

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

AGENDA REQUEST FORM

Name: Stephanie Grove/Pete Dougherty

Department or Entity: Jefferson County Commission

Estimation of amount of time needed for appointment: 15 minutes

Date Requested – 1st Choice: December 5th

Date Requested – 2nd Choice: _____

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

Subject: **Noise Ordinance Revisions (Possible Executive Session 6-9A-4)**

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

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

Attachments:

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

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

AGENDA REQUEST FORM

Name: Jennifer Brockman

Department or Entity: Planning and Zoning

Estimation of amount of time needed for appointment: 15 minutes

Date Requested – 1st Choice: December 5, 2013

Date Requested – 2nd Choice: _____

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

Subject: **Recommendation of the Planning Commission to the County Commission on the landowner-initiated petition to amend the County Zoning Map for a 107 acre property owned by Ann, James, and Ernest Hunter, designated as Tax District: Middleway (07), Map: 1, Parcel: 2, located on the north side of Route 115 (Old Route 9/Charles Town Road), approximately 700 feet southeast of the Berkeley/Jefferson County line, for the purpose of setting a public hearing to be held by the County Commission**

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

On November 12, 2013, the Jefferson County Planning Commission held a Public Hearing for the purpose of receiving public input regarding a landowner-initiated petition to amend the County Zoning Map for a 107 acre property owned by Ann, James, and Ernest Hunter, designated as Tax District: Middleway (07), Map: 1, Parcel: 2, located on the north side of Route 115 (Old Route 9/Charles Town Road), approximately 700 feet southeast of the Berkeley/Jefferson County line. The property is currently vacant. The rezoning request is from the Rural zoning classification to the Residential-Light Industrial-Commercial zoning classification. Pursuant to state law, WV Code 8A-7-9(c), the County Commission must receive the advice of the Planning Commission regarding whether such a request is consistent with the County's adopted Comprehensive Plan.

To this end, the Planning Commission held a Public Hearing, reviewed the applicant's application, the staff's report on the consistency with the Comprehensive Plan, received public input, and made a determination regarding consistency with the Comprehensive Plan. Based on a review of the 2004 Comprehensive Plan and consideration of the facts and opinions presented, the Planning Commission moved to forward the petition to the County Commission with a finding that the application was consistent with the Comprehensive Plan. This motion passed with a vote of 8-0. The application and staff report will be provided to the County Commission for the packet related to the date of the Public Hearing.

In accordance with Section 12.2(C) of the Jefferson County Zoning Ordinance, subsequent to the recommendation received from the Planning Commission, all recommended map amendments require a Public Hearing before the County Commission prior to a final determination.

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

I move to schedule a Public Hearing on the Proposed Zoning Map Amendment for a 107 acre property owned by Ann, James, and Ernest Hunter, designated as Tax District: Middleway (07), Map: 1, Parcel: 2, located on the north side of Route 115 (Old Route 9/Charles Town Road), approximately 700 feet southeast of the Berkeley/Jefferson County line, on (January 16, 2014) at 7 pm.

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: 30 minutes

Date Requested – 1st Choice: November 21, 2013

Date Requested – 2nd Choice: _____

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

Subject: **Follow up to October 10, 2013 Public Hearing input on Minor Amendments to the Jefferson County Zoning and Land Development Ordinance Sections 2.2, 4.10, 4A.5, 5.7, 5.8, 8.5, 8.14(new), 8.15 (new), 9.5, 10.5, 11.1, 12.2 and Appendix C (Agricultural Use and Other Amendments) – Discussion and possible Action**

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

On October 10, 2013, the Jefferson County Commission held a Public Hearing to consider public input regarding proposed Minor Amendments to the Jefferson County Zoning and Land Development Ordinance Sections 2.2, 4.10, 4A.5, 5.7, 5.8, 8.5, 8.14(new), 8.15 (new), 9.5, 10.5, 11.1, 12.2 and Appendix C (Agricultural Use and Other Amendments). The record was held open until October 24, 2013 for additional written comments. Attached is a matrix which summarizes all of the comments received with proposed staff responses to each comment for Commission consideration.

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

I move to approve the Proposed Minor Amendments to the Jefferson County Zoning and Land Development Ordinance related to Agricultural Use and Other Amendments with the following revisions:

1)

2)

....

Attachments:

- **Matrix outlining comments received and staff response**
- **Scanned comments received**
- **Proposed revisions to Sections 2.2, 4.10, 4A.5, 5.7, 5.8, 8.5, 8.14, 8.15, 9.5, 10.5, 11.1, 12.2 and Appendix C with amendments highlighted.**

Proposed Zoning Text Amendment regarding Agricultural Uses and Related Amendments - Zoning and Land Development Ordinance
Public Comments Received at 10/10/13 County Commission Public Hearing
 (includes written comments received before & after the public hearing through 10-24-13)

#	Section or Topic	Current Language in Draft Ordinance	Request	Comment / Staff Recommendation
Section 2.2 Definitions				
	Definitions Terms Defined Section 2.2	Accessory Use: "A structure or use which is customarily incidental and subordinate to the principal building or use which is located on the same lot as the principal building. Accessory structures include garages, toll sheds, storage buildings, swimming pools, or other similar structures. An accessory structure having any part of a wall in common with a dwelling is considered part of the main building and must meet those setbacks." (current)	Amend to include more specific language to provide uniform interpretation and enforcement; Zoning decisions expanding Non-Conforming Uses through this method should be approved through the public process before the BZA by Public Hearing with Notice to affected parties. .	As this is the current language and is not a part of the proposed amendment, this should not be addressed at this time.
Section 4.10 Site Plan Requirements(change submitted to submitted and approved) --- No comments received on this proposed change – approve as drafted				
Section 5.8 (C)(3) RLIC Other Regulations				
	Residential/Light Industrial/Commercial District Section 5.8.C.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, and Section 7.6 inconclusive." (current) "This requirement shall not apply to a building located within a shopping center shown on an approved site plan." (proposed amendment)	Remove all of Section 5.8.C.3	This provision has been in the "mixed use" section of Jefferson County Zoning Ordinance for many years. It is not clear why it was determined that take-out food and convenience stores should require this added level of review when larger retail operations only require processing a site plan. It might be reasonable to remove this requirement completely.

#	Section or Topic	Current Language in Draft Ordinance	Request	Comment / Staff Recommendation
Section 9.5C Projections into Yards				
	Projections into yards (Deck Setbacks) Section 9.5.C new language	"In the Residential-Light Industrial-Commercial District and Residential Growth District, on townhouse lots with a 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 (in addition to associated stairs or concrete slabs located beneath the deck) 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."	Remove the restriction associated with lots including a residence. "As written, a townhome lot could back up to a 100 acre farm with a house and not be permitted to build the deck."	Typically regulations are intended to protect the long term potential plans of neighboring uses by not allowing a development to occur too close to an adjacent property line. In this case, the proposed language relates to townhouses that area a part of an overall design which includes common area along the back of smaller townhome lots and therefore the impact to neighbors is known. Staff recommends leaving the proposed text amendment as written
Section 11.1C Non-Residential Parking Standards				
	11.1.C new language	"Upon request, on a case by case basis, the Zoning Administrator may administratively waive permanent off-street automobile parking and loading requirements for seasonal or temporary uses, agricultural uses, events, or other types of uses that do not require parking on a regular basis. The applicant must provide an exhibit that demonstrates that the parking will occur on level ground, shows the location of the parking, and identifies how handicapped accessibility (if applicable) will be addressed."	Amend so that the Zoning Administrator does not have the authority to waive parking requirements and require that any special event of this magnitude be required to obtain BZA approval after a Public Hearing. Amend the text to reflect: "The applicant must provide an exhibit that demonstrates that the parking will occur on level usable ground"	Currently the only way to waive permanent off-street parking is request a variance from Section 11.1 from the BZA. Typically these requests have related to temporary uses such as farmers markets or events lasting a limited number of days and with limited customers. Discussion with the BZA led to the consideration that some level of grass parking could be approved administratively. Staff recommends that the amendment state " and require less than 40 spaces" at the end of the first sentence. This seems like a reasonable change.
Section 12.2 Procedure for Amendment by County Commission (re: public notice) --- No comments received on this proposed change -- approve as drafted				

#	Section or Topic	Current Language in Draft Ordinance	Request	Comment / Staff Recommendation
Rural Reception/Event Facility and Rural Reception Event Facility/Small (Sections 2.2, 4A.5, 5.7, 8.14, 10.5B, App C)				
<p>Staff Comments (FYI): A brief summary of the proposed differences between the "Rural Reception/Event Facility", the "Rural Reception/Event Facility, Small", and the "Seasonal Use Permit" which seems to have led to confusion in the public review:</p> <p>1) A Rural Reception/Event Facility is a facility within an existing structure and/or outdoor area for the hosting of events such as weddings and similar events. Such events are allowed by Special Exception in accordance with Section 10.5B of this Ordinance. NOTE the following important components:</p> <ul style="list-style-type: none"> • this clearly states the intent that these events occur only in existing structures; • The Special Exception process requires a public hearing before the BZA; • Permitted in all districts except Industrial/Commercial; • Over 300 people requires a traffic control plan as part of the Special Exception hearing <p>2) A Rural Reception/Event Facility, Small is a Rural Reception/Event Facility in the Rural District only, for the hosting of events such as weddings of up to 100 attendees, at a frequency of no more than one event per month. Such events are permitted administratively in accordance with the requirements of a Cottage Industry found in Section 4A.5 of this Ordinance. NOTE the following important components:</p> <ul style="list-style-type: none"> • This was created to allow a simpler process for smaller or less frequent events, intended for a farmer that wants to allow this on an occasional basis; • As this is a subset of the above definition, it also clearly states the intent that these events occur only in existing structures; • The administrative process is in accordance with the requirements of the Cottage Industry; however it is not considered a Cottage Industry; • Permitted only on the Rural District <p>3) A Seasonal Use Permit is not affected by any of these proposed amendments. It is defined as "A use that is carried on for not more than a single three day consecutive period in each of the four solar seasons." Seasonal Uses require approval by the Board of Zoning Appeals pursuant to a public hearing and cannot be approved for longer than one year at a time. A Rural Reception/Event would not be considered a Seasonal Use because there are other provisions required for this use.</p>				
Cottage Industry Section 4.A.5	<p>"The maximum combined gross floor area of a new building, an addition, and/or an existing accessory structure as described in subsection (j)(1) – (4), to be used as a Cottage Industry, is 3,000 square feet. For any additional building area exceeding 3,000 square feet, the development and property shall meet all requirements of the Subdivision and Land Development Regulations and the Zoning and Land Development Ordinance." (current)</p> <p>If the proposed use of an existing structure and related outdoor area is for use as a "Rural Reception/Event Facility, Small", a larger gross</p>	Amend current text to restrict Rural Reception/Event Facilities to be existing structures with no new construction (comment notes that the provision seems to allow the construction of new buildings larger than 3,000 square feet).	<p>The only relationship between the Rural Reception/Event Facilities and the Cottage Industry provisions is that a Rural Reception/Event Facility, Small are permitted administratively in accordance with the requirements of a Cottage Industry. Repeatedly throughout the proposed amendments, the Rural Reception/Event Facilities refers to "existing structures and related outdoor area". There is no proposal that would allow new construction for this purpose.</p> <p>Due to the confusion, staff recommends deleting this sentence from 4A.5 (G) and moving the intent to 8.14 as follows: "A Rural Reception/Event Facility, Small, is a Rural Reception/Event Facility in the Rural District only, for the hosting of events such as weddings of up to 100 attendees, at a frequency of no more than one event per month. Such events are permitted administratively in</p>	

