then reimbursed are subject to the tax. Rather than paying the hotel

## Failure To Collect Or Remit Tax

If any hotel operator fails to collect the tax or does not properly remit the tax, they will be personally liable for the amount they failed to remit. However, the hotel operator will not be held liable if the operator can provide evidence of refusal by the customer to pay the hotel occupancy tax.

## How the County Receives The Tax

The hotel occupancy tax is due in monthly installments on or before the 15<sup>th</sup> day of the month after the month in which the tax was accrued. For example, payment of tax due on October 14<sup>th</sup> would include the tax that was taken in the month of September. The sheriff is the county's agent for administration and collection of the tax.

The county will prepare the form that contains all information needed for computation, collection and distribution of the tax. The hotel operator will fill out the form and return it to the county with the amount of the remittance due. The hotel operator is responsible for keeping and preserving accurate records of tax sales and collections for a period of at least three years.

## Annual Reports by Convention & Visitor's Bureaus

Each year, before August 15<sup>th</sup>, every Convention & Visitor's Bureau which receives any appropriation of hotel occupancy tax from one or more counties will file a statement with that county, including an income statement and balance sheet, showing all amounts of hotel occupancy tax appropriated and all expenditures of hotel occupancy tax made by the Bureau for the prior year.

## Required Expenditures

*The proceeds of the hotel occupancy tax are deposited into the general revenue fund of the county and shall be used only for the following:*

- ▶ at least 50% must go towards funding the Convention & Visitor's Bureau located in your county or region

*If there is not a CVB in your county or region, the 50% is appropriated as follows:*

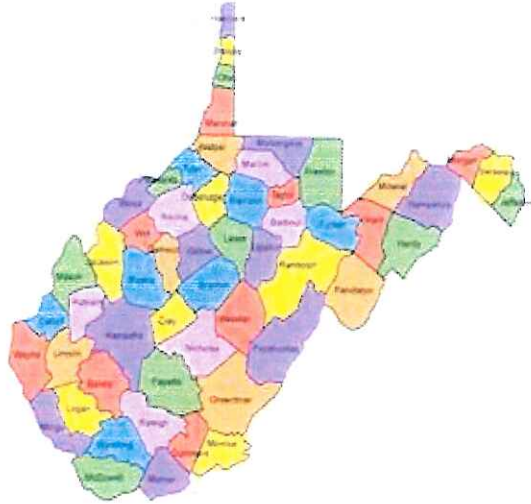
- ▶ Any hotel located within the county may apply for an appropriation of the tax to use towards the promotion of tourism and travel. The portion of the tax allocable to the hotel cannot exceed 75% of the portion of tax collected and remitted by the hotel.
- ▶ If there is more than one Convention & Visitor's Bureau located within a county or region it is the discretion of the county commission to allocate the tax to one or more of the CVBs as they deem appropriate
- ▶ The balance of the required expenditure revenue is appropriated to the regional travel council serving the area in which county is located

*After making these required appropriations, the remaining portion may be used for one or more of the following purposes:*

- ▶ Planning, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipment, maintenance, repair and operation of publicly owned convention facilities such as civic centers, arenas and convention centers
- ▶ Payment of principal and/or interest on revenue bonds issued to finance such convention facilities
- ▶ Promotion of conventions
- ▶ Construction, operation or maintenance of public parks, tourist information centers and recreation facilities (including land acquisition)
- ▶ Promotion of the Arts
- ▶ Historic sites
- ▶ Beautification projects
- ▶ Passenger air service incentives and subsidies directly related to increasing passenger air service availability to tourism destinations
- ▶ Medical care and emergency services, not to exceed \$200,000, in any county that meets certain specific criteria
- ▶ Support and operation of the Hatfield-McCoy Recreation Area by the participating county commissions in the regional area

## Hotel Occupancy Tax Definitions

- ▶ **Convention & Visitor's Bureau & Visitors and Convention Bureau** - are interchangeable and either shall mean a nonstock, nonprofit corporation with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the county or region in which the CVB is located or engaged in business within.
- ▶ **Convention Center** - a convention facility owned by the state, a county, or other public entity or instrumentality and shall include all facilities including armories, commercial, office, community service and parking facilities and publicly owned facilities constructed or used for the accommodation and entertainment of tourists and visitors, constructed in conjunction with the convention center and forming reasonable appurtenances thereto.



**2211 Washington Street East  
Charleston, WV 25311  
Phone: 304-346-0591  
Fax: 304-346-0592  
wvaco@wvaco.org  
www.wvcounties.org**

#### MISSION STATEMENT

The mission of the West Virginia Association of Counties is to achieve unity of purpose among elected officials in order to promote the professionalism, innovation and preservation of county government for the benefit of the citizens they serve to create a better West Virginia.

# A Guide to the Hotel Occupancy Tax

“What West Virginia Counties  
Need to Know to Administer the  
Local Hotel Occupancy Tax.”



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October 25, 2013

BUILDING FOR THE FUTURE

Commissioner Dale Manuel  
Jefferson County Commission  
P.O. Box 250  
124 E. Washington Street  
Charles Town, WV 25414

Re: **Shepherdstown Public Library Independent Auditor's Report and Related Financial Statements**

Dear Commissioner Manuel, *Dale*

Please find enclosed Shepherdstown Public Library's Independent Auditor's Report and Related Financial Statements for the year ended June 30, 2013 for your review and files. As you will see, our financial reporting and accounting principles are in compliance with current government auditing standards. Our audit findings are consistent with prior year audits and will be routinely reviewed internally to the extent our budgetary constraints will allow.

Shepherdstown's former dumpsite is now clean and green! Even better, all invoices received to date for site cleanup have been paid, and we anticipate this phase of our ambitious project will be completed significantly under the original budget! While we await the official Certification of Completion, we are working closely with our designers and civil engineers to develop the essential schematic designs and a site development plan to effectively launch Phase II of our library project. I would very much appreciate the opportunity to present a project update to the Jefferson County Commission in the near future. If this is possible, please give me a call at 304-876-3229 so that we can schedule an appropriate date and time.

Thank you and our County Commissioners for your ongoing support – it is so important for the successful completion of our new library project.

Warm regards,

*Hali*

Hali Taylor  
Director

Enclosure – Auditor's Report and Financial Statements

RECEIVED

NOV 05 2013

Jefferson County Commission



A CAPITAL CAMPAIGN FOR THE SHEPHERDSTOWN PUBLIC LIBRARY AND RESOURCE CENTER  
P. O. BOX 278 SHEPHERDSTOWN, WV 25443 · 304.876.2783 · [www.lib.shepherdstown.wv.us](http://www.lib.shepherdstown.wv.us)



**Tetrick & Bartlett, PLLC**  
Certified Public Accountants  
Consultants

122 N. Oak St. • PO Box 1916 • Clarksburg, WV 26302-1916 • (304) 624-5564 • Fax: (304) 624-5582 • www.tetrickbartlett.com  
1517 Mary Lou Retton Drive • Fairmont, WV 26554 • (304) 366-2992 • Fax: (304) 366-2370

August 28, 2013

RECEIVED

NOV 05 2013

To the Board of Directors  
Shepherdstown Public Library  
P.O. Box 278  
Shepherdstown, West Virginia 25443

Jefferson County Commission

We have audited the financial statements of the governmental activities of Shepherdstown Public Library for the year ended June 30, 2013. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards and *Government Auditing Standards*, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated July 1, 2013. Professional standards also require that we communicate to you the following information related to our audit.

### Significant Audit Findings

#### *Qualitative Aspects of Accounting Practices*

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by Shepherdstown Public Library are described in Note 1 to the financial statements. As described in Note 1 to the financial statements, Shepherdstown Public Library changed accounting policies related to definition of net position by adopting Statement of Governmental Accounting Standards (GASB Statement) No. 63, *Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources and Net Position*. We noted no transactions entered into by the Library during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the Shepherdstown Public Library's financial statements were:

Management's estimate of the accumulated depreciation and depreciation expense is based on the straight line basis of the estimated useful service lives of the various classes of property. Management's estimate of allowance for doubtful accounts is based on historical percentages of collections. We evaluated the key factors and assumptions used to develop the accumulated depreciation, depreciation expense, and allowance for doubtful accounts in determining that it is reasonable in relation to the financial statements taken as a whole.

Certain financial statement disclosures are particularly sensitive because of their significance to financial statement users. The most sensitive disclosure affecting the financial statements was:

The disclosure of cash and capital assets in Note 1 to the financial statements.

The financial statement disclosures are neutral, consistent, and clear.

#### *Difficulties Encountered in Performing the Audit*

We encountered no significant difficulties in dealing with management in performing and completing our audit.

#### *Corrected and Uncorrected Misstatements*

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements. In addition, none of the misstatements detected as a result of audit procedures and corrected by management were material, either individually or in the aggregate, to each opinion unit's financial statements taken as a whole.

#### *Disagreements with Management*

For purposes of this letter, a disagreement with management is a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

#### *Management Representations*

We have requested certain representations from management that are included in the management representation letter dated August 28, 2013.

#### *Management Consultations with Other Independent Accountants*

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the governmental unit's financial

statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

*Other Audit Findings or Issues*

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the governmental unit's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

This information is intended solely for the use of Board of Directors and management of Shepherdstown Public Library and is not intended to be, and should not be, used by anyone other than these specified parties.

Very truly yours,

*Tetrick & Bartlett, PLLC*

Tetrick & Bartlett, PLLC

**WEST VIRGINIA LOTTERY  
WEEKLY SETTLEMENT FOR CHARLES TOWN**

**Week Ending Date**

**Week Ending  
November 2, 2013  
FY14**

To be Deposited on:

November 8, 2013

Amount Played	63,148,161.38
Amount Won	56,909,431.47
Amount Promo	241,285.00
MWAP Contribution	<u>3,327.17</u>
<b>Adjusted Gross Terminal Revenue</b>	<b><u>5,994,117.74</u></b>
Administrative Costs @ 4%	239,764.71
Excess Lottery Fund @ 4%	<u>0.00</u>
<b>Net Terminal Revenue</b>	<b><u>5,754,353.03</u></b>
Surcharge @ 10%	0.00
State Share Excess @ 58%	0.00
Track Share of Capital Reinvestment @ 42%	0.00
<i>Track Share of Capital Reinvestment @ 42% - 96%</i>	<i>0.00</i>
<i>Track Share of Capital Reinvestment @ 42% - 4%</i>	<i>0.00</i>
<b>Adjusted Net Terminal Revenue</b>	<b><u>5,754,353.03</u></b>
Racetrack @ 46.50% / 42%	2,675,774.16
Lottery Fund @ 30% / 0%	1,726,305.86
Excess Lottery Fund @ 0% / 41%	0.00
Race Track Purses @ 7% / 14% / 8%	805,609.42
Workers' Compensation Debt Reduction @ 7% / 0%	0.00
Employee Pension Fund @ 1% / .5%	57,543.54
Greyhound Development @ .75%	43,157.65
Thoroughbred Development @ .75%	43,157.65
Racing Commission @ 1%	57,543.54
County/Municipality @ 2%	115,087.08
<b>3% Funds:</b>	
Tourism Promotion Fund @ 1.375%	79,122.35
Development Office Promotion Fund @ .375%	21,578.82
Research Challenge Fund @ .5%	28,771.77
Capitol Renovation and Improvement Fund @ .6875%	39,561.18
2004 Capitol Complex Parking Garage Fund @ .0625%	3,596.47
<b>1% Funds:</b>	
State Capitol Complex Parking Garage @ 1%	0.00
Cultural Facilities and Capitol Resources @ .5%	28,771.77
Capitol Dome and Capitol Improvements @ .5% / 1%	<u>28,771.77</u>
	<b><u>5,754,353.03</u></b>

WEST VIRGINIA LOTTERY  
 First Benchmark  
 Charles Town  
 County / City Split  
 Fiscal Year 2014

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 7.93%	CHARLES TOWN 39.90%	HARPERS FERRY 2.17%	RANSON 33.68%	SHEPHERDS TOWN 16.32%
6 days ending: 07/06/13	\$ 123,196.88	\$ 123,196.88	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Week ending: 07/13/13	\$ 128,060.40	\$ 128,060.40	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
07/20/13	\$ 115,128.84	\$ 115,128.84	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
07/27/13	\$ 123,049.56	\$ 123,049.56	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
08/03/13	\$ 116,180.80	\$ 116,180.80	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
08/10/13	\$ 120,078.64	\$ 120,078.64	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
08/17/13	\$ 124,888.56	\$ 124,888.56	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
08/24/13	\$ 118,284.44	\$ 89,882.12	\$ 28,402.32	\$ 2,252.30	\$ 11,332.53	\$ 616.33	\$ 9,565.90	\$ 4,835.26
08/31/13	\$ 117,826.36	\$ 58,913.18	\$ 58,913.18	\$ 4,671.81	\$ 23,506.36	\$ 1,278.42	\$ 19,841.96	\$ 9,614.63
09/07/13	\$ 135,517.48	\$ 67,758.74	\$ 67,758.74	\$ 5,373.27	\$ 27,035.74	\$ 1,470.36	\$ 22,821.14	\$ 11,058.23
09/14/13	\$ 106,748.44	\$ 53,374.22	\$ 53,374.22	\$ 4,232.58	\$ 21,296.31	\$ 1,158.22	\$ 17,976.44	\$ 8,710.67
09/21/13	\$ 108,555.88	\$ 54,277.94	\$ 54,277.94	\$ 4,304.24	\$ 21,656.90	\$ 1,177.83	\$ 18,280.81	\$ 8,858.16
09/28/13	\$ 109,763.00	\$ 54,881.50	\$ 54,881.50	\$ 4,352.10	\$ 21,897.72	\$ 1,190.93	\$ 18,484.09	\$ 8,956.66
10/05/13	\$ 111,901.48	\$ 55,950.74	\$ 55,950.74	\$ 4,436.89	\$ 22,324.35	\$ 1,214.13	\$ 18,844.21	\$ 9,131.16
10/12/13	\$ 111,675.84	\$ 55,837.92	\$ 55,837.92	\$ 4,427.95	\$ 22,279.33	\$ 1,211.68	\$ 18,806.21	\$ 9,112.75
10/19/13	\$ 122,654.40	\$ 61,327.20	\$ 61,327.20	\$ 4,863.25	\$ 24,469.55	\$ 1,330.80	\$ 20,655.00	\$ 10,008.60
10/26/13	\$ 105,708.12	\$ 52,854.06	\$ 52,854.06	\$ 4,191.33	\$ 21,088.77	\$ 1,146.93	\$ 17,801.25	\$ 8,625.78
11/02/13	\$ 115,087.08	\$ 57,543.54	\$ 57,543.54	\$ 4,563.20	\$ 22,959.87	\$ 1,248.70	\$ 19,380.66	\$ 9,391.11
Subtotal	\$ 2,114,306.20	\$ 1,513,184.84	\$ 601,121.36	\$ 47,668.92	\$ 239,847.43	\$ 13,044.33	\$ 202,457.67	\$ 98,103.01

Benchmark Goal @ 2% \$ 912,063.48

Remainder until 1% / 1% Split \$ -

**VIDEO LOTTERY REPORT**

FY 2010		FY 2011		FY 2012		FY 2013		FY 2014	
Date	Amount	Date	Amount	Date	Amount	Date	Amount	Date	Amount
07/04/2009 *	128,262.42	07/03/2010	115,402.58	7/1-2/2011	69,824.12	07/07/2012	161,637.92	07/06/2013	123,196.88
07/11/2009	168,815.08	07/10/2010	205,731.64	07/09/2011	171,717.28	07/14/2012	129,458.04	07/13/2013	128,060.40
07/18/2009	160,652.98	07/17/2010	161,386.76	07/16/2011	143,019.52	07/21/2012	130,037.00	07/20/2013	115,128.84
07/25/2009	158,869.08	07/24/2010	160,368.28	07/23/2011	146,508.00	07/28/2012	137,164.44	07/27/2013	123,049.56
08/01/2009	174,493.08	07/31/2010	157,802.08	07/30/2011	144,510.28	08/04/2012	132,931.16	08/03/2013	116,180.80
08/08/2009	138,408.80	08/07/2010	136,494.98	08/06/2011	151,495.28	08/11/2012	134,212.88	08/10/2013	120,078.64
08/15/2009	81,222.14	08/14/2010	78,376.68	08/13/2011	117,350.38	08/18/2012	110,241.90	08/17/2013	124,888.56
08/22/2009	76,260.31	08/21/2010	76,199.02	08/20/2011	71,614.12	08/25/2012	66,209.90	08/24/2013	89,882.12
08/29/2009	80,472.92	08/28/2010	72,460.03	08/27/2011	63,432.14	09/01/2012	67,133.42	08/31/2013	58,913.18
09/05/2009	80,798.15	09/04/2010	76,362.84	09/03/2011	80,837.76	09/08/2012	74,029.40	09/07/2013	67,758.74
09/12/2009	86,286.92	09/11/2010	82,969.36	09/10/2011	84,845.80	09/15/2012	61,838.04	09/14/2013	53,374.22
09/19/2009	70,010.15	09/18/2010	67,638.78	09/17/2011	66,748.62	09/22/2012	56,996.90	09/21/2013	54,277.94
09/26/2009	69,316.87	09/25/2010	70,435.06	09/24/2011	68,929.80	09/29/2012	61,611.40	09/28/2013	54,881.50
10/03/2009	72,286.04	10/02/2010	71,013.86	10/01/2011	68,871.64	10/06/2012	62,715.20	10/05/2013	55,950.74
10/10/2009	69,650.63	10/09/2010	69,311.50	10/08/2011	70,866.90	10/13/2012	60,710.18	10/12/2013	55,837.92
10/17/2009	73,560.21	10/16/2010	75,234.62	10/15/2011	75,262.66	10/20/2012	62,333.08	10/19/2013	61,327.20
10/24/2009	67,581.66	10/23/2010	70,290.80	10/22/2011	68,757.72	10/27/2012	58,073.54	10/26/2013	52,854.06
10/31/2009	64,528.30	10/30/2010	65,615.04	10/29/2011	60,507.98	11/03/2012	56,545.30	11/02/2013	57,543.54
11/07/2009	63,741.59	11/06/2010	61,337.62	11/05/2011	70,673.88	11/10/2012	56,110.96		
11/14/2009	65,959.64	11/13/2010	64,595.28	11/12/2011	67,627.10	11/17/2012	57,432.36		
11/21/2009	59,547.05	11/20/2010	56,010.08	11/19/2011	60,690.60	11/24/2012	65,888.86		
11/28/2009	72,399.98	11/27/2010	71,170.90	11/26/2011	74,140.54	12/01/2012	50,243.34		
12/05/2009	51,006.51	12/04/2010	53,215.08	12/03/2011	59,429.94	12/08/2012	50,770.96		
12/12/2009	52,460.58	12/11/2010	46,944.00	12/10/2011	51,395.44	12/15/2012	47,022.38		
12/19/2009	32,834.39	12/18/2010	42,076.76	12/17/2011	55,981.32	12/22/2012	46,838.96		
12/26/2009	53,406.34	12/25/2010	50,450.28	12/24/2011	54,248.62	12/29/2012	59,697.22		
01/02/2010	92,980.40	01/01/2011	85,152.12	12/31/2011	94,661.00	01/05/2013	71,673.52		
01/09/2010	55,020.46	01/08/2011	54,301.30	01/07/2012	74,863.40	01/12/2013	50,416.30		
01/16/2010	60,551.28	01/15/2011	54,005.90	01/14/2012	58,901.92	01/19/2013	51,211.88		
01/23/2010	69,943.53	01/22/2011	60,924.74	01/21/2012	61,819.92	01/26/2013	46,966.26		
01/30/2010	48,527.75	01/29/2011	48,036.94	01/28/2012	62,898.78	02/02/2013	52,067.92		
02/06/2010	37,155.14	02/05/2011	60,777.44	02/04/2012	72,154.66	02/09/2013	52,222.20		
02/13/2010	44,334.00	02/12/2011	67,471.84	02/11/2012	66,429.04	02/16/2013	64,243.52		
02/20/2010	76,946.12	02/19/2011	72,018.54	02/18/2012	77,455.88	02/23/2013	64,115.70		
02/27/2010	72,024.40	02/26/2011	75,544.02	02/25/2012	77,611.78	03/02/2013	62,602.74		

03/06/2010	76,936.85	03/05/2011	74,535.34	03/03/2012	75,963.86	03/09/2013	59,213.26
03/13/2010	71,007.37	03/12/2011	66,979.48	03/10/2012	76,808.62	03/16/2013	62,366.36
03/20/2010	74,335.38	03/19/2011	73,113.26	03/17/2012	76,883.92	03/23/2013	59,841.02
03/27/2010	69,941.88	03/26/2011	68,490.80	03/24/2012	72,108.36	03/30/2013	57,567.98
04/03/2010	70,636.28	04/02/2011	70,846.58	03/31/2012	74,244.22	04/06/2013	63,108.84
04/10/2010	69,692.79	04/09/2011	67,076.78	04/07/2012	75,382.98	04/13/2013	56,849.30
04/17/2010	69,335.92	04/16/2011	64,698.56	04/14/2012	71,065.34	04/20/2013	55,432.12
04/24/2010	68,714.11	04/23/2011	67,674.14	04/21/2012	68,055.08	04/27/2013	58,612.74
05/01/2010	68,799.06	04/30/2011	66,807.50	04/28/2012	72,880.66	05/04/2013	61,102.92
05/08/2010	67,403.54	05/07/2011	66,379.74	05/05/2012	71,582.30	05/11/2013	57,428.70
05/15/2010	70,186.32	05/14/2011	66,699.76	05/12/2012	63,357.92	05/18/2013	61,172.80
05/22/2010	64,695.71	05/21/2011	63,210.44	05/19/2012	78,984.36	05/25/2013	57,131.24
05/29/2010	67,157.40	05/28/2011	64,724.06	05/26/2012	67,396.24	06/01/2013	65,920.66
06/05/2010	77,371.80	06/04/2011	74,952.34	06/02/2012	76,959.44	06/08/2013	55,233.74
06/12/2010	66,106.29	06/11/2011	62,203.12	06/09/2012	63,584.86	06/15/2013	54,067.52
06/19/2010	64,888.48	06/18/2011	61,200.76	06/16/2012	59,436.12	06/22/2013	54,690.28
06/26/2010	63,950.29	06/25/2011	65,470.44	06/23/2012	55,921.30	06/29/2013	55,991.38
06/30/2010	29,667.19	06/30/2011	34,351.16	06/30/2012	58,207.40	06/30/2013	11,509.54

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TOTALS **4041141.56**

**4016541.01**

**4124906.8**

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**3580645.18**

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**1513185**

**Table Game Revenue**

<b>Date</b>	<b>Amount</b>	<b>Date</b>	<b>Amount</b>	<b>Date</b>	<b>Amount</b>	<b>Date</b>	<b>Amount</b>
July/August, 2010	154,185.68	July, 2011	141,718.01	July, 2012	138,663.64	July, 2013	99,274.36
September, 2010	94,247.84	August, 2011	137,473.92	August, 2012	133,245.83	August, 2013	111,427.75
October, 2010	105,903.60	September, 2011	110,375.25	September, 2012	127,532.40	September, 2013	80,857.74
November, 2010	108,717.67	October, 2011	124,273.94	October, 2012	126,482.02		
December, 2010	118,721.11	November, 2011	121,118.87	November, 2012	134,443.93		
January, 2011	106,189.21	December, 2011	140,509.93	December, 2012	146,677.92		
February, 2011	105,776.45	January, 2012	137,812.68	January, 2013	132,650.35		
March, 2011	120,927.10	February, 2012	142,770.01	February, 2013	121,636.62		
April, 2011	130,654.61	March, 2012	151,845.46	March, 2013	149,033.62		
May, 2011	130,492.02	April, 2012	127,862.26	April, 2013	105,545.23		
June, 2011	121,576.41	May, 2012	137,905.13	May, 2013	109,747.38		
		June, 2012	129,235.38	June, 2013	104,803.37		
<b>Total 2010-2011</b>	<b>1297391.7</b>	<b>Total 2011-2012</b>	<b>1602900.84</b>	<b>Total 2012-2013</b>	<b>1530462.31</b>	<b>Total 2013-2014</b>	<b>291559.85</b>

**Table Game Revenue Distribution - Jefferson County School Board**

<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
July, 2011	425,154.03	July, 2012	415,990.92	July, 2013	297,823.08
August, 2011	412,421.76	August, 2012	399,737.49	August, 2013	334,283.25
September, 2011	331,125.75	September, 2012	382,597.20	September, 2013	242,573.22
October, 2011	372,821.82	October, 2012	379,446.06		
November, 2011	363,356.61	November, 2012	403,331.79		
December, 2011	421,529.79	December, 2012	440,033.75		
January, 2012	413,438.04	January, 2013	397,951.05		
February, 2012	428,310.03	February, 2013	381,857.07		
March, 2012	455,536.38	March, 2013	447,100.86		
April, 2012	383,586.78	April, 2013	316,635.69		
May, 2012	413,715.39	May, 2013	329,242.14		
June, 2012	387,706.12	June, 2013	314,410.11		
<b>Total 2011-2012</b>	<b>4,808,702.50</b>	<b>Total 2012-2013</b>	<b>4,608,334.13</b>	<b>Total 2013-2014</b>	<b>874,679.55</b>