#	Section or Topic	Current Language in Draft Ordinance	Request	Comment / Staff Recommendation
		floor area may be considered as a part of the review process." (proposed amendment)		accordance with the requirements of a Cottage Industry found in Section 4A.5 of this Ordinance; <u>provided, however, that the maximum square footage for a Cottage Industry of 3,000 square feet shall not apply to a proposed Rural Reception/Event Facility, Small.</u> "
	Rural Reception/Event Facility NEW definition and Section 8.14	<p>"A Rural Reception/Event Facility is a facility within an existing structure and/or outdoor area for the hosting of events such as weddings and similar events. Such events are allowed by Special Exception in accordance with Section 10.5B of this Ordinance.</p> <p>A Rural Reception/Event Facility, Small, is a Rural Reception/Event Facility in the Rural District only for the hosting of events such as weddings of up to 100 attendees, at a frequency of no more than one event per month. Such events are permitted administratively in accordance with the requirements of a Cottage Industry found in Section 4A.5 of this Ordinance."</p>	<ul style="list-style-type: none"> a. Amend definition to allow the creation of new structures for Rural Reception/Event Facility. b. Amend definition to allow more than one event per month. Suggestions: remove cap altogether or increase to 5 events/per month. c. Amend to have stricter guidelines limiting the number of persons and vehicles and frequency of events. d. Amend to include parking and traffic requirements to alleviate the burden on rural roads. e. Amend to limit the number of events to one per season (e.g. one event for every three month season of the year). f. Restrict noise levels to residential decibels at property line. g. The use should be tied to agricultural production or a minimum acreage. h. Concern regarding types of uses permitted under this provision. 	<ul style="list-style-type: none"> a. The purpose of this amendment is to allow the use of unique local rural resources such as barns, historic houses and outbuildings to be used for weddings, receptions, parties, etc. It is not intended to create a pure commercial venture in a new structure in rural areas. It is intended to give farm owners an income stream compatible with ag uses. b. There are 2 proposals – the "small" event, which can be administratively approved, is limited to one time per month and up to 100 attendees. The standard event allows more frequent events but requires a Public Hearing before the BZA. c. If the County Commission desires, the number of persons or vehicles can be added to the recommendations. d. The recommended language includes a provision that a traffic control plan is required for the BZA's review if over 300 vehicles are expected. Parking would be discussed as a part of the approval process and is expected to be of a temporary nature. e. An event once a season can already be processed as a Seasonal Use Permit through a public hearing before the BZA. f. Add the following sentence to 8.14 <u>"Approvals of all Rural Reception/Event Facilities" shall include a provision that noise at the property line shall conform with Section 8.9A(1) of this Ordinance.</u>" g. Because the intent of this provision is to allow the use of unique rural structures and allow a source of income that will further preserve the rural character and economy of the County, it would be reasonable to tie this type of event to a minimum lot size. Staff recommends a 20 or 30 acre minimum which would allow enough land to buffer neighbors from possible negative effects. Perhaps a larger acreage is better for the "small" event that can be administratively approved. This minimum acreage could receive a variance through the BZA if a smaller site has a significant structure and a public hearing is held by the BZA. h. Staff recommends adding the following sentences to the end of the definition of Rural Reception/Event Facility:

#	Section or Topic	Current Language in Draft Ordinance	Request	Comment / Staff Recommendation
				<p><u>“Such events are limited to events that involve extended families and friends such as weddings, wedding receptions, birthday events, anniversary events, reunion events and/or family gatherings. No events that involve charging admission or are solely performance events are permitted under this provision.”</u></p>
	Special Exception Uses Section 10.5	<p>“Special Exception Uses listed in this section may be approved by the Board of Zoning Appeals following a public hearing.”</p>	<p>Amend Section 10.5A to be mandatory and substitute the word shall for the word may.</p> <p>Amend so that all special exceptions must be approved by the Board of Zoning Appeals after a Public Hearing with bona fide Agricultural exceptions.</p> <p>Improve notice requirements for all BZA Hearings to include Certified Mail Return Receipt Requested to all adjoin landowners; Notice by publication in newspaper; and Electronic notice of all BZA Hearings through List Serve methodology.</p>	<p>This section states that the BZA <u>may</u> approve a Special Exception Use after a public hearing. The purpose of the hearing is to determine if approval is warranted. Changing “may” to “shall” would require BZA to approve all requests. Staff does not recommend this idea.</p> <p>The meaning of this comment is not clear.</p> <p>Standard notice required by the Zoning Ordinance for BZA hearings is an ad in the Spirit of Jefferson newspaper 15 days prior to the meeting and a sign posted on the property. All agendas and packets are posted on the County website the Friday before the BZA meeting. Mailings to adjoining property owners would add additional costs to the notice but could be accomplished. Such notice is currently required to Zoning Map Amendments. Staff recommends that if the County Commission would like to add this requirement that the applicant be required to provide the most current owner and legal address for all adjoining based on the County Tax Assessor’s Records.</p>
<p>Farm Brewery, Farm Winery, Farm Distillery (Sections 2.2, 5.7, 8.5, App C)</p>				
	Farm Brewery, Farm Winery, or Farm Distillery (Section 8.5)	<p>Section 8.5 B “No sale of alcohol for onsite consumption is permitted.”</p>	<p>Remove this restriction entirely. Businesses would be required to obtain a liquor license and held accountable to state standards and regulations.</p>	<p>The purpose of this amendment is to allow on-site value added use of agricultural products for the production of various alcohol products as permitted by state law. It is not intended to allow the establishment of a restaurant or bar on a rural property; however, if there is an interest in this a modified Conditional Use Permit process could be developed to allow this use after the Neighborhood Compatibility process.</p>

#	Section or Topic	Current Language in Draft Ordinance	Request	Comment / Staff Recommendation
	Farm Brewery, Farm Winery, or Farm Distillery Section 8.5.E	"Twenty-five percent of the raw products for a product containing alcohol that is produced by a farm brewery, farm winery, or farm distillery must be produced (i.e. grown and harvested) on the premises of the farm brewery, farm winery, or farm distillery. No more than twenty-five percent of any produce utilized for farm wineries and farm distilleries shall originate from any source outside of West Virginia."	Remove restriction entirely and leave to State regulations. "The county has no way of policing this, but takes on the responsibility by having it in their ordinance."	The intent of this language is to reflect the requirements of state law and ensure consistency. Staff recommends leaving language as is.
	Farm Brewery, Farm Winery, or Farm Distillery Section 8.5.F	"Production limits are as follows: a. A farm brewery may produce annually up to 5,000 barrels of beer (155,000 gallons). b. A farm winery may produce annually up to 50,000 gallons of wine and similar products. c. A farm distillery may produce annually up to 20,000 gallons of alcoholic liquor.	Remove restriction entirely and leave to State regulations. "The county has no way of policing this, but takes on the responsibility by having it in their ordinance."	The intent of this language is to reflect the requirements of state law and ensure consistency. Staff recommends leaving language as is.
Accessory Agricultural Dwelling Units (Sections 2.2, 5.7, 8.15, 10.5B, App C)				
	Accessory Agricultural Dwelling Unit Section 8.15	"A dwelling unit that is incidental and subordinate to the principal dwelling unit, which is located on the same lot as the principal building and is meets all of the following criteria: (a) is limited in size to a maximum of 1,000 heated square feet, gross floor area; (b) is located on a property for which the primary use is an agricultural use as defined by this ordinance; (c) is located on a property of at least 10 acres in area; and (d) is limited to use by a person (and family) who performs agricultural work on the property or	a. Administrative Approval. b. Remove restriction limiting building to 1,000 sq. ft. c. Amend to include language requiring the Construction of new "Accessory Agricultural Dwelling Units" to be approved by a CUP process, unless directly tied to bona fide Agricultural operations. d. Amend to include language requiring verification that current farming operations employ farm workers and seasonal labor requiring additional	a. Under Section 10.5B, one detached "Accessory Agricultural Dwelling Units" meeting the definition herein may be permitted administratively for each property meeting the criteria of Section 8.15 on the effective date of this Amendment. Additional units require a Special Exemption Public Hearing by the BZA. b. The small house size was discussed by the PC and staff and it was determined that the purpose is to provide an incidental structure to support the agricultural operation and for this reason it was kept small. If the structure is intended to become a more permanent substantial structure, a lot can be divided off per the regulations. c. The purpose of this provision is to develop a means by which an active agricultural operation can have housing for a caretaker or a

#	Section or Topic	Current Language in Draft Ordinance	Request	Comment / Staff Recommendation
		acts as a caretaker for the property.”	housing on site.	<p>farm worker other than a unit attached to the primary home (which is permitted). If desired, the CUP process could be used instead of the Special Exception for additional units.</p> <p>d. Sections 8.15 and 10.5B both state that the purpose of these units is for someone who performs agricultural work on the property or acts as a caretaker. We could require such documentation upon application.</p>
General Comments				
	Generally Opposed to all Proposed Amendments regarding Special Exception Uses and Rural Receptions / Event Facilities, no specific comments.	<p>Number of written submissions in opposition: 7</p> <p>General comments include concerns for ambiguous language; not enough restrictions/guidelines for events; and a concern that amendments create a way for commercial uses to be introduced to all planning zones/districts.</p>	No proposed action	

Jennifer Brockman

From: Mark Dyck <mdyck@gordon.us.com>
Sent: Thursday, October 10, 2013 3:35 PM
To: Jennifer Brockman
Subject: RE: Ordinance Change Comments

Please submit these on my behalf, not sure if I can make it.

Thanks,

Mark

From: Jennifer Brockman [<mailto:jbrockman@jeffersoncountywv.org>]
Sent: Wednesday, October 09, 2013 11:33 AM
To: Mark Dyck; 'Seth Rivard'
Subject: RE: Ordinance Change Comments

Mark

Thank you for your comments. Will you be attending the Thursday night Public Hearing or would you like us to submit these on your behalf?

I will try to address some of your concerns in a future e-mail.

Thanks for your input.

Jennie

Jennifer M. Brockman, AICP
Director, Planning and Zoning
116 E. Washington St. PO Box 338
Charles Town, WV 25414
304-728-3228

RECEIVED
OCT 10 2013
JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

From: Mark Dyck [<mailto:mdyck@gordon.us.com>]
Sent: Monday, October 07, 2013 2:59 PM
To: Seth Rivard (srivard@jeffersoncountywv.org); Jennie Brockman (jbrockman@jeffersoncountywv.org)
Subject: Ordinance Change Comments

All,

Please accept the following as my comments on the zoning ordinance changes. From a philosophical perspective if we think it is a good thing to have Rural Receptions, Wineries/Breweries/Distilleries, Ag related Housing and decks on townhomes let's make it as easy as possible.