**WEST VIRGINIA LOTTERY  
WEEKLY SETTLEMENT FOR CHARLES TOWN**

Week Ending Date	Week Ending November 9, 2013 FY14 November 18, 2013
<b>To be Deposited on:</b>	
Amount Played	56,150,768.02
Amount Won	50,243,425.48
Amount Promo	210,141.00
MWAP Contribution	<u>2,747.83</u>
<b>Adjusted Gross Terminal Revenue</b>	<b><u>5,694,453.71</u></b>
Administrative Costs @ 4%	227,778.16
Excess Lottery Fund @ 4%	<u>0.00</u>
<b>Net Terminal Revenue</b>	<b><u>5,466,675.55</u></b>
Surcharge @ 10%	0.00
State Share Excess @ 58%	0.00
Track Share of Capital Reinvestment @ 42%	0.00
<i>Track Share of Capital Reinvestment @ 42% - 96%</i>	<i>0.00</i>
<i>Track Share of Capital Reinvestment @ 42% - 4%</i>	<i>0.00</i>
<b>Adjusted Net Terminal Revenue</b>	<b><u>5,466,675.55</u></b>
Racetrack @ 46.50% / 42%	2,542,004.13
Lottery Fund @ 30% / 0%	1,640,002.64
Excess Lottery Fund @ 0% / 41%	0.00
Race Track Purses @ 7% / 14% / 8%	765,334.58
Workers' Compensation Debt Reduction @ 7% / 0%	0.00
Employee Pension Fund @ 1% / .5%	54,666.76
Greyhound Development @ .75%	41,000.07
Thoroughbred Development @ .75%	41,000.07
Racing Commission @ 1%	54,666.76
County/Municipality @ 2%	109,333.52
<b>3% Funds:</b>	
Tourism Promotion Fund @ 1.375%	75,166.79
Development Office Promotion Fund @ .375%	20,500.03
Research Challenge Fund @ .5%	27,333.38
Capitol Renovation and Improvement Fund @ .6875%	37,583.39
2004 Capitol Complex Parking Garage Fund @ .0625%	3,416.67
<b>1% Funds:</b>	
State Capitol Complex Parking Garage @ 1%	0.00
Cultural Facilities and Capitol Resources @ .5%	27,333.38
Capitol Dome and Capitol Improvements @ .5% / 1%	<u>27,333.38</u>
	<b><u>5,466,675.55</u></b>

WEST VIRGINIA LOTTERY  
 First Benchmark  
 Charles Town  
 County / City Split  
 Fiscal Year 2014

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 7.93%	CHARLES TOWN 39.90%	HARPERS FERRY 2.17%	RANSON 33.68%	SHEPHERDS TOWN 16.32%
6 days ending: 07/06/13	\$ 123,196.88	\$ 123,196.88	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Week ending: 07/13/13	\$ 128,060.40	\$ 128,060.40	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
07/20/13	\$ 115,128.84	\$ 115,128.84	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
07/27/13	\$ 123,049.56	\$ 123,049.56	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
08/03/13	\$ 116,180.80	\$ 116,180.80	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
08/10/13	\$ 120,078.64	\$ 120,078.64	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
08/17/13	\$ 124,888.56	\$ 124,888.56	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
08/24/13	\$ 118,284.44	\$ 89,882.12	\$ 28,402.32	\$ 2,252.30	\$ 11,332.53	\$ 616.33	\$ 9,565.90	\$ 4,635.26
08/31/13	\$ 117,826.36	\$ 58,913.18	\$ 58,913.18	\$ 4,671.81	\$ 23,506.36	\$ 1,278.42	\$ 19,841.96	\$ 9,614.63
09/07/13	\$ 135,517.48	\$ 67,758.74	\$ 67,758.74	\$ 5,373.27	\$ 27,035.74	\$ 1,470.36	\$ 22,821.14	\$ 11,058.23
09/14/13	\$ 106,748.44	\$ 53,374.22	\$ 53,374.22	\$ 4,232.58	\$ 21,296.31	\$ 1,158.22	\$ 17,976.44	\$ 8,710.67
09/21/13	\$ 108,555.88	\$ 54,277.94	\$ 54,277.94	\$ 4,304.24	\$ 21,656.90	\$ 1,177.83	\$ 18,280.81	\$ 8,858.16
09/28/13	\$ 109,763.00	\$ 54,881.50	\$ 54,881.50	\$ 4,352.10	\$ 21,897.72	\$ 1,190.93	\$ 18,484.09	\$ 8,956.66
10/05/13	\$ 111,901.48	\$ 55,950.74	\$ 55,950.74	\$ 4,436.89	\$ 22,324.35	\$ 1,214.13	\$ 18,844.21	\$ 9,131.16
10/12/13	\$ 111,675.84	\$ 55,837.92	\$ 55,837.92	\$ 4,427.95	\$ 22,279.33	\$ 1,211.68	\$ 18,806.21	\$ 9,112.75
10/19/13	\$ 122,654.40	\$ 61,327.20	\$ 61,327.20	\$ 4,863.25	\$ 24,469.55	\$ 1,330.80	\$ 20,655.00	\$ 10,008.60
10/26/13	\$ 105,708.12	\$ 52,854.06	\$ 52,854.06	\$ 4,191.33	\$ 21,088.77	\$ 1,146.93	\$ 17,801.25	\$ 8,625.78
11/02/13	\$ 115,087.08	\$ 57,543.54	\$ 57,543.54	\$ 4,563.20	\$ 22,959.87	\$ 1,248.70	\$ 19,380.66	\$ 9,391.11
11/09/13	\$ 109,333.52	\$ 54,666.76	\$ 54,666.76	\$ 4,335.07	\$ 21,812.04	\$ 1,186.27	\$ 18,411.76	\$ 8,921.62
<b>Subtotal</b>	<b>\$ 2,223,639.72</b>	<b>\$ 1,567,851.60</b>	<b>\$ 655,788.12</b>	<b>\$ 52,003.99</b>	<b>\$ 261,659.47</b>	<b>\$ 14,230.60</b>	<b>\$ 220,869.43</b>	<b>\$ 107,024.63</b>

Benchmark Goal @ 2% \$ 912,063.48  
 Remainder until 1% / 1% Split \$ -

**VIDEO LOTTERY REPORT**

FY 2010		FY 2011		FY 2012		FY 2013		FY 2014	
Date	Amount	Date	Amount	Date	Amount	Date	Amount	Date	Amount
07/04/2009 *	128,262.42	07/03/2010	115,402.58	7/1-2/2011	69,824.12	07/07/2012	161,637.92	07/06/2013	123,196.88
07/11/2009	168,815.08	07/10/2010	205,731.64	07/09/2011	171,717.28	07/14/2012	129,458.04	07/13/2013	128,060.40
07/18/2009	160,652.98	07/17/2010	161,386.76	07/16/2011	143,019.52	07/21/2012	130,037.00	07/20/2013	115,128.84
07/25/2009	158,869.08	07/24/2010	160,368.28	07/23/2011	146,508.00	07/28/2012	137,164.44	07/27/2013	123,049.56
08/01/2009	174,493.08	07/31/2010	157,802.08	07/30/2011	144,510.28	08/04/2012	132,931.16	08/03/2013	116,180.80
08/08/2009	138,408.80	08/07/2010	136,494.98	08/06/2011	151,495.28	08/11/2012	134,212.88	08/10/2013	120,078.64
08/15/2009	81,222.14	08/14/2010	78,376.68	08/13/2011	117,350.38	08/18/2012	110,241.90	08/17/2013	124,888.56
08/22/2009	76,260.31	08/21/2010	76,199.02	08/20/2011	71,614.12	08/25/2012	66,209.90	08/24/2013	89,882.12
08/29/2009	80,472.92	08/28/2010	72,460.03	08/27/2011	63,432.14	09/01/2012	67,133.42	08/31/2013	58,913.18
09/05/2009	80,798.15	09/04/2010	76,362.84	09/03/2011	80,837.76	09/08/2012	74,029.40	09/07/2013	67,758.74
09/12/2009	86,286.92	09/11/2010	82,969.36	09/10/2011	84,845.80	09/15/2012	61,838.04	09/14/2013	53,374.22
09/19/2009	70,010.15	09/18/2010	67,638.78	09/17/2011	66,748.62	09/22/2012	56,996.90	09/21/2013	54,277.94
09/26/2009	69,316.87	09/25/2010	70,435.06	09/24/2011	68,929.80	09/29/2012	61,611.40	09/28/2013	54,881.50
10/03/2009	72,286.04	10/02/2010	71,013.86	10/01/2011	68,871.64	10/06/2012	62,715.20	10/05/2013	55,950.74
10/10/2009	69,650.63	10/09/2010	69,311.50	10/08/2011	70,866.90	10/13/2012	60,710.18	10/12/2013	55,837.92
10/17/2009	73,560.21	10/16/2010	75,234.62	10/15/2011	75,262.66	10/20/2012	62,333.08	10/19/2013	61,327.20
10/24/2009	67,581.66	10/23/2010	70,290.80	10/22/2011	68,757.72	10/27/2012	58,073.54	10/26/2013	52,854.06
10/31/2009	64,528.30	10/30/2010	65,615.04	10/29/2011	60,507.98	11/03/2012	56,545.30	11/02/2013	57,543.54
11/07/2009	63,741.59	11/06/2010	61,337.62	11/05/2011	70,673.88	11/10/2012	56,110.96	11/09/2013	54,666.76
11/14/2009	65,959.64	11/13/2010	64,595.28	11/12/2011	67,627.10	11/17/2012	57,432.36		
11/21/2009	59,547.05	11/20/2010	56,010.08	11/19/2011	60,690.60	11/24/2012	65,888.86		
11/28/2009	72,399.98	11/27/2010	71,170.90	11/26/2011	74,140.54	12/01/2012	50,243.34		
12/05/2009	51,006.51	12/04/2010	53,215.08	12/03/2011	59,429.94	12/08/2012	50,770.96		
12/12/2009	52,460.58	12/11/2010	46,944.00	12/10/2011	51,395.44	12/15/2012	47,022.38		
12/19/2009	32,834.39	12/18/2010	42,076.76	12/17/2011	55,981.32	12/22/2012	46,838.96		
12/26/2009	53,406.34	12/25/2010	50,450.28	12/24/2011	54,248.62	12/29/2012	59,697.22		
01/02/2010	92,980.40	01/01/2011	85,152.12	12/31/2011	94,661.00	01/05/2013	71,673.52		
01/09/2010	55,020.46	01/08/2011	54,301.30	01/07/2012	74,863.40	01/12/2013	50,416.30		
01/16/2010	60,551.28	01/15/2011	54,005.90	01/14/2012	58,901.92	01/19/2013	51,211.88		
01/23/2010	69,943.53	01/22/2011	60,924.74	01/21/2012	61,819.92	01/26/2013	46,966.26		
01/30/2010	48,527.75	01/29/2011	48,036.94	01/28/2012	62,898.78	02/02/2013	52,067.92		
02/06/2010	37,155.14	02/05/2011	60,777.44	02/04/2012	72,154.66	02/09/2013	52,222.20		
02/13/2010	44,334.00	02/12/2011	67,471.84	02/11/2012	66,429.04	02/16/2013	64,243.52		
02/20/2010	76,946.12	02/19/2011	72,018.54	02/18/2012	77,455.88	02/23/2013	64,115.70		
02/27/2010	72,024.40	02/26/2011	75,544.02	02/25/2012	77,611.78	03/02/2013	62,602.74		

03/06/2010	76,936.85	03/05/2011	74,535.34	03/03/2012	75,963.86	03/09/2013	59,213.26
03/13/2010	71,007.37	03/12/2011	66,979.48	03/10/2012	76,808.62	03/16/2013	62,366.36
03/20/2010	74,335.38	03/19/2011	73,113.26	03/17/2012	76,883.92	03/23/2013	59,841.02
03/27/2010	69,941.88	03/26/2011	68,490.80	03/24/2012	72,108.36	03/30/2013	57,567.98
04/03/2010	70,636.28	04/02/2011	70,846.58	03/31/2012	74,244.22	04/06/2013	63,108.84
04/10/2010	69,692.79	04/09/2011	67,076.78	04/07/2012	75,382.98	04/13/2013	56,849.30
04/17/2010	69,335.92	04/16/2011	64,698.56	04/14/2012	71,065.34	04/20/2013	55,432.12
04/24/2010	68,714.11	04/23/2011	67,674.14	04/21/2012	68,055.08	04/27/2013	58,612.74
05/01/2010	68,799.06	04/30/2011	66,807.50	04/28/2012	72,880.66	05/04/2013	61,102.92
05/08/2010	67,403.54	05/07/2011	66,379.74	05/05/2012	71,582.30	05/11/2013	57,428.70
05/15/2010	70,186.32	05/14/2011	66,699.76	05/12/2012	63,357.92	05/18/2013	61,172.80
05/22/2010	64,695.71	05/21/2011	63,210.44	05/19/2012	78,984.36	05/25/2013	57,131.24
05/29/2010	67,157.40	05/28/2011	64,724.06	05/26/2012	67,396.24	06/01/2013	65,920.66
06/05/2010	77,371.80	06/04/2011	74,952.34	06/02/2012	76,959.44	06/08/2013	55,233.74
06/12/2010	66,106.29	06/11/2011	62,203.12	06/09/2012	63,584.86	06/15/2013	54,067.52
06/19/2010	64,888.48	06/18/2011	61,200.76	06/16/2012	59,436.12	06/22/2013	54,690.28
06/26/2010	63,950.29	06/25/2011	65,470.44	06/23/2012	55,921.30	06/29/2013	55,991.38
06/30/2010	29,667.19	06/30/2011	34,351.16	06/30/2012	58,207.40	06/30/2013	11,509.54

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TOTALS **4041141.56**

**4016541.01**

**4124906.8**

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**3580645.18**

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**1567852**

## Table Game Revenue

<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
July/August, 2010	154,185.68	July, 2011	141,718.01	July, 2012	138,663.64	July, 2013	99,274.36
September, 2010	94,247.84	August, 2011	137,473.92	August, 2012	133,245.83	August, 2013	111,427.75
October, 2010	105,903.60	September, 2011	110,375.25	September, 2012	127,532.40	September, 2013	80,857.74
November, 2010	108,717.67	October, 2011	124,273.94	October, 2012	126,482.02		
December, 2010	118,721.11	November, 2011	121,118.87	November, 2012	134,443.93		
January, 2011	106,189.21	December, 2011	140,509.93	December, 2012	146,677.92		
February, 2011	105,776.45	January, 2012	137,812.68	January, 2013	132,650.35		
March, 2011	120,927.10	February, 2012	142,770.01	February, 2013	121,636.62		
April, 2011	130,654.61	March, 2012	151,845.46	March, 2013	149,033.62		
May, 2011	130,492.02	April, 2012	127,862.26	April, 2013	105,545.23		
June, 2011	121,576.41	May, 2012	137,905.13	May, 2013	109,747.38		
		June, 2012	129,235.38	June, 2013	104,803.37		
<b>Total 2010-2011</b>	<b>1297391.7</b>	<b>Total 2011-2012</b>	<b>1602900.84</b>	<b>Total 2012-2013</b>	<b>1530462.31</b>	<b>Total 2013-2014</b>	<b>291559.85</b>

**Table Game Revenue Distribution - Jefferson County School Board**

<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
July, 2011	425,154.03	July, 2012	415,990.92	July, 2013	297,823.08
August, 2011	412,421.76	August, 2012	399,737.49	August, 2013	334,283.25
September, 2011	331,125.75	September, 2012	382,597.20	September, 2013	242,573.22
October, 2011	372,821.82	October, 2012	379,446.06		
November, 2011	363,356.61	November, 2012	403,331.79		
December, 2011	421,529.79	December, 2012	440,033.75		
January, 2012	413,438.04	January, 2013	397,951.05		
February, 2012	428,310.03	February, 2013	381,857.07		
March, 2012	455,536.38	March, 2013	447,100.86		
April, 2012	383,586.78	April, 2013	316,635.69		
May, 2012	413,715.39	May, 2013	329,242.14		
June, 2012	387,706.12	June, 2013	314,410.11		
<b>Total 2011-2012</b>	<b>4,808,702.50</b>	<b>Total 2012-2013</b>	<b>4,608,334.13</b>	<b>Total 2013-2014</b>	<b>874,679.55</b>

# Jefferson County Public Service District

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## Jefferson County Public Service District Regular Board Meeting October 7, 2013

The monthly meeting of the Jefferson County Public Service District was held at 7:00PM on Tuesday, October 7, 2013 in the meeting room at the Districts office in Kearneysville. Those in attendance included: Chairman, Jim Cummins; Secretary, Peter Appignani; Treasurer, Bill Strider; General Manager, Susanne Lawton; Administrative Assistant, Ashley Stottlemeyer; Operations Manager, Joe Freeze; District Legal Counsel, Jim Kelsh; from Pentree Engineering, Zane Summerfield; Liaison for the County Commission, Commissioner Jane Tabb; and Customer Liaison, Charles Cheezum.

### CALL TO ORDER

Chairman Jim Cummins called the meeting to order at 7:00PM.

### APPROVAL OF AGENDA

There were no changes made to the agenda.

### PUBLIC COMMENTS

None.

### OLD BUSINESS

#### Review Minutes of September 3 regular board meeting

The minutes of the September 3, 2013 regular board meeting were approved as presented.

**Action: Motion made by Mr. Appignani and seconded by Mr. Strider to accept the September 3, 2013 minutes as presented. Unanimously approved.**

#### Update on the Water Systems Improvement Project for Glen Haven and Cavaland

- Approve grant agreement for water systems project
- Approve Jim Crawford to move forward with the condemnation of Cavaland property

Ms. Lawton informed the Board that the District received final approval from the Public Service Commission. The District is now waiting for the engineer to complete an "Unanticipated Discovery Plan" that would be used if artifacts were found upon excavation and the condemnation of an easement in Cavaland to get a title opinion for the project. The Board will need to approve the grant agreement which will allow the use of funds to pay for the condemnation.

**Action: Motion made by Mr. Appignani and seconded by Mr. Strider to approve the grant agreement from West Virginia Infrastructure and Jobs Development Council for the water systems project. Unanimously approved.**

**Action: Motion made by Mr. Strider and seconded by Mr. Appignani to adopt the resolution for the water systems project relating to the Cavaland easement expenditures. Unanimously approved.**

**Action: Motion made by Mr. Strider and seconded by Mr. Appignani to approve Jim Crawford to file the condemnation for the Cavaland well house easement by Jim Crawford. Unanimously approved.**

#### Consider approval of the contract with Dunn Engineers, Inc for general consulting services

Last month the Board made the motion to file the Dunn Engineering contract with the Public Service Commission (PSC) but it was later discovered that this agreement does not need PSC approval since the District will not need any funding assistance.

RECEIVED

NOV 08 2013

Jefferson County Commission

project (13-0865-PWD-PC-CN) and the pass through sewer rate increase from Charles Town (13-1188-PSD-30B).

**Action:** No action taken by the Board.

Discussion of any Expenses over Budget

There were no items over budget. Mr. Cheezum questioned what the Special Expense line item included. Ms. Lawton replied that it included special expenses including attorney costs, accounting fees, etc.

**Action:** No action taken by the Board.

Disbursements

**Action:** Motion made by Mr. Strider and seconded by Mr. Appignani to approve disbursements for Public Service District water expenses in the amount of \$5,594.01. Unanimously approved.

**Action:** Motion made by Mr. Strider and seconded by Mr. Appignani to approve disbursements for the Public Service District sewer expenses in the amount of \$171,240.77. Unanimously approved.

Approve transfer of \$723.25 from renewal & replacement account to Sewer Operating account for repairs at pump station 4-2

**Action:** Motion made by Mr. Strider and seconded by Mr. Appignani to approve the transfer of \$723.25 from the renewal & replacement account into the sewer operating account for repairs at pump station 4-2. Unanimously approved.

Approve transfer of \$4,729.36 from Sewer Security Deposit account to Sewer Operating account for security deposit refunds

**Action:** Motion made by Mr. Strider and seconded by Mr. Appignani to approve the transfer of \$4,729.36 from the sewer security deposit account into the sewer operating account for security deposit refunds. Unanimously approved.

Approve transfer of \$64.01 from Water Security Deposit account to Water Operating account for security deposit refunds

**Action:** Motion made by Mr. Strider and seconded by Mr. Appignani to approve the transfer of \$64.01 from the water security deposit account into the water operating account for security deposit refunds. Unanimously approved.

General Manager's Report

Ms. Lawton updated the Board on activities since last month's meeting.

Generator Maintenance – Ms. Lawton would like to advertise for a new generator maintenance contract.

**Action:** No action taken by the Board.

Operations Manager's Report

Mr. Freeze updated the Board on activities since last month's meeting.

Pump Station 1-12A – The wet well has been relined and now the pump is not fitting properly. Staff is attempting to fix this issue.

**Action:** No action taken by the Board.

Comments from customer liaison

Mr. Cheezum had questions regarding the listing of certain executive session items and why they are considered as executive session.

**Action:** No action taken by the Board.

Public Comment

Dan Farrell and Dave Smith from Thrasher Engineering were present to reassure the Board that even though John Tuggle has left the company they will continue working on their current projects and assist the District as needed.

Correspondence

The District received a letter from Charles Town Utility Board discussing Senate Bill 245 funding.

Mr. Freeze, Mr. Cheezum, Commissioner Tabb, and Mr. Summerfield exited the meeting.

**Action: Motion made by Mr. Appignani and seconded by Mr. Strider to convene in executive session for the purpose of discussing litigation, personnel matters, and contract negotiations. Unanimously approved.**

Mr. Bob Rodecker was called to discuss the Old Standard land issues. Mr. Kelsh exited the room for that discussion.

**Action: Motion made by Mr. Appignani and seconded by Mr. Strider to return to public session. Unanimously approved.**

**Action: Motion made by Mr. Appignani and seconded by Mr. Strider to adjourn. Unanimously approved.**

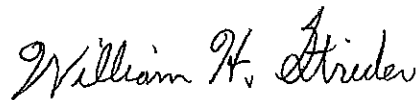
There being no further business at this time, the meeting was adjourned at 9:31PM

The next regular meeting is scheduled for Monday, November 4, 2013 at 7:00pm at 340 Edmond Road, Suite A at the Districts office in Kearneysville.

Respectfully Submitted,



Peter L. Appignani  
Secretary



William H. Strider  
Treasurer

# Jefferson County Public Service District

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## Jefferson County Public Service District Work Session October 16, 2013

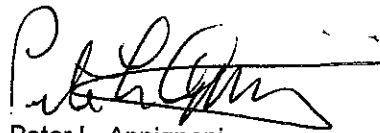
The work session of the Jefferson County Public Service District was held from 10:00AM to 12:00PM on Wednesday, October 17, 2013 at the District's office in Kearneysville. Those in attendance included: Chairman, Jim Cummins; Secretary, Peter Appignani; Treasurer, Bill Strider; PSD General Manager, Susanne Lawton; Administrative Assistant, Ashley Stottlemeyer; District Legal Counsel, Jim Kelsh (speakerphone); from Pentree Engineering, Zane Summerfield (speakerphone); Liaison for the County Commission, Commissioner Jane Tabb; Lee Snyder from Jefferson Utilities; and Fred Hypes (speakerphone) from Dunn Engineering.

There was a discussion on the revised draft Preliminary Engineering Report done by Pentree for a proposed Mountain Water Project.

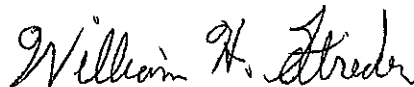
There being no further business at this time, the meeting was concluded at 12:07PM

The next regular meeting is scheduled for November 4, 2013 at 7:00pm at 340 Edmond Road, Suite A at the District's office in Kearneysville.

Respectfully Submitted,



Peter L. Appignani  
Secretary



William H. Strider  
Treasurer

# Ethics Reporter

## Since the Last Reporter

Since the August edition of the **REPORTER** (there were no opinions published in September), the West Virginia Ethics Commission published six Advisory Opinions interpreting provisions of the West Virginia Governmental Ethics Act and the laws governing Boards of Education.

At its October 3 meeting, the West Virginia Ethics Commission approved opinions relating to the permissibility of a county land surveyor having potential conflicts, the permissibility of a county commissioner being employed by a county ambulance authority, the permissibility of a county coordinator also working for a municipality within the county, the ability of

a county authority to take action when a member is in conflict and refuses to recuse, the permissibility of town council members voting on matters affecting a board of education that employs their spouses and, the permissibility of state employees contracting with counties to provide services.