Definitions

Rural Reception/Event Facility – I think this is a good use in the rural district. If the County wants to encourage these types of venues we should make it easy. As the ordinance reads it could be interpreted to prohibit the construction of new structures to serve this use. If the County feels that the construction of new buildings could be a part of a Rural

Reception Facility this should be changed. If we don't change it we are putting limitations on what could be highly successful operations.

Rural Reception/Event Facility Small – If we think people getting married in the country is a good idea, why limit it to once per month. I don't think there is any real danger in removing this restriction and it may be the difference between a viable business and one that never happens.

Section 8.5 – there appears to be a lot of repetition with state regulations, I would suggest the removal of E and F. The County has no real way of policing this, but takes on the responsibility by having it in their ordinance.

Section 8.5 – why prohibit the sale of alcohol for onsite consumption, this seems standard for every winery I have ever gone to. This can be a liquor license problem to deal with. We would be helping out these businesses greatly if we permitted the sale for consumption. It would be their responsibility to get the liquor license. Let's get out of the way of private business. We will be competing with wineries that allow the sale of a bottle of wine and it's consumption on a terrace, this seems OK.

8.14 – reemphasize that the once per month seems to hurt these business. If an event occurred on June 4th and on June 28th it would be very difficult to make a case that they are having a negative impact. Plus it puts the County in a position where they have to police the frequency of events.

8.14 Special Exception – the special exception process is not defined, what needs to be submitted, etc. Section 3.4A makes no mention of Special Exceptions and only permits approval if very specific conditions are met. If special exceptions are added to the ordinance they should be incorporated completely.

8.15 – what is the purpose of limiting the building to 1,000sf, especially if a family is living in the building. I would suggest removing this, very limited risk with this. I think that this could be administratively approved.

9.5.C – would suggest removing the restriction associated with lots including a residence. As written a townhome lot could back up to a 100 acre farm with a house and not be permitted to build the deck. Not sure that the impact is even if there are towns backing up to towns.

10.5 Special Exception Uses – see above

Mark A. Dyck P.L.A., LEED AP | Principal

mdyck@gordon.us.com

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Jennifer Brockman

From: Eric Lewis <ELewis@oll-cpas.com>
Sent: Wednesday, October 30, 2013 9:03 AM
To: Jennifer Brockman
Cc: 'Walter Pellish'; 'Patricia Noland'; dmanuel@frontiernet.net; vinemont@frontiernet.net; Lyn Widmyer; Debbie Keyser; Stephanie Grove; Seth Rivard; Eric Lewis
Subject: RE: Reception events

Folks (particularly Walt, Patsy, Dale, Jane & Lyn):

It has come to my attention that a group of local citizens is objecting to the minor ordinance amendments focused on special events because they have the misguided believe that it has something to do with Matt Knott and River Riders.

I know that you all know that's not true, but just to be sure, I thought I'd lay out how we got to this point. I can assure you with 100% certainty this ordinance amendment has absolutely nothing to do with Matt Knott.

Here's a timeline:

1. Back in January 2013 I inquired with the Department of Planning & Zoning as to the steps I would need to take to obtain approval to hold special events (like weddings) in our 130+ year old historic timberframe barn outside Shepherdstown. We have held events there in the past with great success, but always donated the use of the venue. My wife decided in late 2012 that she might want to explore expanding that to paid rental. That's what prompted my inquiry.
2. On Feb 1 2013 I emailed the Dept of P&Z to spell out my request
3. In March 2013, Dept P&Z responded in detail with all the steps that would need to be taken and we scheduled a meeting. At this meeting Jennie Brockman and Steve Barney laid out my options. None of them really worked (for example, one was "establish a bed & breakfast"). I then inquired about submitting a Conditional Use Permit. Steve researched my farm and determined that my LESA score was too high so I would not qualify for a CUP. Yes, that's correct: my LESA score was going to block my ability to use my historic barn for wedding receptions. To me, that just seemed ridiculous.
4. Jennie and Steve informed me that they were planning minor ordinance amendments and suggested they could include an amendment that would allow this type of activity in certain circumstances. They seemed to very much agree with my assertions that this is exactly the type of activity we should encourage (for adaptive reuse of old structures and helping sustain farms). *They were extremely helpful. I can't emphasize that enough.*
5. Over the course of the next several months, the draft ordinance amendment was put forth and commented on to get to the point at which we find ourselves today.

Again: This ordinance amendment has absolutely nothing to do with River Riders or Matt Knott. It is based solely on the roadblocks I found when I inquired about the steps for approvals for my property and the assumption that there are other great historic properties out there for which this would also be a problem.

I hope you can see through the nonsense of their objection and approve the ordinance amendments. I would also like to reiterate my comments below.

Thanks for your time.

-Eric Lewis
Shepherdstown

From: Jennifer Brockman [mailto:jbrockman@jeffersoncountywv.org]
Sent: Wednesday, October 09, 2013 11:32 AM
To: Eric Lewis
Cc: 'Walter Pellish'; 'Patricia Noland'; dmanuel@frontiernet.net; vinemont@frontiernet.net; Lyn Widmyer; Debbie Keyser; Stephanie Grove; Seth Rivard
Subject: RE: Reception events

Eric
Just to clarify, the Public Hearing is tomorrow night (Thursday 10/10/11). We will be glad to submit your comments into the record.
I will review your questions and try to answer them before tomorrow night.
Thanks for your input.
Jennie

Jennifer M. Brockman, AICP
Director, Planning and Zoning
116 E. Washington St. PO Box 338
Charles Town, WV 25414
304-728-3228

From: Eric Lewis [mailto:EJLewis@oll-cpas.com]
Sent: Wednesday, October 09, 2013 9:37 AM
To: jbrockman@jeffersoncountywv.org
Cc: 'Walter Pellish'; 'Patricia Noland'; dmanuel@frontiernet.net; vinemont@frontiernet.net
Subject: RE: Reception events

Hi Ms Brockman.

Unfortunately I have another engagement this evening and won't be able to attend the public hearing. However, I wanted to enter my comments and questions into the record for the County Commissioners.

First, again, I'd like to thank you for working on these text amendments, as I believe they are very much needed. Personally, of course, I am most appreciative of the "weddings & special events" amendment which will allow us to use our historic 120+ year old bank barn for such events, where our current ordinance would have prohibited more than 4 events per year (as I understand it). I'd also like to thank you for incorporating many of my original comments from the June public hearing into this draft.

Our County's historic timberframe and stone barns are a real asset. They are, frankly, priceless. For example, the cost to duplicate our barn would be so incredibly high (\$500,000+?) in timberframe and stone is so prohibitively high that not many folks (including us) would have the financial ability to undertake such an effort. As such, we must do whatever we can to help the current owners find financially viable ways to justify maintaining and improving these structures. If these barns have a "reason to live" there's a better chance they will be protected.

With that said, I have a few questions:

1) Could you confirm that the amendment on Section 4.10 (page 45) does NOT require a site plan for the Special Use Exemption for weddings & special events? As I previously mentioned, Site Plans are very costly and should not be required for these Special Exceptions. I had hoped it would be explicitly stated that they were not required as some future Zoning Administrator may be inclined to interpret that they are required and the applicant at that time would be at the mercy of this interpretation.

2) Section 8.14 - what is the reasoning behind the restriction to one small event per month? The more owners can utilize and monetize their historic barns, the better chance we have of saving and improving these structures. My

recommendation would be to either remove this cap or increase it to 5 events per month. For example, an owner might have someone requesting use for a 50 person birthday party on a Friday night with someone else requesting use for a 75 person wedding a week later. Would the general public or neighbors be inconvenienced over this frequency? Absolutely not. A cap of one event per month is arbitrary and doesn't do the public any good. In fact, I would assert that the general public benefits so much from having these buildings saved and used that we should encourage "more" use than less.

Thanks for all your hard work on this.

best,

-Eric

J. Michael Cassell
ATTORNEY AT LAW
CASSELL & PRINZ, PLLC
120 N. George Street, Suite 200
Charles Town, West Virginia 25414
304-728-2012/telephone
304-728-2881/facsimile
jcassell@cassellprinz.com

COPY

October 24, 2013

Hand Delivery
County Commission of
Jefferson County
Courthouse
Charles Town, West Virginia 25414

Received

OCT 24 2013

Jefferson County Commission

Re: Proposed "Minor Amendments to Zoning Ordinance"

Dear Ladies and Gentlemen:

The Shorekeepers of Jefferson County retained me to represent them regarding the above-captioned matter. The first issue which causes concern for the Shorekeepers is the introduction of a new Permitted Use titled "Rural Reception/Event Facility" which is proposed to be a Permitted Use in the Rural District. Apparently this proposal is intended to provide an additional source of income for the agricultural community. As currently proposed these new Permitted Uses could be implemented in many ways outside the context of the intended purpose. Additional conditions and definitions are needed to prevent unintended expansion of purely Commercial Uses in the Rural District without adequate planning.

The definition "Rural Reception/Event Facility, Small" is limited to the Rural District and limited by the number of attendees (100) and the frequency of no more than one event per month. These definitions lack any specific location focus or conditions which would limit their implementation to rural areas of the County in a nonintrusive way. It would be very difficult for the staff to monitor the number of people attending these commercial ventures.

These events could over burden rural roads with the introduction of hundreds of guests or patrons. There needs to be limits of numbers of persons and vehicles attending, frequency of events, and parking and traffic requirements which are absent in the Proposed Amendments.

In addition, the Proposed Amendments grant to the Zoning Administrator the authority to waive parking requirements which runs counter to the basic structure of the Ordinance. Any special event of this magnitude should be required to obtain Board of Zoning Appeals approval after a Public Hearing. The Notice requirements should include Certified Mail Return Receipt. Requested Notice for each adjoining landowner along with Notice by Publication and electronic means through automatic list serve.

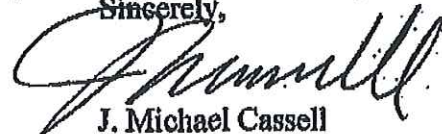
Since there are no limitations on these events and these events would be Principal Permitted Uses, these Special Events could multiply very easily without any oversight or limitation in the County. Apparently, once they are approved, they become permanent. These additional Commercial Uses must be regulated to preserve and protect the character of the Rural District. It seems odd that the Proposed Amendment allows these events in the Rural District, Residential Growth, Mixed Use Zone, and the Village District but these events are not Principal Permitted Uses in the Industrial Commercial District. There are ample opportunities in our Districts for these commercial ventures.

It will be very difficult to monitor and regulate these events. It is almost impossible for the County to obtain accurate information regarding the number of persons attending these events. There must be limitations of the number of vehicles traveling to the events. My clients do not intend to impair the ability of the Agricultural Community to maximize the use of their property. The issue here is the use of this event as a pretext to introduce additional Commercial Uses in the Rural District without the use of the Conditional Use Process which is the preferred method for uses that are not listed as permitted uses.