### ADVISORY OPINION REPORT

**Advisory Opinion 2013-29-NP** addressed the permissibility of a county floodplain manager and county surveyor undertaking his duties for the county in the face of multiple potential conflicts.

In this instance, an individual is serving as a part-time floodplain manager for a county, and as the elected surveyor for a county, while also owning a private surveying company. The surveyor and a family member own mineral rights in the county. The question posed to the

Commission is whether the confluence of these public positions and private interests is permissible and can be reconciled under the law.

Of interest to the Ethics Commission in this instance are the provisions of 6B-1-2(c), concerning the conflicts inherent in part-time public service, of 6B-2-5(b), which prohibits a public official from using their office for private gain or for gains generated for another, of 6B-2-5(d)(1), which prohibits public officials from having an interests in a contract over which they have authority or control and, the provisions of Chapter 61-10-15 making it unlawful for a county officer to have direct or indirect pecuniary interests in a matter over which they exercise voice, influence or control

In its opinion, the Ethics Commission ruled that the individual is not constrained from serving

as the elected county surveyor since that position has no statutory duties and there is no compensation for the post. However, the Commission ruled very clearly that the individual could not continue to serve as the part-time paid floodplain manager for the county while he continued to operate his private surveyor business serving clients in the county.

The Commission opined that there is an irreconcilable conflict in place whereby the surveyor's private clients could come under his official jurisdiction. Additionally, the Commission determined that the floodplain manager could not provide any official service or guidance to a mineral developer with whom he and his family had a contract or lease.

The Ethics Commission suggested that the surveyor/floodplain manager resign his "manager" post as the best way to serve the public interest in this case, and stayed its order for 90 days so that

the County Commission could find a replacement manager.

**Advisory Opinion 2013-41** concerned the permissibility of a county commissioner being employed by a county ambulance authority.

In this case, a prospective candidate for a county commission seeks guidance on whether he can serve as an elected official while also continuing to hold his paid position with the county ambulance authority. The employee reports to the director of the authority, who is in turn chosen by the authority's board, which is appointed by the county commission.

Of interest to the Ethics Commission were 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, as well as those found in the Chapter 61-10-15 standards making it unlawful for a member of a county commission to have direct or indirect pecuniary interests in any matter over which he has voice, influence

or control. The Ethics Commission also examined applicable sections of State Code pertaining to county ambulance authorities.

In its opinion, the Ethics Commission ruled that in clear terms, the prospective county commissioner could not continue to serve as an employee of the ambulance authority because, as a county commissioner, he would have the requisite voice, influence or control over the ambulance authority to be in potential violation of the 61-10-15 standards.

**Advisory Opinion 2013-42** addressed the permissibility of a county geographic information system coordinator performing private work for a municipality in the county where he works.

The individual in this case is employed full time by a county. The county and a municipality have entered into a data sharing arrangement for GIS purposes but the individual also desires to provide services to the municipality in instances where that specific

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matter is not addressed by the agreement.

The individual pledges to conduct any work on his private time and to not use county facilities to do so. The work to be done for the municipality appears to be practically identical to that which is performed as a part of his full time employment.

At issue for the Ethics Commission in this case were the provisions of 6B-2-5(b)(1) prohibiting a public official from using their public office to produce a private gain for themselves or another, those of 6B-2-5(e) prohibiting the disclosure or use of confidential information gained during the course of public employment, those of 6B-2-5(h) prohibiting a full time public employee from receiving private compensation for duties that are required in his public service and, those found in 6B-2-5(l)(1) against a public employee receiving compensation from another governmental body for working the same hours.

In its opinion, the Ethics Commission ruled that as long as the individual kept his work hours to his own time and did not utilize county facilities or property, the proposed outside employment arrangement was permissible. The Commission noted that the individual served in a support position and held not independent authority or regulatory responsibilities that could have made the arrangement problematic.

**Advisory Opinion 2013-43** concerned a situation where members of a county solid waste authority are seeking guidance from the Ethics Commission because a member of the authority is perceived to have a conflict of interest and will not recuse himself from the work of the authority in the matter.

In this case, the Commission had previously issued an Advisory Opinion on the matter whether a member of a solid waste authority could permissibly participate in authority deliberations on an issue involving his banking client. The

Ethics Commission ruled that the authority member should recuse himself from considering the issues affecting his client.

However, the authority member has chosen to ignore the guidance of the Ethics Commission as well as the advice of the Authority's attorney.

The Ethics Commission analyzed the provisions of 6B-2-5(b)(1) prohibiting the use of public office for private gain in light of the facts presented in this request, those of 6B-2-5(d)(1) prohibiting a public official from having an interest in a contract over which they have control or authority, as well as the language of 6B-2-5(e) prohibiting the use of confidential information acquired during the course of public service, and that of 6B-2-5(j) prohibiting a public official from voting on matters affecting a customer or his employer when working for a financial institution for a period of 12 months preceding.

The Commission ruled in this case that the other members of the

Authority would not be in violation of the Ethics Act if they continued to conduct business when the other member refused to recuse himself from the decision making and voting processes involving the issues affecting his banking client. The Commission did clearly indicate that the refusal of the member to comply with the provisions of the previous Advisory Opinion on this subject would constitute a violation of the Act.

**Advisory Opinion 2013-47** addressed the permissibility of town council members voting on matters affecting a board of education when their spouses are employed by the board.

The board of education has a contract in place with the town that causes a parcel of property to return to the town's control if a school is no longer operated on the property. The town intends to waive that provision of the contract and the action requires a vote of the council. Two council members

have spouses employed by the boards, one member is still employed, and yet others are retired from board employment.

The Commission reviewed the provisions of 6B-2-5(b) prohibiting the use of public office to produce to generate a private gain, those of 6B-2-5(j) placing restrictions on voting by public officials when their personal interests are affected and the standards found in Chapter 61-10-15 making it unlawful for a school official to have direct or indirect pecuniary interests in any matter over which they have voice, influence or control.

In its opinion, the Ethics Commission ruled that none of the town council members with direct employment, spouses employed or retirement benefits from the board are, in any way, potentially in violation of the Ethics Act or the 61-10-15 standards if they vote on the contract modification because none of the council members has any control over the board of education's policy and

decision making processes.

**Advisory Opinion 2013-48** concerned the permissibility of employees of a state agency providing contract services for a county agency.

The state agency responsible for death investigations also is authorized to appoint county medical examiners and staff, and to pay for these services. In this instance, guidance is sought on the permissibility of state employees who conduct death investigations to be also appointed on a contractual basis to handle similar work directly for counties. The potential does exist for colleagues within the state agency to award each and other contracts for local work.

The Commission examined the language of 6B-2-5(b)(1) prohibiting public officials from using their office to generate a private gain for themselves or another, the language of 6B-2-5(d) prohibiting a public official from having an interest in a contract

over which they have authority or control, with certain exceptions, and that of 6B-2-5(h) prohibiting a full time public employee from having secondary employment with another in certain circumstances.

In its ruling, the Ethics Commission determined that the proposed arrangement whereby state colleagues appointing and supervising on another in gaining contracts with counties would violate the Ethics Act. However, the Commission held out the possibility of considering a contract exemption in the future if qualified personnel could not be found.

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NONE PUBLISHED

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**MISCELLANEOUS**

NONE PUBLISHED

ADVISORY OPINION NO. 2013-41

Issued on October 3, 2013 By the

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Potential Candidate for County Commission** asks whether, if elected, he may continue his employment with the County Ambulance Authority.

FACTS RELIED UPON BY THE COMMISSION

The Requester is employed full-time by a County Ambulance Authority (Authority). He is also considering running for election to the County Commission in the same county.

The employees of the Ambulance Authority, including the Requester, report directly to the Executive Director, who is chosen by the Ambulance Authority's Board of Directors. Pursuant to W. Va. Code § 7-15-5, the County Commission appoints the members of the Authority's Board.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(d)(1) provides in part that no elected official or business with which he or she is associated may be a party to or have an interest in a contract which such official ... may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body....

W. Va. Code § 61-10-15(a) states in part:

It is unlawful for any member of a county commission ... to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract ... [over] which such ... member ... may have any voice, influence, or control....

W. Va. Code § 7-15-4 states in part:

[T]he county commission shall cause emergency ambulance service to be made available to all the residents of the county where such service is not otherwise available.... Each authority shall constitute a public corporation, and as such, shall have perpetual existence.

W. Va. Code § 7-15-5 states in part:

The management and control of any [ambulance] authority, its operations, business and affairs shall be lodged in a board of not less than five nor more than

fifteen individuals who shall be known as members of the board and who shall be appointed for terms of three years each by the governing bodies of the participating governments.

### ADVISORY OPINION

Both the Ethics Act, W. Va. Code § 6B-2-5(d)(1), and a separate criminal misdemeanor statute, W. Va. Code § 61-10-15, prohibit county officials from having an interest in public contracts. Although the Ethics Act expressly excepts employment contracts, W. Va. Code § 61-10-15 does not.

Thus, the analysis herein will be limited to W. Va. Code § 61-10-15, as a discussion of the provisions of the Ethics Act would be purely academic.

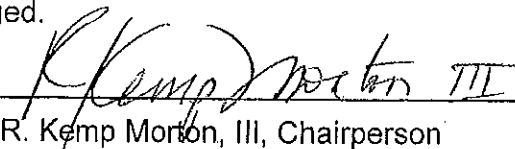
In Advisory Opinion 94-30, the Ethics Commission found that a County Commissioner may not have an interest as a realtor in the sale of property owned by the County Development Authority where a County Commission appoints all of the board members of a Development Authority. Specifically, the Commission stated as follows:

[T]hat the power of the county commission to appoint the members of the County Development Authority, along with the authority to make contributions from general funds and transfer and convey property to the Authority, is sufficient to give the requester some voice or influence over the Development Authority's contracts. Consequently, the requester's position as a county commissioner does give her the degree of control contemplated by WV Code 61-10-15.

This case presents the same conflict that existed in Advisory Opinion 94-30. The County Commission appoints all members of the Authority and has authority to make contributions from general funds. If elected to the position of County Commissioner, the Requester would have voice, influence, or control over the Authority which in turn has control over the Requester's employment vis-à-vis the Authority's Executive Director. W. Va. Code § 61-10-15 prohibits county officials from having even an indirect pecuniary interest in a contract over which they have voice, influence, or control.

Therefore, the Commission hereby finds that W. Va. Code § 61-10-15 prohibits the Requester from serving on the County Commission while employed by the Authority.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.*, and W. Va. Code § 61-10-15 and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.

  
R. Kemp Morton, III, Chairperson

ADVISORY OPINION NO. 2013-43

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Issued On October 3, 2013 By The  
WEST VIRGINIA ETHICS COMMISSION

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**OPINION SOUGHT**

A County Solid Waste Authority asks what is its obligation, if any, when a member has a purported conflict of interest but refuses to recuse himself.

**FACTS RELIED UPON BY THE COMMISSION**

The Requester previously sought an opinion from the Ethics Commission to determine whether a member of the County Solid Waste Authority (SWA) should recuse himself because of a potential conflict of interest. In that opinion, recorded as Advisory Opinion 2013-03, the Commission ruled in relevant part that:

The SWA's attorney should carefully review with the affected SWA Members this rule of law and determine whether in fact the Board Member/Banker is an employee, and whether he has been involved in approving loans for the Board Member/Waste hauler. If so, then the SWA Member/Banker must recuse himself from matters affecting the SWA Member/Waste hauler . . . [t]he Board Member/Banker shall also recuse himself from matters relating to the lawsuit.

Accordingly, the SWA's attorney reviewed this rule of law in accordance with the Commission's opinion, and determined that the affected board member has a conflict of interest. The attorney based this decision on the nature of the Member/Banker's relationship with the Member/Waste Hauler, and also because the Member/Banker was relaying information to the Member/Waste Hauler that was obtained during Executive Sessions from which the Member/Waste Hauler was recused.

According to the Requester, the Member/Banker has ignored the attorney's advice and stated that he would not recuse himself from the meeting in question or any meeting.

**CODE PROVISIONS RELIED UPON BY THE COMMISSION**

W. Va. Code § 6B-2-5(b) provides in part that:

A public official or public employee may not knowingly or intentionally use his or her office or the prestige of his and her office for his 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.

W. Va. Code § 6B-2-5(d)(1) explains in relevant part that:

In addition to [W. Va. Code § 61-10-15], no . . . public employee . . . 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(e) states:

No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

W. Va. Code § 6B-2-5(j) states in relevant part:

(B) If a public official is employed by a financial institution and his or her primary responsibilities include consumer and commercial lending, the public official may not vote on a matter which directly affects the financial interests of a customer of the financial institution if the public official is directly involved in approving a loan request from the person or business appearing before the governmental body or if the public official has been directly involved in approving a loan for that person or business within the past 12 months.