Another way to regulate these events would be to require these events to be on a seasonal basis which would mean one event for every three month season of the year. Seasons would be defined as January -- March, April -- June, July -- September, and October -- December. It is also important to tie Rural Reception/Events directly to bona fide farming operations with a minimum area such as 100 acres and an approved Farm Use evaluation real estate tax status.

Please consider these suggestions in your deliberations regarding the changes to the Zoning Ordinance.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Michael Cassell".

J. Michael Cassell

Submitted by J. Michael Cassel on behalf of the Shorekeepers
October 24, 2013

OUTLINE OF ISSUES

Regarding Proposed Minor Amendments to the Zoning Ordinance

- I. All Rural Receptions/Event Facilities and Events should be approved by the BZA with a Public Hearing.**
 - (a) Amend Section 10.5A to be mandatory and substitute the word shall for the word may.
 - (b) Create exceptions for bona fide Agricultural Operations.
- II. All special exceptions should be specifically enumerated in the Ordinance in each Zoning District.**
 - (a) All special exceptions must be approved by the Board of Zoning Appeals after a Public Hearing with bona fide Agricultural exceptions.
- III. Improve notice requirements for all BZA Hearings.**
 - (a) Certified mail return receipt requested to all adjoining landowners.
 - (b) Notice by publication in newspaper.
 - (c) Electronic notice of all BZA Hearings through the List Serve methodology.
- IV. Rural Reception/Event Facilities to be existing structures with no new construction.**
 - (a) The Provisions contained on page 52 of the Proposed Amendments should be unnecessary.
 - (b) This Provision seems to allow the construction of new buildings larger than 3,000 square feet.

V. Construction of new "Accessory Agricultural Dwelling Units should be approved by a CUP process.

(a) Unless directly tied to bona fide Agricultural operations

(b) Determine if current farming operations employ farm workers and seasonal labor requiring addition housing on site.

VI. Use of existing structures as "Rural Reception/Event Facilities" (See page 108 of Proposed Amendments) lacks any specificity or conditions for approval.

(a) Some issues are outlined in the Proposal but there is a need for more specific requirements to guide BZA approval.

VII. The definition of Accessory Uses must be more specific.

(a) Currently a structure which is "customarily incidental" and subordinate to the principal building or use" is accessory. This is much too broad.

(b) Additional definition requirements are necessary to provide uniform interpretation and enforcement.

(c) Zoning decisions expanding Non-Conforming Uses through this method must be approved through the public process before the BZA by Public Hearing with Notice to affected parties.

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OCT 18 2013
JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

October 9, 2013

County Commission of Jefferson County
P.O. Box 250
Charles Town, WV 25414

Dear Honorable Commissioners:

Thank you for the opportunity to comment on the proposed text amendments to the Jefferson County Zoning Ordinance. I believe that the proposed amendment to allow facilities in the rural district to host events a good step to enhance business in the County. Some of the other proposed amendments are also a step in the right direction of permitting more business opportunities in Jefferson County.

However, my interest is in the proposed amendment to Article 5, Section 5.8 C 3. This section requires a Conditional Use Permit for stores that are less than 10,000 square feet in size and restaurants with a pick-up counter in the Mixed-Use District. The proposed amendment will eliminate the need for a Conditional Use Permit (CUP) for these uses in existing shopping centers. I believe that the amendment doesn't go far enough. I believe that all of Section 5.8 C 3. should be eliminated.

It makes no sense that currently in the Mixed-Use District, stores that are larger than 10,000 square feet are permitted without an a CUP, yet a store that is smaller than 10,000 square feet requires a CUP. It is interesting to note that a gas station is also a use which can go into this district without a CUP. As a matter of fact most commercial uses are permitted in this district without a CUP.

If a giant convenience store (greater than 10,000 square feet) with gas pumps is permitted in this district without a CUP, then why penalize a smaller one. This does not make sense. The permitted uses should be based on similar impact. I cannot see how a 9,000 square feet store with gas pumps would have more of an impact than an 11,000 square feet store with gas pumps; yet the 11,000 square feet one is permitted without a CUP.

This same section of the ordinance allows large restaurants that can seat hundreds of people if there is an employee that brings the food to the table without requiring a CUP. However, a Subway shop would require a CUP. Again, this does not make sense.

Most of the Mixed-Use Zone is along Route 340. This area is the area that is slated for growth in the current Comprehensive Plan. Based on the comments that the County Commissioners had during the Route 340 Corridor Study, one has to assume the Route 340 Corridor will continue to be the major growth area in the new Comprehensive Plan that is currently being drafted. As such, it would only seem logical to allow these smaller stores and restaurants the ability to be planned in the Mixed-Use District without a Conditional Use Permit.

In order to do that, all the Commission has to do is remove Section 5.8 C 3. as opposed to amending it, to allow these uses only in shopping centers. The provision is illogical as written.

Therefore, I respectfully ask that the text amendments are changed to remove 5.8 C 3. Thank you for your consideration of this testimony.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Michael Shepp". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

R. Michael Shepp

PO Box 1162

Shepherdstown, WV 25443

Jennifer Brockman

From: Cindy Schott <cschott@jeffersoncountywv.org>
Sent: Friday, October 11, 2013 9:40 AM
To: 'Jennifer Brockman'; 'Sandy McDonald'; jesscarroll01@gmail.com
Subject: FW: Comments on Proposed Zoning Text Amendments 10/10/13

Cynthia C. Schott
Executive Assistant
Jefferson County Commission
124 E. Washington Street
PO Box 250
Charles Town, WV 25414
304-728-3284

From: Matt Knott [<mailto:matt@riverriders.com>]
Sent: Thursday, October 10, 2013 6:29 PM
To: INFO@JEFFERSONCOUNTYWV.ORG
Subject: Comments on Proposed Zoning Text Amendments 10/10/13

Dear Commissioners,

In regard to the proposed zoning text amendments being discussed on 10/10/2013 I have one suggested change:

On Item 11.1.C The text for seasonal parking should be changed "The applicant must provide an exhibit that demonstrates that the parking will occur on - change "level" to "usable" - ground."

Thanks,
Matt Knott

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OCT 11 2013
JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

Jennifer Brockman

From: Cathy <winterscat@aol.com>
Sent: Wednesday, October 23, 2013 6:07 PM
To: dmanuel@frontiernet.net; vinemont@frontiernet.net; lynwidmyer@gmail.com;
pnoland@jeffersoncountywv.org; walterpellish@mac.com;
jbrockman@jeffersoncountywv.org
Subject: Opposition to the "minor" land use changes and traffic

Dear Commissioners and Ms Brockman,

I forgot to include in my previous letter of opposition to the changes to the land use ordinance that the ability of the zoning administrator to waive parking requirements for seasonal uses greatly concern those of us who use Bakerton Rd. Under the present zoning certificate issued for the Harpers Ferry Campground, clients are to be bused to the campground for the accessory use zip line and river access. If these parking requirements can be waived, the traffic problems at the one lane railroad underpass would be exacerbated. All previous requests for a CUP for this site were denied due to traffic concerns as well as for having a commercial enterprise in a rural residential area. As you know many people in this area are greatly upset by the issue of the zoning certificate for the campground and zip line. Notice to neighbors re a grandfathered use was not required and most people did not check BZA agendas. Further, as most of you know, there was never a continuous use of a commercial campground since one never existed. The expansion of the campground by allowing parking at that site, waiving the magic wand of the zoning administrator would cause us further harm.

We had one head on collision in the tunnel last year. The present restrictions re parking at the campground should remain and the provision in the new land use ordinance should be removed that would allow parking requirements for seasonal uses to be waived by the zoning administrator.

Cathy Vance

Jennifer Brockman

From: kathy loftin <kathyloftin@yahoo.com>
Sent: Thursday, October 24, 2013 2:53 PM
To: dmanuel@frontiernet.net; pnoland@jeffersoncountywv.org; lynwidmyer@gmail.com; vinemont@frontiernet.net; walterpellish@mac.com; jbrockman@jeffersoncountywv.org
Subject: Proposed Zoning Changes

Dear Ladies and Gentlemen:

The latest "minor" zoning change that has been proposed is not minor at all (special events), and I urge you not to adapt it as written. It is too broad and would be detrimental to the property rights of the county's residents. I understand the need for farmers to hold special events and find alternate methods of earning income so they can afford to keep farming, but the "special event" zoning is so broad that almost anything would be automatically approved, and not just for farmers. Neighbors get no real notice, or input on whether the parking regulations are enforced - the BZA can just decide they aren't required? What about minimum acreage for special events, farm use only, minimum setbacks from neighboring properties, hours of use and noise levels, number of people (100 or 300?), neighborhood and watershed impact research required before approving such an event? In addition, each event needs to be considered separately; all events are not created equal regarding their impact on the neighboring area.

It appears as though the Commission's intent is to practically eliminate the ability of residents to have any meaningful say on what happens in their neighborhoods and on their roads. Each new zoning change seems intended to make future exception requests go through almost automatically - or to change the zoning to "anything goes" so that an exception won't even be required. The conditional use process is here to protect us - and the Commission seems bound and determined to get rid of it, and make exceptions the norm (just as the people near the underpass had no input on the ziplines and campground which was "grandfathered in" on a complete pretense without undergoing the conditional use process, and the "ancillary use" ziplines are actually a primary use).

Zoning laws protect us, your constituents, who must rely on you to represent us. Those of us in rural areas would have moved elsewhere if we wanted commercial businesses in our neighborhoods - and when we bought our properties, the zoning laws prevented those things from happening. While some exceptions will always be necessary, if you have too many of them (or make them practically automatically approved due to floating zoning and other broad rules such as this special events category), you've basically negated the zoning ordinances. And it seems that is exactly what you're attempting to do. You told us you would table the zoning changes until after the Comprehensive Plan was developed, perhaps in an effort to sneak changes in under our noses - because you reneged on that assurance. It's hard not to think that perhaps you never truly intended to table the zoning effort, and were just lulling us into a false sense of security. Your constituents have repeatedly made their voices heard that we do not want vague, anything-goes zoning, whether it's called floating zoning or anything else, that is intended to allow pretty much anything no matter how much the residents are against it. And yet, that type of zoning keeps making its way back into the proposal, disguised as a "minor change."

Jefferson County does need to attract more businesses (especially professional businesses), but not at the expense of our residents and rural neighborhoods.

Thank you for your consideration in this matter.

Respectfully,

Kathy Loftin

Jennifer Brockman

From: Steiding, Krista <SteidingK@MedImmune.com>
Sent: Thursday, October 24, 2013 3:59 PM
To: 'planningdepartment@jeffersoncountywv.org'; 'lynwidmyer@gmail.com';
'vinemont@frontiernet.net'; 'walterpellish@mac.com'; 'dmanuel@frontiernet.net';
'commissionerpnoland@gmail.com'; 'zoning@jeffersoncountywv.org';
'jbrockman@jeffersoncountywv.org'; 'pnoland@jeffersoncountywv.org'
Cc: 'dissaann@hotmail.com'
Subject: Special Exception Uses

Dear Commissioners and Ms. Brockman,

I am writing to strongly oppose the proposed land use ordinance, "Minor Amendments to Zoning Ordinance" as they pertain to creating rural events. These changes listed as minor have the appearance of providing certain commercial ventures the ability to circumvent the current ordinances as approved. These changes impact a majority of the population of Jefferson County and do not have any semblance of transparency. The changes as written have little to no limitation as to what one venture versus another can be permitted to do. Additionally, there is conflicting wording throughout the ordinance;

- o Section 10.5 Special Exception Uses, B, allows 300 people
- o Section 8.14 allows for 100 attendees.
- o One section states that events can occur no more than one in each season (what is the definition of a "season"
- o Another section states no more than one per month.