### **ADVISORY OPINION**

This opinion is a matter of first impression. The Requester asks what its own obligation is when one of its members refuses to comply with the Ethics Act. The question presented is similar in content to Advisory Opinion 1997-30. In that case, a Town Recorder was presented with bills for Town purchases made from a business owned by a Council Member. The Recorder was concerned as to whether she would violate the Ethics Act by paying the bills.

The Commission explained that the Ethics Act prohibits public servants from being a party to a public contract, purchase or sale, and if the Recorder paid the bills in question, the Council Member in question would receive public funds he or she would not have a right to receive. Therefore, the Recorder would be guilty of using her office for the private gain of another in violation of W. Va. Code § 6B-2-5(b)(1).

Here, similarly, the potential exists for at least one underlying violation by another public servant. In this case the Member/Banker might violate W. Va. Code §§ 6B-2-5(b), (d)(1), (e), and (j) by failing to recuse himself. The question, then, is whether the Requester,

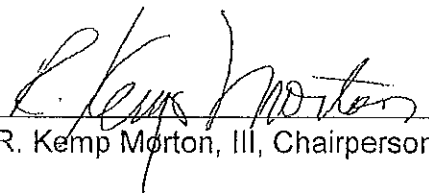
i.e. the other members of the governing body, individually or collectively, violate the Ethics Act when the member with the purported conflict of interest refuses to recuse himself. The instant case can be differentiated from Advisory Opinion 1997-30 by the nature of the Requester's involvement with the alleged violations. In order for the Recorder in Advisory Opinion 1997-30 to violate the Ethics Act, she would have to take an affirmative step to assist with the ethics violation by paying the bills – mere knowledge of the bills would not be enough to trigger a violation of the Ethics Act. In other words, the Recorder's own conduct in paying the bills was the operative issue.

In this case, Respondents did nothing to assist with the Member/Banker's alleged violations, and therefore should not be guilty of assisting in his actions. The rationale behind this decision is similar to a classic tort law concept – namely, that while a person may be held liable for committing a negligent act, the same person may not be held liable for failing to take any action while another commits one. Similarly, here, the Commission hereby finds that individual members of a governing body do not violate the Ethics Act by continuing a meeting after one member has refused to recuse himself.

Here, the individual members are not obligated to physically remove the Member/Banker from the meeting; instead, the remaining members of the Solid Waste Authority have satisfied their ethical obligation by complying with the steps outlined in Advisory Opinion 2013-03. If a member of the Solid Waste Authority who has a conflict of interest as defined by the Ethics Act refuses to recuse himself as required by the Ethics Act, then that member violates the Ethics Act thereby.

This advisory opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester should contact the Commission for further advice as it may alter the analysis and render this opinion invalid.

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 public servants and other persons unless and until it is amended or revoked, or the law is changed.

  
R. Kemp Morton, III, Chairperson

ADVISORY OPINION NO. 2013-47

Issued on October 3, 2013 By the

WEST VIRGINIA ETHICS COMMISSION

FILED

2013 OCT 16 AM 10:38

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

OPINION SOUGHT

A **Town Manager** asks if Town Council members who are currently or formerly employed, or whose spouse is currently employed, by the County Board of Education may vote on issues concerning property deeded to the Board of Education by the Town.

FACTS RELIED UPON BY THE COMMISSION

A County Board of Education (BOE) is in the process of closing and selling an elementary school. The school building is situated over two parcels of land. One of the two parcels was owned BOE by the Town until 1950 when the Town deeded the parcel to the for public school purposes. The deed contains a reversionary clause which returns ownership to the Town in the event the property ceases to be used for public school purposes.

The BOE has asked the Town Council to allow the BOE to retain the lot so that the BOE may sell the property as a whole building. The language in the prior deed automatically reverts ownership from the BOE back to the Town once the land is no longer used for public school purposes. Therefore, the Town must vote on whether to take affirmative action to deed its interest in the property to the BOE.

Various Council members are currently or formerly employed, or their spouse is currently employed, by the BOE. The Town asks if those Town Council members may vote on issues relating to the property.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b) reads, in relevant part:

(1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.... 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(j) reads, in relevant part:

(1) Public officials... may not vote on a matter:  
(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with

which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

W. Va. Code § 6B-1-3(b) "Business" means any entity through which business for-profit is conducted including a corporation, partnership, proprietorship, franchise, association, organization or self-employed individual.

W. Va. Code § 61-10-15 reads, in relevant part:

(a) It is unlawful for any ... 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

### **ADVISORY OPINION**

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 "...for personal gain beyond the lawful emoluments of their position ... [or] ... to benefit narrow economic or political interests at the expense of the public at large..."

Various members of Town Council are connected to the BOE. One is a current teacher; another is married to a current teacher; and two others are retired employees and receive a pension as a result.

In Advisory Opinion 2001-29, relying on Legislative Rule § 158-9-1, the Ethics Commission found that members of City Council may not vote on matters that are personal to them. The Rule provided that a matter is personal to a public servant " ... when he or she has any pecuniary interest either directly or indirectly in the matter or is affected in a manner which may influence his or her vote or would clearly give the appearance of impropriety." The Ethics Commission found that pension and retirement plans are personal to the members of City Council, and as a result they were prohibited from voting on a matter which would affect a company from which they are receiving retirement benefits. Legislative Rule § 158-9-1 was repealed by operation of statute in 2008 when the West Virginia Legislature added the less strict provision on voting to the Ethics Act, codified as W. Va. Code § 6B-2-5(j).

The Ethics Commission has not yet had the opportunity to determine whether the less restrictive provisions of W. Va. Code § 6B-2-5(j) prohibit public servants from voting on matters relating to their former employer that now holds their pension and retirement plans.

W. Va. Code § 6B-2-5(j)(1)(A) prohibits public officials from voting on a matter in which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is an employee. W. Va. Code § 6B-1-3(b) defines business as "any entity through which business for-profit is conducted ...." The definition does not include a governing body.

In Advisory Opinion 2012-05, the Commission found that W. Va. Code § 6B-2-5(j)(1)(A) prohibited a candidate for County Commissioner who was also a teacher for a County BOE from voting on matters involving his employer, the BOE. In that opinion, the Ethics Commission relied upon the language in the prohibition against voting on matters related to a business by which he was employed, and determined that his employment by a public agency constitutes a financial interest requiring recusal. The Commission, however, neglected to consider the definition of "business", and that definition does not mention a governing body. W. Va. Code § 6B-1-3(b). As a result of this oversight, the Commission hereby overrules Advisory Opinion 2012-05, and now finds that the Ethics Act does not prohibit a public official from voting on a matter in which his or her **public** employer has a financial interest.

Additionally, the retired employees have no financial interest, as defined by W. Va. Code § 6B-2-5(j)(1)(A) in whether the Town decides to deed its interest in the property. Therefore, the Ethics Act does not prohibit them from voting on whether the Town should deed its interest in the property to the BOE.

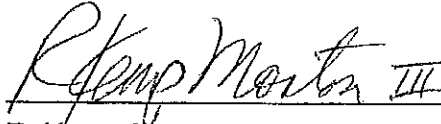
The Town Council member who is currently employed by the BOE as a teacher is also subject to the stricter criminal provision of W. Va. Code §61-10-15. This provision prohibits teachers from becoming pecuniarily interested, either directly or indirectly, in the proceeds of any contract if, as a teacher, he or she has any voice, influence, or control over the contract. Here, the teacher does not have control over the contract through his position as teacher. Therefore, W. Va. Code § 61-10-15 does not prohibit the Town Council member employed as a teacher from voting on the matter.

As a result of the foregoing analysis, none of the affected members of Town Council has a financial or pecuniary interest in whether the Town grants its remaining rights to the land currently owned by the BOE. Therefore, the Commission hereby finds that both current and retired employees of a County BOE, and their spouses, who are also members of a Town Council, may vote on whether the Town should deed its remaining rights to property to the County BOE for use as a public school only. Further, there are no facts to suggest that anyone on Town Council has any other financial or pecuniary interest in the ultimate sale of the property by the BOE.<sup>1</sup>

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<sup>1</sup> The Requester does not indicate whether any of the Town Council or County BOE members, family members, or associated businesses are interested in purchasing the property. If any of the above wish to purchase the property, then those individuals should contact the Ethics Commission for additional guidance.

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.



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R. Kemp Morton, III, Chairperson

ADVISORY OPINION NO. 2013-29-NP

Issued On October 3, 2013 By The  
WEST VIRGINIA ETHICS COMMISSION

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SECRETARY OF STATE

OPINION SOUGHT

A County Floodplain Manager, who is also the County Surveyor, and who owns a private surveying company and land, and whose father owns land and mineral rights, poses three questions:

1. Is there a conflict between being the County Surveyor and being employed part-time by the County Commission as the County Floodplain Manager?
2. Is there a conflict for the County Floodplain Manager to perform private land surveys which designate whether an area is in a floodplain?
3. Is it a conflict for the County Floodplain Manager to perform Floodplain Manager duties when natural gas companies submit applications to work in the designated floodplain?

FACTS RELIED UPON BY THE COMMISSION

The Requester is the elected County Surveyor. The Handbook of Elected Officials for County Government, published by the West Virginia Association of Counties, contains this job description for a County Surveyor.

Each county elects a surveyor every four years, but the office carries no official duties and no salary. It is an office required by the West Virginia Constitution and the county must provide office space. Many counties do not have a surveyor. In counties with surveyors, they are compensated for the work performed such as providing documents for property tax sales or assisting in property disputes and boundary locations.

The Requester also works part time as the County Floodplain Manager, and is charged with enforcing the County's floodplain ordinances, as well as the issuance of permits for construction in a floodplain. He oversees flood mitigation projects, which typically include: (1) Acquisition and 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).

In his private capacity, the Requester owns a private surveying company, and often performs FEMA elevation certificate surveys in the same county. It is possible that the land of one or more clients of his private business may be located in a designated floodplain, but that fact is unknown **before** the survey is performed.

Additionally, the Requester and his father own land and mineral rights in the same county. According to the Requester, he has no financial interest in his father's land or mineral rights, but he is his father's sole heir.

The Requester's county is in the middle of a huge Marcellus Shale natural gas drilling boom involving multiple gas companies. One of the companies holds the lease under the Requester's house lot. His father owns fractional mineral royalties under thousands of leased acres in the county, thus dealing with virtually all of the gas companies operating in the county.

### CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-1-2(c) reads:

The Legislature finds that the state government and its many public bodies and local governments have many part-time public officials and public employees serving in elected and appointed capacities; and that certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official or public employee from the responsibility of voting or deciding a matter; **however, when such conflict becomes personal to a particular public official or public employee, such person should seek to be ... relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.**

(Emphasis supplied)

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) prohibits public officials and public employees from being a party to or having an interest in the profits or benefits of a contract over which the official or employee has direct authority or control.

Finally, W. Va. Code § 61-10-15(a) reads, in pertinent part:

demarcate his public job duties, the interests of the Association, and the interests of his constituents....

Similarly, here too it is impracticable, if not impossible, to craft limitations that would eliminate the conflicts of interest in the performance of the Requester's public job duties. As a result, he is not permitted to serve as the County Floodplain Manager so long as he has a private survey company doing business in the same county.

Additionally, as to the third question, the Commission hereby finds that the Requester may not be involved as the County Floodplain Manager in any matters involving the gas company that holds the lease under his house lot, or any other gas company with an interest in his father's land or mineral rights. Although he does not have a financial interest in his father's land or mineral rights, as his father's sole heir, this situation creates an unavoidable conflict of interest resulting in an impermissible use of office, or the prestige thereof, for private gain.

As a result of the foregoing, the Commission hereby finds:

1. The Requester may continue his part time employment as County Floodplain Manager and continue to serve as the elected County Surveyor.
2. The Requester may **not** continue his part time employment as County Floodplain Manager while continuing to operate his private surveying business in the same county.
3. The Requester may **not** perform the duties of his part time employment as County Floodplain Manager for any gas company in the county that has an interest in his or his father's land or mineral rights.

The Commission commends the Requester for seeking this opinion, but concludes that the County Commission should select someone else to serve as County Floodplain Manager. Due to the difficulty the County Commission may encounter in finding a competent qualified replacement, the Commission hereby delays the effective date of this opinion for ninety (90) days from the date hereof.

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 others.

  
R. Kemp Morton, Chairperson

It is unlawful for . . . any . . . county . . . officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract if . . . he or she may have any voice, influence or control. . . .

### ADVISORY OPINION

Both the Ethics Act and W. Va. Code § 61-10-15 prohibit public servants from having a financial interest in a public contract over which their public position gives them control. Neither poses a problem in this situation, since the County Commissioners who employ the Requester as County Floodplain Manager do not have a financial interest in the compensation paid the County Surveyor and the County Surveyor has no official voice, influence or control over any of the County Commission's contracts.

In Advisory Opinion 2001-37, a County Commission and County Surveyor asked if the County Commission could pay the County Surveyor for time spent on, or in preparation for work on, county projects. The Ethics Commission stated,

No provision of the Ethics Act disqualifies the County Surveyor from consideration for employment by the County to work on county projects. So long as the County Surveyor is qualified to perform the activities he is paid to perform, it would not be a violation of the Ethics Act for the County Commissioners to pay him or for him to accept payment.

The County Surveyor has no statutory duties. Thus, as to the first question, the Requester may continue to be employed as the County Floodplain Manager and continue to serve as the elected County Surveyor. This conclusion is academic, however, due to the conflicts of interest related to the Requester's private business, addressed below in response to the remaining questions.

The second question posed limits the Requester's ability to perform the duties of the County Floodplain Manager. Due to the nature of his private survey work, he will not know until **after** performing the survey whether a potential customer is subject to his regulatory authority as County Floodplain Manager.<sup>1</sup> This situation results in divided loyalty between his private business and public duties. In Advisory Opinion 2012-17, the Commission considered whether a Presiding Officer of a house of the West Virginia Legislature may be retained to provide legal services to an Association that is actively engaged in lobbying on behalf of its members. The Commission concluded that he could not do so, and stated:

While, the private gain prohibition provides an exception for "the performance of usual and customary duties associated with the office . . . or [performance of] constituent services", the Ethics Act expressly limits the exception to those duties performed without compensation. Here, the Commission finds that in applying this provision to the facts presented, it is impracticable, if not impossible, to craft limitations that clearly and fairly

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<sup>1</sup> As a part-time employee, the Requester is not subject to the provisions of W. Va. Code § 6b-2-5(h).

**ADVISORY OPINION NO. 2013-41**

**Issued on October 3, 2013 By the**

**WEST VIRGINIA ETHICS COMMISSION**

**OPINION SOUGHT**

A **Potential Candidate for County Commission** asks whether, if elected, he may continue his employment with the County Ambulance Authority.

**FACTS RELIED UPON BY THE COMMISSION**

The Requester is employed full-time by a County Ambulance Authority (Authority). He is also considering running for election to the County Commission in the same county.

The employees of the Ambulance Authority, including the Requester, report directly to the Executive Director, who is chosen by the Ambulance Authority's Board of Directors. Pursuant to W. Va. Code § 7-15-5, the County Commission appoints the members of the Authority's Board.

**CODE PROVISIONS RELIED UPON BY THE COMMISSION**

W. Va. Code § 6B-2-5(d)(1) provides in part that no elected official or business with which he or she is associated may be a party to or have an interest in a contract which such official ... may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body....

W. Va. Code § 61-10-15(a) states in part:

It is unlawful for any member of a county commission ... to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract ... [over] which such ... member ... may have any voice, influence, or control....

W. Va. Code § 7-15-4 states in part:

[T]he county commission shall cause emergency ambulance service to be made available to all the residents of the county where such service is not otherwise available.... Each authority shall constitute a public corporation, and as such, shall have perpetual existence.

W. Va. Code § 7-15-5 states in part:

The management and control of any [ambulance] authority, its operations, business and affairs shall be lodged in a board of not less than five nor more than

fifteen individuals who shall be known as members of the board and who shall be appointed for terms of three years each by the governing bodies of the participating governments.

### ADVISORY OPINION

Both the Ethics Act, W. Va. Code § 6B-2-5(d)(1), and a separate criminal misdemeanor statute, W. Va. Code § 61-10-15, prohibit county officials from having an interest in public contracts. Although the Ethics Act expressly excepts employment contracts, W. Va. Code § 61-10-15 does not.

Thus, the analysis herein will be limited to W. Va. Code § 61-10-15, as a discussion of the provisions of the Ethics Act would be purely academic.

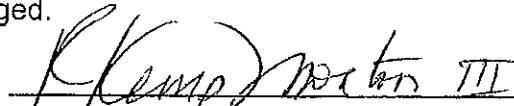
In Advisory Opinion 94-30, the Ethics Commission found that a County Commissioner may not have an interest as a realtor in the sale of property owned by the County Development Authority where a County Commission appoints all of the board members of a Development Authority. Specifically, the Commission stated as follows:

[T]hat the power of the county commission to appoint the members of the County Development Authority, along with the authority to make contributions from general funds and transfer and convey property to the Authority, is sufficient to give the requester some voice or influence over the Development Authority's contracts. Consequently, the requester's position as a county commissioner does give her the degree of control contemplated by WV Code 61-10-15.

This case presents the same conflict that existed in Advisory Opinion 94-30. The County Commission appoints all members of the Authority and has authority to make contributions from general funds. If elected to the position of County Commissioner, the Requester would have voice, influence, or control over the Authority which in turn has control over the Requester's employment vis-à-vis the Authority's Executive Director. W. Va. Code § 61-10-15 prohibits county officials from having even an indirect pecuniary interest in a contract over which they have voice, influence, or control.

Therefore, the Commission hereby finds that W. Va. Code § 61-10-15 prohibits the Requester from serving on the County Commission while employed by the Authority.

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.

  
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R. Kemp Morton, III, Chairperson

FILED

ADVISORY OPINION NO. 2013-42

2013 OCT 16 AM 10: 38

Issued On October 3, 2013 By The  
WEST VIRGINIA ETHICS COMMISSIONOFFICE WEST VIRGINIA  
SECRETARY OF STATE**OPINION SOUGHT**

A County Geographic Information System (GIS) Coordinator asks if he is permitted to create and manage a GIS database for a municipality in the county by which he is employed.

**FACTS RELIED UPON BY THE COMMISSION**

A GIS is an "information system that integrates, stores, edits, analyzes, shares and displays geographic information for informing decision making."<sup>1</sup> According to the Requester, "GIS is a mapping technology that allows the user to combine and visualize many layers of data." Essentially, a GIS Coordinator manages a map and integrated database for a government agency, private business, or other unique entity. With this integrated database, officials can compare data points in relation to a quasi-physical layered model. GIS databases are generally customized for a specific business, and are generally considered only moderately compatible with other GIS databases.<sup>2</sup>

The Requester is employed full-time by the county. The county and municipality have recently entered into an agreement to share data assessment and will use the same maps; however, the county and municipality work with, and are responsible for, different layers of said maps. For example, the county might work with data from voter precincts, district boundaries, and land parcels, while the municipality could be concerned with police patrol zones and sewer pipe placement. Importantly, even if the Requester would notice a problem with the municipality's layers while working on mapping for the county, he states that he would not be able to correct the issue while using the county's database. Instead, he would only make the correction on the municipality's database.

The Requester further explains that he does not have the ability to make any regulatory or policy recommendations or judgments. If the Requester were to do the work for the municipality in question, his work would be done on his own time, with his own software and using software personally licensed to him. The work would be practically identical to the work he does for the county, except with different content. The Requester believes his work for the municipality would take between two and four hours a week.

**CODE PROVISIONS RELIED UPON BY THE COMMISSION**

W. Va. Code § 6B-2-5(b) provides in part that:

<sup>1</sup> [http://en.wikipedia.org/wiki/Geographic\\_information\\_system](http://en.wikipedia.org/wiki/Geographic_information_system)

<sup>2</sup> <http://www.colorado.edu/geography/gcraft/notes/intro/intro.html>

A public official or public employee may not knowingly or intentionally use his or her office or the prestige of his and her office for his 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.

W. Va. Code § 6B-2-5(e) states:

No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

W. Va. Code § 6B-2-5(h) provides:

(1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working. . . .

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(6) A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.

W. Va. Code § 6B-2-5(l)(1) states:

A public employee may not receive additional compensation from another publicly-funded state, county or municipal office or employment for working the same hours . . .

### **ADVISORY OPINION**

The issue presented by this request is whether a county employee without any regulatory or policy-making authority is permitted to do similar work in his spare time for a municipality within the same county.

First, W. Va. Code § 6B-2-5(b) does not permit a public official or public employee to knowingly or intentionally use his or her office for private gain unless it is *de minimis*. If there is any private gain in this case, it will likely be *de minimis*. Although there does not appear to be a significant opportunity for the Requester to derive any significant private

gain, the Requester must remain vigilant to avoid using more than a *de minimis* amount of his county work time to note errors in municipality work.

Next, W. Va. Code § 6B-2-5(h)(1)(A) and (B) prohibit full-time public employees from being employed by any person who either has a matter on which the public employee took regulatory action within the last twelve months, or has a matter before the agency on which he or she is working. The Requester does not regulate any municipality within the county. Indeed, there is no indication that the Requester can influence policy or regulation in any way. He is employed in a support capacity, and his job is to make maps and databases. Therefore, he would not violate these provisions if he moonlighted for the municipality.

When the Requester does county work, W. Va. Code § 6B-2-5(h)(6) and § 6B-2-5(l) work together to prevent the Requester from collecting pay from the municipality even if it incidentally benefits from said work. The former bars private gain from information he learns or services he performs as part of his county job, and the latter bars gain from doing two jobs at the same time, more commonly known as "double-dipping." Essentially, the Requester cannot be paid for his work product or work time twice. Here, the database information for the county and municipality is notably different and kept explicitly separated from each other. Since the Requester cannot change the maps for the county while working for the municipality, and vice versa, there is no opportunity for him to engage in double-dipping potential, even if the Requester were so inclined.

This question is distinguishable from Advisory Opinion 2012-29, yet similar in substance to Advisory Opinion 2012-30. Those opinions concern a County Director of Emergency Services, responsible for overseeing various county programs, who also served as the 911 Director and the Floodplain Permit Officer. In Advisory Opinion 2012-29, he was barred from privately contracting to manage a federal grant with the county that employed him because he had both authority and control over the contract and there was some overlap with his duties as a public employee. The Commission wrote:

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).

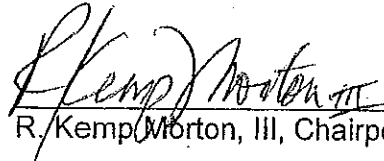
By contrast, in Advisory Opinion 2012-30, he was permitted to privately contract with a municipality within the county to manage a federal grant for mitigation projects. The Commission noted that even though he would be doing similar work for both public agencies, he did not have control over the contract, and there was no overlap of his county and municipal duties. The same is true of the Requester herein.

Advisory Opinion 2012-36 is also instructive. In that opinion, a state employee working for an agency that houses and preserves state historical documents was approved to

contract with the State to compile the papers of a former governor. The Ethics Commission explained that since she did not exercise control over the contract, and because compiling gubernatorial papers was not part of her regular job duties, she could accept the contract.

In closing, there is nothing in the Ethics Act which prohibits the Requester from contracting with the City to create and manage its GIS database. The Requester must perform the work on his own time, not during his County work hours. He may not use public resources, including subordinate staff, in furtherance of his private business.

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 public servants and other persons unless and until it is amended or revoked, or the law is changed.

  
R. Kemp Morton, III, Chairperson

ADVISORY OPINION NO. 2013-43

2013 OCT 16 AM 10:38

Issued On October 3, 2013 By The  
WEST VIRGINIA ETHICS COMMISSION

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**OPINION SOUGHT**

A County Solid Waste Authority asks what is its obligation, if any, when a member has a purported conflict of interest but refuses to recuse himself.

**FACTS RELIED UPON BY THE COMMISSION**

The Requester previously sought an opinion from the Ethics Commission to determine whether a member of the County Solid Waste Authority (SWA) should recuse himself because of a potential conflict of interest. In that opinion, recorded as Advisory Opinion 2013-03, the Commission ruled in relevant part that:

The SWA's attorney should carefully review with the affected SWA Members this rule of law and determine whether in fact the Board Member/Banker is an employee, and whether he has been involved in approving loans for the Board Member/Waste hauler. If so, then the SWA Member/Banker must recuse himself from matters affecting the SWA Member/Waste hauler . . . [t]he Board Member/Banker shall also recuse himself from matters relating to the lawsuit.

Accordingly, the SWA's attorney reviewed this rule of law in accordance with the Commission's opinion, and determined that the affected board member has a conflict of interest. The attorney based this decision on the nature of the Member/Banker's relationship with the Member/Waste Hauler, and also because the Member/Banker was relaying information to the Member/Waste Hauler that was obtained during Executive Sessions from which the Member/Waste Hauler was recused.