The changes in this ordinance will greatly impact the residents near any event area but there is a provision that the zoning administrator has the ability to waive parking requirements. This gives the appearance that the wants and needs of commercial ventures outweighs that of the residents. The rural nature of Jefferson County and the associated roads would most definitely be overburden by unmonitored events. This issue can be seen extensively on Bakerton Road where the increased level of personal vehicles and commercial transportation has resulted in numerous wrecks. The current infrastructure cannot handle the current level of congestion let alone a significant increase.

Over the years, there have been attempts to change the zoning requirements ranging from Spot Zoning to Neighborhood Commercial. The latest "minor" changes are too broad in range, have conflicting wording and do nothing to protect the residents.

The recent decision by the Jefferson County Commission to appoint a local entrepreneur to the Board of Zoning Appeals shows a level of opaqueness that should never be allowed in local government. The impact from this appointment shows a blatant disregard for transparency in the day to day operations of our elected government officials. The majority of the "minor" amendment changes will benefit this businessman and this appointment shows no consideration to conflict of interest.

I am very disappointed in the Jefferson County Commission's recent decision to appoint Matt Knott to the Board of Zoning Appeals. In the first place, this opening should have been posted for public comment with a specified cutoff day for applicants, and been part of the published agenda, as are applications for the Planning and Zoning Committee.

I believe as constituents, we deserve better from our elected officials. I urge you to reconsider this appointment, in the interest of our county having an ethical government that seeks to avoid conflicts of interest.

Sincerely,

Krista Steiding
304-876-6318

To the extent this electronic communication or any of its attachments contain information that is not in the public domain, such information is considered by MedImmune to be confidential and proprietary. This communication is expected to be read and/or used only by the individual(s) for whom it is intended. If you have received this electronic communication in error, please reply to the sender advising of the error in transmission and delete the original message and any accompanying documents from your system immediately, without copying, reviewing or otherwise using them for any purpose. Thank you for your cooperation.

Jennifer Brockman

From: Wendy Lochner <wwlochner@yahoo.com>
Sent: Tuesday, October 22, 2013 10:45 PM
To: dmanuel@frontiernet.net; lynwidmyer@gmail.com; vinemont@frontiernet.net;
pnoland@jeffersoncountywv.org; walterpellish@mac.com;
jbrockman@jeffersoncountywv.org
Subject: Oppose "Minor Changes" to Zoning

October 22, 2013

Dear County Commissioners and Jennifer Brockman,

It is with a great sense of disappointment that I am writing to you today. As a citizen with deep roots in Jefferson County, I continue to be shocked by what I am witnessing regarding zoning and the lack of respect for residents of this County. While I am very pro commerce and support growing the area, it is coming at too high a price for rural residential neighborhoods. As I have admired and supported you all in your roles for many years in providing direction in our community, ongoing and recent decisions regarding the support of zoning that is done very underhandedly and clearly shows favoritism and discrimination truly goes against the level of trust I have had in your position and mars the great sacrifices and leadership you have displayed in our community over the years. Please, I ask that you have the fortitude to preserve and protect rural residential neighborhoods regarding zoning. The first step is to NOT allow "Minor Amendments to Zoning Ordinance" as they pertain to creating rural events. The events seem to create a way for commercial uses to be introduced to all planning zones/districts except Industrial Commercial with no regulated limitations.

Further, there are conflicts in the number of the events that may occur; lack of wording that limits the events with minimum land requirements and parking requirements may be waived without a conditional use permit. In many ways this looks like another attempt to implement Spot Zoning and Floating Zoning, and it was very clear how upsetting this was to our community.

I do not oppose the ability for special events allowed in Jefferson County, it is that they need to be very tightly controlled. Those of us that have been in the County for the last 50 years are proud of how our area has grown and is prospering and would like that to continue, but we are at a tipping point that is in your hands. Please show that you value us as residents and acknowledge this zoning, as defined, is NOT in the best interest for Jefferson County residents.

Further, I ask that you do whatever it takes to protect Rural Residential Neighborhoods and our historical and natural resources.

Thank You,

Wendy Whitehair-Lochner

Jennifer Brockman

From: Cathy <winterscat@aol.com>
Sent: Thursday, October 24, 2013 10:44 AM
To: jbrockman@jeffersoncountywv.org
Subject: Fwd: Objection to the proposed "minor" land use ordinance changes

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

From: Cathy <winterscat@aol.com>
To: dmanuel <dmanuel@frontiernet.net>; lynwidmyer <lynwidmyer@gmail.com>; vinemont <vinemont@frontiernet.net>; pnoiland <pnoiland@jeffersoncountywv.org>; walterpellish <walterpellish@mac.com>
Sent: Tue, Oct 22, 2013 9:47 pm
Subject: Objection to the proposed "minor" land use ordinance changes

Dear Commissioners and Ms. Brockman,

I am writing to strongly oppose the proposed land use ordinance, "Minor Amendments to Zoning Ordinance" as they pertain to creating rural

events. The events seem to create a way for commercial uses to be introduced to all planning zones/districts except Industrial Commercial,

without any meaningful limitations that can monitored or controlled by the county. The new ordinance is very mushy, allowing 300 people in

section 10.5, Special Exception Uses, B, and 100 attendees in Section 8.14. That is just one example. Another example is that the events can

be no more than one in each season in one section of the ordinance and another section, no more than one per month. There is no

requirement that the special events are limited to farms or farmers, no minimum land requirement, and the zoning administrator has the

authority to waive parking requirements without a conditional use permit. These "minor" changes are in fact major changes.

As you know, there have been several attempts to circumvent normal zoning change requirements in the past few years. Spot Zoning,

Floating Zoning, and the NC zone, Neighborhood Commercial that would have allowed commercial enterprises everywhere in Jefferson

County. I see these "minor" changes attempting to do the same thing.

I have no objection to a Bed and Breakfast being able to have special events on site or more importantly, for farmers to be able to generate

additional income. These proposed changes introducing Rural Events are too broad, conflicting in some cases, and will not be able to be

enforced fairly or uniformly.

Thank you,
Cathy Vance

Jennifer Brockman

From: Ted Schiltz <tlschiltz1@comcast.net>
Sent: Thursday, October 24, 2013 11:52 AM
To: dmanuel@frontiernet.net; pnoland@jeffersoncountywv.org; walterpellish@mac.com; vinemont@frontiernet.net; lynwidmyer@gmail.com
Cc: Jennifer Brockman
Subject: Minor Amendments to Zoning Ordinance

Dear Commissioners and Ms. Brockman,

We am writing to strongly oppose the proposed land use ordinance, "Minor Amendments to Zoning Ordinance" as they pertain to creating rural events. The events seem to create a way for commercial uses to be introduced to all planning zones/districts except Industrial Commercial without any meaningful limitations that can monitored or controlled by the county. The new ordinance is not ready for release yet as there are still too many variables for the unscrupulous to circumvent the system. Allowing 300 people in section 10.5, Special Exception Uses, B, and 100 attendees in Section 8.14. That is just one example. Another example is that the events can be no more than one in each season and another no more than one per month. There is no requirement that the special events are limited to farms or farmers, no minimum land requirement, and the zoning administrator has the authority to waive parking requirements! These "minor" changes are in fact major changes.

We would also like to say that we have no objection to farmers being able to make additional income, but do object to allowing commercial businesses the ability to expand their operations, without proper zoning or a conditional use permit. The amendments seem to be designed for the farmers in the county to utilize their buildings and land for uses other than agriculture, however you already have the vultures of the county flocking to see how they can beat the system.

As you know, there have been several attempts to circumvent normal zoning change requirements in the past few years. Spot Zoning, Floating Zoning, and the NC zone. Neighborhood Commercial that would have allowed commercial enterprises everywhere in Jefferson County.

Ted & Jan Schiltz

Jennifer Brockman

From: William S Dorman Jr <chipdorman1@aol.com>
Sent: Thursday, October 24, 2013 10:39 AM
To: Dale Manuel; Patsy Noland; Walter Pellish; Lyn Widmyer; Jane Tabb
Cc: Jennifer M Brockman
Subject: Proposed Land Use Ordinance

Commissioners,

Today, I write you representing myself and my fellow homeowners in Deer Mountain Estates. In addition, after numerous discussions with neighbors throughout the rural residential area between Harpers Ferry and Shepherdstown, I'm certain that my points to follow, reflect their broad sentiments as well.

First, let me encourage you, in the strongest terms possible, to take NO for an answer.

We, your constituents, have told you repeatedly that we will not tolerate efforts to disrupt the quiet enjoyment of our private property. Since previous entreaties seem to have found you to be unreceptive, I will now be blunt.

It is offensive to us, as taxpaying property owners, that our clear property rights appear to be under routine assault. Repeated attempts to issue dodgy conditional use permits, suspect zoning amendments, and efforts to improperly "stack" the board of zoning appeals, all make us distrust your actions. Following due process and giving homeowners a fair opportunity is the minimum we expect from our elected officials.

We do understand the desire and need to encourage business development in Jefferson County, and West Virginia as a whole. So, you would be mistaken to write us off as "anti-growth" zealots. We believe there are ways to develop business opportunities and manage growth without sacrificing the historic character of our area. The zoning changes to the areas north of 340 along Bakerton Road sacrifice significant homeowner rights yet gain the county virtually nothing of value in return. It is truly flabbergasting to us that you would condone this course of action.

We expect you to hear our grievances and put to rest our significant concerns. We, your voting constituents, await your decision.

Very respectfully,

//signed//
William S. Dorman, Jr.
Lt Col USAF (Ret)
H: (304) 876-3301

Jennifer Brockman

From: Zoning <zoning@jeffersoncountywv.org>
Sent: Thursday, October 24, 2013 10:27 AM
To: 'Jennifer Brockman'; 'Seth Rivard'; Jimmy T. Redmon; cwhittaker@jeffersoncountywv.org
Subject: FW: Opposition to Ordinance Changes

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

From: Humes Barbara [<mailto:bhumes1@comcast.net>]
Sent: Wednesday, October 23, 2013 10:04 PM
To: planningdepartment@jeffersoncountywv.org; jennifer brockman; commissionerpnoland@gmail.com;
dmanuel@frontiernet.net; walterpellish@mac.com; Tabb Jane; lynwidmyer@gmail.com
Subject: Opposition to Ordinance Changes

To County Commissioners: I am writing to express my concern about the proposed ordinance changes regarding special exception uses that include special rural events. I fear that these changes are too ambiguous and will cause harm to our fragile rural areas and create problems.