According to the Requester, the Member/Banker has ignored the attorney's advice and stated that he would not recuse himself from the meeting in question or any meeting.

**CODE PROVISIONS RELIED UPON BY THE COMMISSION**

W. Va. Code § 6B-2-5(b) provides in part that:

A public official or public employee may not knowingly or intentionally use his or her office or the prestige of his and her office for his 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.

W. Va. Code § 6B-2-5(d)(1) explains in relevant part that:

In addition to [W. Va. Code § 61-10-15], no . . . public employee . . . 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(e) states:

No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

W. Va. Code § 6B-2-5(j) states in relevant part:

(B) If a public official is employed by a financial institution and his or her primary responsibilities include consumer and commercial lending, the public official may not vote on a matter which directly affects the financial interests of a customer of the financial institution if the public official is directly involved in approving a loan request from the person or business appearing before the governmental body or if the public official has been directly involved in approving a loan for that person or business within the past 12 months.

### **ADVISORY OPINION**

This opinion is a matter of first impression. The Requester asks what its own obligation is when one of its members refuses to comply with the Ethics Act. The question presented is similar in content to Advisory Opinion 1997-30. In that case, a Town Recorder was presented with bills for Town purchases made from a business owned by a Council Member. The Recorder was concerned as to whether she would violate the Ethics Act by paying the bills.

The Commission explained that the Ethics Act prohibits public servants from being a party to a public contract, purchase or sale, and if the Recorder paid the bills in question, the Council Member in question would receive public funds he or she would not have a right to receive. Therefore, the Recorder would be guilty of using her office for the private gain of another in violation of W. Va. Code § 6B-2-5(b)(1).

Here, similarly, the potential exists for at least one underlying violation by another public servant. In this case the Member/Banker might violate W. Va. Code §§ 6B-2-5(b), (d)(1), (e), and (j) by failing to recuse himself. The question, then, is whether the Requester,

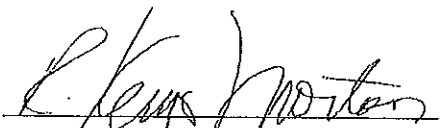
i.e. the other members of the governing body, individually or collectively, violate the Ethics Act when the member with the purported conflict of interest refuses to recuse himself. The instant case can be differentiated from Advisory Opinion 1997-30 by the nature of the Requester's involvement with the alleged violations. In order for the Recorder in Advisory Opinion 1997-30 to violate the Ethics Act, she would have to take an affirmative step to assist with the ethics violation by paying the bills – mere knowledge of the bills would not be enough to trigger a violation of the Ethics Act. In other words, the Recorder's own conduct in paying the bills was the operative issue.

In this case, Respondents did nothing to assist with the Member/Banker's alleged violations, and therefore should not be guilty of assisting in his actions. The rationale behind this decision is similar to a classic tort law concept – namely, that while a person may be held liable for committing a negligent act, the same person may not be held liable for failing to take any action while another commits one. Similarly, here, the Commission hereby finds that individual members of a governing body do not violate the Ethics Act by continuing a meeting after one member has refused to recuse himself.

Here, the individual members are not obligated to physically remove the Member/Banker from the meeting; instead, the remaining members of the Solid Waste Authority have satisfied their ethical obligation by complying with the steps outlined in Advisory Opinion 2013-03. If a member of the Solid Waste Authority who has a conflict of interest as defined by the Ethics Act refuses to recuse himself as required by the Ethics Act, then that member violates the Ethics Act thereby.

This advisory opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester should contact the Commission for further advice as it may alter the analysis and render this opinion invalid.

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 public servants and other persons unless and until it is amended or revoked, or the law is changed.

  
R. Kemp Morton, III, Chairperson

ADVISORY OPINION NO. 2013-47

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SECRETARY OF STATE

OPINION SOUGHT

A **Town Manager** asks if Town Council members who are currently or formerly employed, or whose spouse is currently employed, by the County Board of Education may vote on issues concerning property deeded to the Board of Education by the Town.

FACTS RELIED UPON BY THE COMMISSION

A County Board of Education (BOE) is in the process of closing and selling an elementary school. The school building is situated over two parcels of land. One of the two parcels was owned BOE by the Town until 1950 when the Town deeded the parcel to the for public school purposes. The deed contains a reversionary clause which returns ownership to the Town in the event the property ceases to be used for public school purposes.

The BOE has asked the Town Council to allow the BOE to retain the lot so that the BOE may sell the property as a whole building. The language in the prior deed automatically reverts ownership from the BOE back to the Town once the land is no longer used for public school purposes. Therefore, the Town must vote on whether to take affirmative action to deed its interest in the property to the BOE.

Various Council members are currently or formerly employed, or their spouse is currently employed, by the BOE. The Town asks if those Town Council members may vote on issues relating to the property.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b) reads, in relevant part:

(1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.... 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(j) reads, in relevant part:

(1) Public officials... may not vote on a matter:  
(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with

which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

W. Va. Code § 6B-1-3(b) "Business" means any entity through which business for-profit is conducted including a corporation, partnership, proprietorship, franchise, association, organization or self-employed individual.

W. Va. Code § 61-10-15 reads, in relevant part:

(a) It is unlawful for any ... 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

### **ADVISORY OPINION**

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 "...for personal gain beyond the lawful emoluments of their position ... [or] ... to benefit narrow economic or political interests at the expense of the public...."

Various members of Town Council are connected to the BOE. One is a current teacher; another is married to a current teacher; and two others are retired employees and receive a pension as a result.

In Advisory Opinion 2001-29, relying on Legislative Rule § 158-9-1, the Ethics Commission found that members of City Council may not vote on matters that are personal to them. The Rule provided that a matter is personal to a public servant " ... when he or she has any pecuniary interest either directly or indirectly in the matter or is affected in a manner which may influence his or her vote or would clearly give the appearance of impropriety." The Ethics Commission found that pension and retirement plans are personal to the members of City Council, and as a result they were prohibited from voting on a matter which would affect a company from which they are receiving retirement benefits. Legislative Rule § 158-9-1 was repealed by operation of statute in 2008 when the West Virginia Legislature added the less strict provision on voting to the Ethics Act, codified as W. Va. Code § 6B-2-5(j).

The Ethics Commission has not yet had the opportunity to determine whether the less restrictive provisions of W. Va. Code § 6B-2-5(j) prohibit public servants from voting on matters relating to their former employer that now holds their pension and retirement plans.

W. Va. Code § 6B-2-5(j)(1)(A) prohibits public officials from voting on a matter in which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is an employee. W. Va. Code § 6B-1-3(b) defines business as "any entity through which business for-profit is conducted ...." The definition does not include a governing body.

In Advisory Opinion 2012-05, the Commission found that W. Va. Code § 6B-2-5(j)(1)(A) prohibited a candidate for County Commissioner who was also a teacher for a County BOE from voting on matters involving his employer, the BOE. In that opinion, the Ethics Commission relied upon the language in the prohibition against voting on matters related to a business by which he was employed, and determined that his employment by a public agency constitutes a financial interest requiring recusal. The Commission, however, neglected to consider the definition of "business", and that definition does not mention a governing body. W. Va. Code § 6B-1-3(b). As a result of this oversight, the Commission hereby overrules Advisory Opinion 2012-05, and now finds that the Ethics Act does not prohibit a public official from voting on a matter in which his or her public employer has a financial interest.

Additionally, the retired employees have no financial interest, as defined by W. Va. Code § 6B-2-5(j)(1)(A) in whether the Town decides to deed its interest in the property. Therefore, the Ethics Act does not prohibit them from voting on whether the Town should deed its interest in the property to the BOE.

The Town Council member who is currently employed by the BOE as a teacher is also subject to the stricter criminal provision of W. Va. Code § 61-10-15. This provision prohibits teachers from becoming pecuniarily interested, either directly or indirectly, in the proceeds of any contract if, as a teacher, he or she has any voice, influence, or control over the contract. Here, the teacher does not have control over the contract through his position as teacher. Therefore, W. Va. Code § 61-10-15 does not prohibit the Town Council member employed as a teacher from voting on the matter.

As a result of the foregoing analysis, none of the affected members of Town Council has a financial or pecuniary interest in whether the Town grants its remaining rights to the land currently owned by the BOE. Therefore, the Commission hereby finds that both current and retired employees of a County BOE, and their spouses, who are also members of a Town Council, may vote on whether the Town should deed its remaining rights to property to the County BOE for use as a public school only. Further, there are no facts to suggest that anyone on Town Council has any other financial or pecuniary interest in the ultimate sale of the property by the BOE.<sup>1</sup>

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<sup>1</sup> The Requester does not indicate whether any of the Town Council or County BOE members, family members, or associated businesses are interested in purchasing the property. If any of the above wish to purchase the property, then those individuals should contact the Ethics Commission for additional guidance.

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.

A handwritten signature in cursive script that reads "R. Kemp Morton III". The signature is written in black ink and is positioned above a horizontal line.

R. Kemp Morton, III, Chairperson

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

ADVISORY OPINION NO. 2013-48

Issued On October 3, 2013 By The  
WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Agency** asks whether its death investigators may also provide contract services as County Medical Examiners for the State Agency.

FACTS RELIED UPON BY THE COMMISSION

The Requester is a State Agency which is responsible for investigating certain deaths, i.e., suspicious deaths and deaths in an unusual or unnatural manner. Pursuant to its enabling legislation, the Requester is authorized to appoint County Medical Examiners and assistants and pay them for their services. The Requester states that the relevant high ranking State Agency has delegated to its death investigators the authority to select which of the particular appointed County Medical Examiners to retain in each death case. The State Agency pays the County Medical Examiners \$127.00 per case. The Requestor asks whether the death investigators employed by the State Agency may also serve as the County Medical Examiners who are awarded contracts by the State Agency, and more particularly by other death investigators in their office (co-workers). There are five death investigators, including one supervisor. Some of them have been appointed by the State Agency to serve as County Medical Examiners and their assistants. The investigators rotate shifts, and at least one investigator must be available to perform his or her duties at all times. This raises the potential for the on duty investigator to award contracts to his or her co-workers when they are off duty with the State Agency.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b) reads, in relevant part:

A public official or 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 to another . . . .

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**: Provided, That nothing herein

shall be construed to prevent or make unlawful the employment of any person with any governmental body. . . . (Emphasis added)

\* \* \*

(3) 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.

W. Va. Code § 6B-2-5(h) reads in relevant part:

(1) No full-time ... public employee may...be employed by...any person who:

\* \* \*

(C) Is a **vendor** to the agency where the official serves or public employee is employed and the official or public employee, or a subordinate of the official or public employee, exercises authority or control over a public contract including, but not limited to:

- (i) Drafting bid specifications or requests for proposals;
- (ii) Recommending selection of the vendor;

\* \* \*

(2) Within the meaning of this section, the term "employment" includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor

\* \* \*

(3) A full-time public official or employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibitions.

\* \* \*

### **ADVISORY OPINION**

The Ethics Act generally prohibits public employees from using their public office (including public resources), for their own private financial gain. W. Va. Code § 6B-2-5(b). Based upon this principle, the Ethics Act imposes limitations on secondary employment of public servants with vendors over whom they exercise authority or control over the selection of the vendor. W. Va. Code § 6B-2-5(h)(1).

In this case, the State employees who work as death investigators are in a position to select their co-workers as vendors. As a result, the investigators are able to award contracts to one another.

Further, W. Va. Code § 6B-2-5(b) prohibits an employee of a state agency from knowingly and intentionally using his or her office or the prestige of his or her office for his or her own private gain or to another. Also, W. Va. Code § 6B-2-5(d) prohibits an employee from having a direct pecuniary interest in a contract over which he or she may have direct authority to enter into, or over which he or she may have control.

Here, the State Agency has delegated to its own investigators the authority to select County Medical Examiners to receive the contract work from the State. In short, the State investigators are in the position of awarding contracts to their coworkers (and, conceivably, themselves). This situation is fraught with conflicts of interest. Therefore, pursuant to W. Va. Code § 6B-2-5(h)(1) and § 6B-2-5(d), the Requester's employees who have been delegated authority to select County Medical Examiners may not serve as County Medical Examiners under these circumstances.

The Ethics Commission commends the Requester for seeking this opinion. If the Requester is unable to find qualified candidates to serve as County Medical Examiners, after a meaningful search, then it may return to the Commission to seek a Contract Exemption to retain the services of its death investigators. To do so requires the State Agency to prove that hiring anyone else would result in undue hardship, excessive cost, or substantial interference with government operations. Advisory Opinion 2012-04.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.*, and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.

  
R. Kemp Morton, Chairperson