Sincerely

Barbara Humes

Jefferson County Zoning and Land Development Ordinance

Jefferson County,
West Virginia

Prepared By
The Jefferson County
Planning Commission

Adopted July 7, 1988, As Amended
Amendments adopted by the County Commission, November 10, 2011
DRAFT AG USES and REALTED AMENDMENTS 8/13/13 rev 8/22/13 for CC

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ARTICLE 2: DEFINITIONS

Section 2.1 Definitions

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

Section 2.2 Terms Defined

Abandonment or
Abandoned^{17,21}

The relinquishment of property or cessation of the use of the property by the owner or lessee without any intention of transferring rights to the property to another owner or resuming the nonconforming use of the property for a period of one year.

Accessory Agricultural
Dwelling Unit

A dwelling unit that is incidental and subordinate to the principal dwelling unit, which is located on the same lot as the principal building, and is limited to use by a person (and family) who performs agricultural work on the property or acts as a caretaker for the property.

Accessory Equipment²²

Any equipment serving or being used in conjunction with a Wireless Telecommunications Facility. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

Accessory Use

A structure or use which is customarily incidental and subordinate to the principal building or use which is located on the same lot as the principal building. Accessory structures include garages, tool sheds, storage buildings, swimming pools or other similar structures. An accessory structure having any part of a wall in common with a dwelling is considered part of the main building and must meet those setbacks.

Addition, Major

A major addition shall include those additions which will directly affect the function of the site or those areas surrounding the site. Any substantial change of use classification, alteration of on-site parking requirements, potential adverse impacts of off-site storm water drainage, increased demand for public water and sewerage or additions which will cause the rerouting of traffic circulation

together and sharing living areas in a dwelling unit; or
D. A group of persons occupying a dwelling unit meeting the definition of a Residential Care Home.

Farm Market²³

Market for the sale of farm products, and products incidental to farm products.

Farm Winery

An agricultural use licensed as a "Farm winery" pursuant to the West Virginia Code, and meeting the requirements for a "Farm winery" in §60-1-1 et seq of the West Virginia Code as amended. A farm winery is also subject to the requirements of Section 8.5 of this Ordinance.

Farm Distillery

An agricultural use licensed as a "Mini-distillery" pursuant to the West Virginia Code, and meeting the requirements for a "Mini-distillery" in §60-1-1 et seq of the West Virginia Code as amended. A farm distillery is also subject to the requirements of Section 8.5 of this Ordinance.

Farm Brewery

An agricultural use that entails the manufacturing of beer in accordance with the requirements of the West Virginia Code. A farm brewery is also subject to the requirements of Section 8.5 of this Ordinance.

Farm Vacation Enterprise²³

A farm adapted for use as a rural vacation area, which may include picnicking and sporting areas, fishing waters, camping, scenery, nature recreation areas, and similar uses. The site may contain up to 5 lodging units.

FCC²²

Federal Communications Commission.

Flood-prone Area

Areas subject to the one hundred (100) year flood as determined by the Flood Insurance Study prepared by the Federal Insurance Study prepared by the Federal Insurance Administration for Jefferson County, dated April 15, 1980, as may be amended.

Flood-prone Soils

Any area designated as flood-prone soils in the Soil Survey of Jefferson County, West Virginia prepared by the Department of Agriculture, Soil Conservation Service.

Frontage, Street

All property on the side of a street between two intersecting streets (crossing or ending), or if the street is a dead-end, then all property abutting on one side between an intersecting street and the dead-end of the street.

Functionally Equivalent

FCC licensed providers of Commercial Mobile Radio Services

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.

Rural Reception/Event Facility

A facility within an existing structure and/or outdoor area for the hosting of events such as weddings and similar events in the Rural, Village, Residential Growth and Residential-Light Industrial-Commercial Districts (permitted by Special Exemption).

Rural Reception/Event Facility, Small

A Rural Reception/Event Facility in the Rural District for the hosting of events such as weddings of up to 100 attendees, at a frequency of no more than one event per month.

School, University or College²³

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.

Seasonal Use⁵

A use that is carried on for not more than a single three day consecutive period in each of the four solar seasons.

Sensitive Natural Area⁵

An area of wetlands, stream or river banks and forest which exists as a habitat supporting rare or endangered species or which has been dedicated perpetually to environmental preservation by easement, covenant or other legal instrument or which is otherwise protected for environmental purposes by State or Federal statute.

Setback Line²³

That line that is the required minimum distance from the street right-of-way line or any other lot line that establishes the area within which the principal structure must be erected or placed. For attached dwelling unit types (duplex, multi-family, townhouse, two-family, and similar residential uses) no setback between attached dwelling units is required.

Sexual Paraphernalia Store¹⁵

Any retail store specializing in the sale of paraphernalia, devices, or equipment distinguished or characterized by an emphasis on depicting or describing specific sexual activities or used in connection with specified sexual activities.

Section 4.8 Buildable Lot

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

Section 4.9 Traffic Visibility Across Corner Lots

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

Section 4.10 Site Plan Requirements

- A. ~~A site plan shall be submitted~~ and approval of a site plan is required for all commercial, townhouse and multi-family residential, industrial, and institutional development in any district and for all major additions or expansions of existing uses as defined in Article 2, in accordance with the requirements of the Subdivision and Land Development Regulations and this Ordinance.²³
- B. Site plan submittal is not required for single-family or two-family dwelling units unless planned as part of a multi-unit or mixed use development plan.
- C. The site plan format and informational requirements that must be followed are referenced in the Jefferson County Subdivision and Land Development Regulations, and this Ordinance.²³
- D. The Planning Commission has the authority to waive any site plan standards in accordance with the Subdivision and Land Development Regulations.^{10, 17, 21, 23}

Section 4.11 Landscaping, Screening and Buffer Yard Requirements

- A. All commercial development adjacent to any Residential district, or any lot with a residence, school, church, or institution of human care shall have a fifty (50) foot or greater unscreened green space buffer or a fifteen (15) foot screened green space buffer along common property lines. The screening may be either vegetative or opaque fencing and may be placed anywhere within the buffer. No structures, materials, or vehicular parking shall be permitted within the side and rear yard buffers. All commercial development adjacent to all other uses must maintain ten (10) foot side and rear yard landscape buffers.⁵
- B. All industrial development adjacent to any Residential district, or a residence, school, church, or institution for human care shall have a buffer yard of no less than two hundred (200) feet. No structures, stored materials, or vehicular parking shall be permitted within the buffer yard. All industrial development shall have front yard buffers of no less than one-half (½) the front yard building setback.^{5, 7}

Section 4A.5 Cottage Industry

4. An existing structure or addition built without a required, valid building permit or Improvement Location Permit after December 20, 1975.
- H. The maximum combined gross floor area of a new building, an addition, and/or an existing accessory structure as described in subsection (j)(1) – (4), to be used as a Cottage Industry, is 3,000 square feet. For any additional building area exceeding 3,000 square feet, the development and property shall meet all requirements of the Subdivision and Land Development Regulations and the Zoning and Land Development Ordinance. If the proposed use of an existing structure and related outdoor area is for use as a “Rural Reception/Event Facility, Small”, a larger gross floor area may be considered as a part of the review process.
- I. Setbacks shall be as provided below for an accessory structure used for a Cottage Industry:
 1. For an accessory structure lawfully constructed during the five years prior to application for a Zoning Certificate for a Cottage Industry, setbacks are 25 feet from all lot lines.
 2. For an accessory structure lawfully constructed more than five years prior to application for a Zoning Certificate for a Cottage Industry, the applicable zoning district setbacks for an accessory structure apply.
- J. For a Cottage Industry located in the Residential Growth District or an existing residential subdivision, the minimum lot size is 2 acres.
- K. If a proposed Cottage Industry would utilize a private, shared right-of-way, driveway or easement for vehicular access, a Compatibility Assessment Meeting is required. The meeting shall be conducted as described in Sections 7.6A and 7.6C of this Ordinance, with the following exceptions:
 1. The purpose of the meeting is for the applicant to inform adjacent owners of the proposed Cottage Industry and to describe any associated traffic impacts.
 2. Owners of all properties with vehicular access to the right-of-way or easement shall be notified of the date, time, and place of the meeting by registered mail. Letters shall be mailed 14 days prior to the scheduled date of the meeting. Staff shall approve the letter as adequate prior to mailing, and the applicant must provide proof of mailing.
 3. During the Compatibility Assessment Meeting, attendees should limit their comments to the adequacy of the private, shared right-of-way, driveway or easement, to accommodate traffic generated by the proposed Cottage Industry.
 4. No Board of Zoning Appeals approval of the application is required.
- L. The subject property shall be posted conspicuously by a zoning notice no less than twenty-eight (28) inches by twenty-two (22) inches in size, at least 15 days prior to approval of a Zoning Certificate for the land use. The sign will be prepared by the Departments of Planning and Zoning but posting the sign is the responsibility of the applicant.

Section 5.7 Rural District²³

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

A. Principal Permitted Uses²³

1. Agricultural uses as defined in Article 2⁷
2. Church
3. Elementary or Secondary School
4. Vocational and/or Training Facility for Adults^{12, 20}
5. Dwelling, Single Family
6. Mobile Home (subject to the Jefferson County Subdivision and Land Development Regulations)
7. Dwelling, Two-Family⁸
8. Accessory Agricultural Dwelling Unit
- ~~7.9.~~ Cottage Industry⁸
- ~~8.10.~~ Home Occupation, Level 1⁸
- ~~9.11.~~ Home Occupation, Level 2⁸
- ~~10.12.~~ Day Care Center, Small^{12, 11, 15}
- ~~11.13.~~ Public Safety Facility
- ~~12.14.~~ Cultural Facility
- ~~13.15.~~ Farm Market (subject to the requirements for such a use in Article 8)⁸
- ~~14.16.~~ Horticultural nurseries and commercial greenhouses
- ~~15.17.~~ Hospital
- ~~16.18.~~ Essential Utility Equipment
- ~~17.19.~~ Accessory uses
- ~~18.20.~~ Group Residential Facility
- ~~19.21.~~ Bed and Breakfast (subject to the requirements for such a use in Article 8)^{7, 15}
- ~~20.22.~~ Publicly Owned Facility⁸
- ~~21.23.~~ Wireless Telecommunications Facilities pursuant to Article 4B.¹⁰

22:24. Model Homes/Sales Office (subject to the requirements for such a use in Article 8)¹²

23:25. Non-profit Community Centers¹⁵

24:26. Landscaping business outside of Planning Commission approved subdivisions¹⁵

25:27. Veterinary services outside of Planning Commission approved subdivisions¹⁵

26:28. Feed and/or Farm Supply Center

27:29. Agricultural Repair Center¹⁵

28:30. Kennels (subject to the requirements for such a use in Article 8)¹⁵

29:31. Hunting, Shooting, Archery and Fishing Clubs (subject to the requirements for such a use in Article 8)²⁰

30:32. Agricultural Tourism

31:33. Farm Vacation Enterprise

32:34. Farm Brewery, or Winery, or Distillery

35. Rural Reception/Event Facility or Rural Reception/Event Facility, Small (subject to the requirements of 10.5B)

33:36. Rental of Existing Farm Building, for commercial storage (structure must have existed for 5 years)

34:37. Preschool

B. Minimum Lot Area, Lot Width and Yard Requirements²³

1. Minimum lot sizes, lot width, and yard requirements for principal permitted uses are shown in Table 5.7-1.
2. For any residential use that complies with the Development Review System, the setbacks and lot size shall be as outlined in Article 5.4.⁵

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

Land Use	Lot Area	Lot Width	Front Yard Depth	Side Yard Depth	Rear Yard Depth
Dwellings	40,000 sq. ft.	100	40	15	50
Churches	2 acres	200	25	50	50
Schools, Grades K-4	10 acres +	500	100	100	100
Schools, Grades 5-8	20 acres +	500	100	100	100
Schools, Grades 9-12	30 acres +	500	100	100	100
Hospitals	10 acres	500	100	100	100
Other permitted uses	40,000 sq. ft.	100	40	50	50

Section 5.8 Residential/Light Industrial/Commercial District¹

3. Restaurants where the primary mode of food distribution is by pick-up counter or drive in window and convenience stores (food stores not in excess of 10,000 square feet gross floor area) shall be subject to the Compatibility Assessment Meeting process pursuant to Article 7, Section 7.6 inclusive.²³ This requirement shall not apply to a building located within a shopping center shown on an approved site plan.
4. Proposed uses in this zone do not have to comply with the distance requirements in Sections 4.6 (a-b) if part of a master planned community. This provision shall only apply to the internal use of land under the same ownership.⁷

Section 5.9 Reserved²³

Section 5.10 Village District^{8, 23}

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

A. Principal permitted uses²³

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 Facility¹²
8. Essential Utility Equipment
9. Medical/Dental/Optical Office, Small¹²
10. Group Residential Facility
11. Cultural Facility¹²
12. Wireless Telecommunications Facilities pursuant to Article 4B

B. Conditional Uses²³

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

Section 8.5 Farm Brewery, ~~or Farm Winery, or Farm Distillery~~²³

- A. All structures associated with the operation of a farm brewery, ~~or farm winery, or farm distillery~~ may not exceed ~~40~~20,000 square feet.
- B. No sale of alcohol for onsite consumption is permitted.
- C. The use may include facilities for fermenting, processing, bottling, packaging, and storage of products produced on-premises
- D. Permitted accessory uses include the following:
 - a. incidental tastings of products produced on-premises
 - b. incidental food sales associated with tastings, not including a restaurant
 - c. sales of packaged products produced on-premises
 - d. sales of novelty and gift items associated with products produced on-premises
- E. Twenty-five percent of the raw products for a product containing alcohol that is produced by a farm brewery, farm winery, or farm distillery must be produced (i.e. grown and harvested) on the premises of the farm brewery, farm winery, or farm distillery. No more ~~with no more~~ than twenty-five percent of ~~anysueh~~ produce utilized for farm wineries and farm distilleries shall originate~~ing~~ from any source outside of West Virginia~~this state~~.
- F. Production limits are as follows:
 - a. A farm brewery may produce annually up to 5,000 barrels of beer (155,000 gallons)
 - b. A farm winery may produce annually up to 50,000 gallons of wine and similar products
 - c. A farm distillery may produce annually up to 20,000 gallons of alcoholic liquor
- G. Buildings located on the premises may exceed the square footage limit of 8.5 (A) provided that the total building area dedicated to the use does not exceed to total permitted square footage. This limit applies to the use of space for distilling, bottling, sales, administrative offices, and customer area, and does not apply to a barn, greenhouse or similar structure that is directly related to agricultural production.

Section 8.6 Farm Market²³

The floor area of a farm market may not exceed 1,500 square feet, a front yard setback of fifty feet (50) from the street right-of-way must be maintained, and off street parking must be provided.

Section 8.7 Jails and Prisons²³

Due to the special conditions surrounding a jail, prison, or penal institution, all such projects shall only be allowed in the Industrial-Commercial Zone and shall be subject to the Development Review System as outlined in Article 6 of this Ordinance.⁵

Section 8.12 West Virginia Legal Fireworks²³

Sales of fireworks are only permitted in the commercial zones provided all other restrictions such as setbacks and the requirements of the Jefferson County Subdivision and Land Development Regulations are met.⁸

Section 8.13 Dormitory²³

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.

Section 8.14 Rural Reception/Event Facility

A Rural Reception/Event Facility is a facility within an existing structure and/or outdoor area for the hosting of events such as weddings and similar events. Such events are allowed by Special Exception in accordance with Section 10.5B of this Ordinance.

A Rural Reception/Event Facility, Small, is a Rural Reception/Event Facility in the Rural District only, for the hosting of events such as weddings of up to 100 attendees, at a frequency of no more than one event per month. Such events are permitted administratively in accordance with the requirements of a Cottage Industry found in Section 4A.5 of this Ordinance.

Section 8.15 Accessory Agricultural Dwelling Unit

A dwelling unit that is incidental and subordinate to the principal dwelling unit, which is located on the same lot as the principal building and is meets all of the following criteria: (a) is limited in size to a maximum of 1,000 heated square feet, gross floor area; (b) is located on a property for which the primary use is an agricultural use as defined by this ordinance; (c) is located on a property of at least 10 acres in area; and (d) is limited to use by a person (and family) who performs agricultural work on the property or acts as a caretaker for the property.

Section 9.5 Projections Into Yards⁸

- A. Projections such as bay windows, chimneys, entrances, uncovered porches, balconies, and eaves may extend into any required yard not more than four (4) feet; provided that such projections are not over ten (10) feet in width. All roof overhangs may extend into any required yard not more than two (2) feet; provided that the primary structure is located entirely within the appropriate setback.²³
- B. Fences and walls over six (6) feet in height shall meet building lines and yard requirements. A building permit is required before construction. Fences and walls six (6) feet and under in height shall be exempt from building lines and yard requirements unless obstructions to vision at an intersection as referenced in Section 4.9.²³
- C. In the Residential - Light Industrial - Commercial District and Residential Growth 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 (in addition to associated stairs or concrete slabs located beneath the deck) 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.

Section 9.6 Accessory Structures

Accessory structures, defined by Section 2.2, shall be permitted in all districts where single-family and two-family dwelling units are permitted. The provisions for accessory structures are as follows.

- A. The minimum distance to a lot line in any District from a single-story utility or storage shed, not exceeding one hundred fifty (150) square feet, shall be five (5) feet.
- B. In any District wherein single-family and two-family dwellings are permitted, the minimum distance from any accessory structure, not attached to the principal permitted use, to the side or rear lot line shall be not less than the longest horizontal dimension of the accessory structure or the minimum distance specified for that District, whichever is the lesser of the two.
- C. No accessory building shall be erected within the required front yard.

Section 9.7 Other Exceptions³

For all lots that were approved with setbacks by the Planning Commission as part of the subdivision process prior to September 1, 1989, the setbacks and sizes shall be as established as a part of that process.

Setbacks are as follows in subdivisions for which no setback was stipulated previously by the Jefferson County Planning Commission as a part of the subdivision process:²³

shall not face the adjoining residence. Signs governed by the Development Review System are subject to Section 10.4 (e). Structures which have more than one use shall be required to use a pylon sign. One is permitted on each street frontage.⁸

- D. All outdoor advertising signs shall be spaced in such a manner that in an Industrial District there shall be a minimum of three hundred (300) feet between signs, and in the Rural District, where permitted, such signs shall be located in such a manner that there shall be one thousand (1,000) feet between signs. This shall be subject to Section 10.4 (e).
- E. All signs accessory to land use that must be evaluated by the Development Review System (DRS) shall be proposed within the DRS application and assessed at the Compatibility Assessment Meeting. Such signs shall be maintained at least one thousand (1,000) feet between signs. Consideration of the placement of such signs with less than one thousand (1,000) foot intervals shall be determined by the Commercial or Residential Uses adjacent to the subject site. Commercial uses adjacent to the subject site may allow spacing intervals of three hundred (300) feet. The Planning Commission shall make this determination if the location cannot be agreed upon at the Compatibility Assessment Meeting.^{2, 17, 21, 23}
- F. No outdoor advertising sign shall be placed closer than three hundred (300) feet to an intersection on a dual or proposed dual highway or within one hundred feet of any other intersection; provided, however, that such signs may be affixed to or located adjacent to a building at such intersections in such a manner as not to materially cause any greater obstruction of vision than caused by the building itself. No business sign shall be so located to obstruct the vision of traffic using entrance ways, driveways, or any public road intersection.
- G. All outdoor advertising, excluding billboards subject to Section 10.4 (h), shall comply with front yard setback provisions in the districts in which they are permitted.
- H. Billboards
 1. No billboard shall be closer to any public highway right-of-way than three (300) feet.
 2. Placement of a billboard must be in a location that is within eight hundred (800) feet of an existing business.
 3. There shall be a minimum of one thousand (1000) feet between billboards.
 4. A billboard shall be no closer than five hundred (500) feet from a church, school, or cemetery.

Section 10.5 Special Exception Uses

~~(Requiring Board of Zoning Appeals after Public Hearing)~~

- A. Special Exception uses listed in this section may be approved by the Board of Zoning Appeals following a public hearing.
 - a. The public hearing shall be conducted according to the requirements of Section 3.4A(3)(c).
 - b. Such hearing may be continued according to the requirements of Section 3.4A(3)(d).

Section 10.5 Special Exception Uses

c. The public hearing is subject to the notification requirements of Section 3.4A(3)(b).

B. The following uses may be approved as a Special Exception:

a. Outdoor advertising signs including billboards. ~~The may be approved by the Board of Zoning Appeals shall determine if itsuch a sign~~ conforms to existing State law and does not have a negative effect on the neighborhood or intent of this Ordinance.^{17,21}

b. Detached "Accessory Agricultural Dwelling Units" for agricultural purposes, such as units for occupancy by farmworkers or caretakers, may be approved based on the Board's evaluation of the size of the subject property, adequacy of vehicular access to the property, impact on adjacent properties, and compatibility with the neighborhood. One unit meeting the definition of "Accessory Agricultural Dwelling Unit" may be permitted administratively for each property meeting the criteria of Section 8.15 on the effective date of this Amendment. Additional units may be permitted by Special Exemption in accordance with this Section.

c. Use of existing structures and outdoor areas as "Rural Reception/Event Facilities" for weddings and similar events in the Rural, Village, Residential Growth, and Residnetial-Light Industrial-Commercial Districts. Such a land use may be approved based on the Board's evaluation of the proposed frequency and size of the proposed events, adequacy of parking area, size of the subject property, adequacy of vehicular access to the property, impact on adjacent properties, and compatibility with the neighborhood. For events exceeding 300 persons, applicants shall provide a traffic control plan.

Section 10.6 Zoning Certificate²

All Zoning Certificate applications for signs may be approved by the Departments of Planning and Zoning if in conformance with the regulations.^{17,21,23}

Section 11.1 Non-Residential Parking Standards

C. Upon request, on a case by case basis, the Zoning Administrator may administratively waive permanent off-street automobile parking and loading requirements for seasonal or temporary uses, agricultural uses, events, or other types of uses that do not require parking on a regular basis. The applicant must provide an exhibit that demonstrates that the parking will occur on level ground, shows the location of the parking, and identifies how handicapped accessibility (if applicable) will be addressed.

Section 11.2 Residential Parking Standards²

To decrease congestion, permanent off-street automobile parking space and truck loading space shall be provided for all new structures and uses, and for existing structures or uses that are increased in size by 20 percent or more after adoption of these regulations.²³

Spaces shall be required per residential uses as follows:

<u>Type of Residences</u>	<u>Parking Requirements</u>
Single Family Detached	Driveway Only
Single Family Attached (Duplex or Two-Family)	Driveway Only ²³
Single Family Attached (Townhouse)	See the Jefferson County Subdivision and Land Development Regulations, Appendix B, Division 5.0 ²³
Multi-Family	See the Jefferson County Subdivision and Land Development Regulations, Appendix B, Division 6.0 ²³

ARTICLE 12: MAP AND TEXT AMENDMENTS

Section 12.1 Purpose

- A. These regulations, restrictions, provisions, and the boundaries of districts provided herein may from time to time be amended, modified, or repealed by the County Commission. Any person, individual, board, commission or bureau of the County may petition the County Commission for such change.
- B. The County Commission shall refer any amendment or alteration of this Ordinance to the Planning Commission for analysis, study, report, and recommendations regarding compatibility with the Comprehensive Plan as well as consideration as to whether a Conditional Use Permit (CUP) or other process may be a more appropriate process.^{17, 21, 23, 25}

Section 12.2 Procedure for Amendment by County Commission^{1, 25}

- A. After the enactment of the Zoning Ordinance, the governing body of the County may amend the Zoning Ordinance without holding an election.^{17, 21}
- B. Before amending the Zoning Ordinance text or map, the governing body, with the advice of the Planning Commission, must find that the amendment is consistent with the adopted Comprehensive Plan, or if it is inconsistent, must make findings in accordance with the requirements of §8A-7-8 et seq of the West Virginia State Code, as amended.^{17, 21, 25}
- C. All amendments to the Zoning Ordinance Map require a Public Hearing to be held by the Planning Commission for the purpose of making a recommendation to the County Commission. Subsequently, all recommended map amendments require a Public Hearing before the County Commission prior to a final determination.
 - 1. Public Notice of the Public Hearing for a Zoning Map amendment before the Planning Commission requires the following:
 - a. A legal advertisement describing the location and identification of the subject parcel for which the zoning is proposed to be changes, including the current tax district, map and parcel number, and the date, time and place of hearing regarding the amendment at least 15 days prior to the date set for such hearing in a newspaper with local circulation;
 - b. Any property affected by the proposed zoning map amendment shall be posted ~~at least 30~~not less than 20 and not more than 28 days prior to the Public Hearing. The posting shall state the time, date, and location of such hearing, as well as, what new zone is being requested on the property; and
 - c. All property owners adjoining the property proposed to be rezoned shall be noticed by first class mail not less than 20 and not more than 28 ~~at least 30~~ days prior to the Public Hearing. The 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

APPENDIX C: PRINCIPAL PERMITTED USES TABLE²³

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

Land Use	R	RG	R-LI-C	I-C	V	General Standards	Additional Standards
Residential Uses							
Dwelling, Single Family	P	P	P	NP	P		
Dwelling, Two Family	P	P	P	NP	P		
Dwelling, Duplex	NP	P	P	NP	P		
Dwelling, Townhouse	NP	P	P	NP	NP		
Dwelling, Multi-Family	NP	P	P	NP	NP		
Day Care Center, Small	P	P	NP	P	NP		
Mobile Home	P	NP	NP	NP	NP		
Mobile Home Park	NP	P	P	NP	NP		
Model Homes/Sales Office	P	P	P	NP	NP	Sec. 8.10	
Home Uses							
Home Occupation, Level 1	P	P	P	P	P	4A.3	4A.1
Home Occupation, Level 2	P	P	P	P	P	4A.4	4A.1
Cottage Industry	P	P	P	P	P	4A.5	4A.1
Institutional Uses							
Church	P	P	P	NP	PC		
Day Care Center, Large	NP	P	P	P	PC		
Hospital	P	P	P	NP	NP		
Group Residential Facility	P	P	P	NP	P		
Group Residential Home	P	P	P	NP	P		
Residential Care Home	P	P	P	NP	P		
Nursing or Retirement Home	NP	P	P	NP	NP		
Cultural Facility	P	NP	P	P	P		
Elementary or Secondary School	P	P	P	NP	NP		
Preschool	P	P	P	NP	NP		
Vocational and Training Facility for Adults	P	P	P	NP	NP		
Public Safety Facility	P	P	P	P	P		
Publicly Owned Facility	P	P	P	P	NP		
Essential Utility Equipment	P	P	P	P	P	4.7	
Industrial							
Salvage Yards	NP	NP	NP	PC	NP		
Slaughterhouses, Stockyards	NP	NP	NP	PC	NP		
Heavy Industrial Uses	NP	NP	NP	P	NP		Sec. 8.9
Light Industrial Uses	NP	***	P	P	NP		Sec. 8.9
Shooting Range	NP	NP	NP	P	NP		

Principal Permitted Uses Table (continued)^{23, 24}

Land Use	R	RG	R-LI-C	I-C	V	General Standards	Additional Standards
Industrial Manufacturing & Processing							
Acid or heavy chemical manufacturer, processing or storage	NP	NP	NP	PC	NP		
Bituminous concrete mixing and recycling plants	NP	NP	NP	PC	NP		
Cement or Lime Manufacture	NP	NP	NP	PC	NP		
Commercial Sawmills	NP	NP	NP	PC	NP		
Concrete and ceramic products manufacture, including ready mixed	NP	NP	NP	PC	NP		
Explosive manufacture or storage	NP	NP	NP	PC	NP		
Foundries and/or casting facilities	NP	NP	NP	PC	NP		
Garbage or dead animal reduction or	NP	NP	NP	PC	NP		
Jails and Prisons	NP	NP	NP	PC	NP		Sec. 8.7
Mineral extraction, mineral processing	NP	NP	NP	PC	NP		
Petroleum products refining or storage	NP	NP	NP	PC	NP		Sec. 8.11
Adult Uses							
Adult Uses	NP	NP	NP	P	NP		Sec. 8.1
Recreational Uses							
Hunting, Shooting, Archery and Fishing Clubs, public or private	P	NP	NP	NP	NP		Sec. 8.8
Commercial Uses							
Antique Shop	NP	NP	P	P	PC		
ATM	NP	NP	P	P	PC		
Branch Bank	NP	NP	P	P	PC		
Barber/Beauty Shop, Limited	NP	NP	P	P	PC		
Bed and Breakfast	P	NP	NP	NP	PC		Sec. 8.3
Commercial Uses	*	**	P	P	*		Sec. 8.9
Country Inn	NP	NP	P	P	PC		
Kennel	P	NP	P	P	NP		Sec. 8.4
Dry Cleaners	NP	NP	P	P	PC		
Florist	NP	NP	P	P	PC		
Medical/Dental/Optical Office, Small	NP	NP	P	P	P		
Non/Not for Profit Commercial Uses	NP	NP	P	P	NP		
Non-Profit Community Centers	P	NP	P	P	NP		
Restaurant, Fast Food, Limited	NP	NP	P	P	PC		
Restaurant, Limited	NP	NP	P	P	PC		
Retail Food Store, Limited	NP	NP	P	P	PC		
Veterinary Services	P	NP	P	P	NP		Sec. 8.x
Video Rental Stores	NP	NP	P	P	PC		
Wireless telecommunications facilities	P	PC	PC	P	PC	Sec. 4B	

Principal Permitted Uses Table (continued)²³

Land Use	R	RG	R-LI-C	I-C	V	General Standards	Additional Standards
Agricultural Uses							
Accessory Agricultural Dwelling Unit	P	NP	NP	NP	NP	Sec. 10.5B	
Agricultural Repair Center	P	NP	P	P	NP		
Agricultural Tourism	P	NP	P	P	NP		
Agricultural Uses as defined in Article 2	P	P	P	P	P		
Farm Brewery or Winery	P	NP	P	P	NP		Sec. 8.5
Farm Winery	P	NP	P	P	NP		Sec. 8.5
Farm Distillery	P	NP	P	P	NP		Sec. 8.5
Farm Market	P	NP	P	P	NP		Sec. 8.6
Farm Vacation Enterprise	P	NP	P	P	NP		
Feed and/or Farm Supply Center	P	NP	P	P	NP		
Horticultural Nurseries and Commercial Greenhouses	P	NP	P	P	NP		
Landscaping Business	P	NP	P	P	NP		
Rental of Existing Farm Building for Commercial Storage (structure must have existed for 5 years)	P	NP	P	P	NP		
Rural Reception/Event Facility, Small	P	NP	NP	NP	NP	Sec. 4A.5	
Rural Reception/Event Facility	P	P	P	NP	P	Sec. 10.5B	
Accessory Uses							
Accessory Uses	P	P	P	P	P		

P = Permitted use

NP = Not permitted use

PC = Use permitted conditionally subject to requirements of district

* = Limited permitted uses

** = Accessory use to a planned residential community

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

AGENDA REQUEST FORM

Name: Tim Stanton

Department or Entity: Jefferson County Commission – Financial Director

Estimation of amount of time needed for appointment: 15 minutes

Date Requested – 1st Choice: December 5, 2013

Date Requested – 2nd Choice: _____

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

Subject: **Financial Update**

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

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

Attachments:

FY14 General Fund Budget Discussion

The current budget has \$3,483,539 in unencumbered reserves being used to balance the FY14 budget. The County is not in a financial position where they can use unencumbered reserves to balance the budget. The \$3,483,539 needs removed from the budget and an additional \$416,000 needs removed from the budget resulting in \$3,900,000 in expenditures being removed from the FY14 budget. The above will result in the County having a fund balance as of June 30, 2014 in the amount of \$3,530,600 which is 16.67% ratio of fund balance to operating expenditures which represents the minimum acceptable fund balance per the GFOA (Government Finance Officers Association). As of June 30, 2013 your ratio was 14.39% which is why you experienced cash flow issues the first quarter of the fiscal year.

In order to maintain financial stability the County needs to reduce expenditures by \$3,900,000 this year and adopt several financial policies.

Reduction of Expenditures

On the attached page is a list of expenditure reductions for discussion. All revenue and expenditure lines have been reviewed in the FY14 budget. The attached report starts with \$3,900,000 in budget reductions and then lists those specific lines which could be adjusted. The report shows possible budget reductions of \$3,603,625. In order to maintain adequate cash flow additional reductions need to be determined that are not on the attached list. All line items that are footnoted with (1) are items that are agreed reductions with Department Managers or they represent budget corrections. All items that are not noted with a footnote of (1) need discussed with the Commissioner Board.

Also attached is a list of contributions that were made by the County in FY12, FY13 and shows the amount requested in FY14. The Board will need to determine how much, if any, will be funded in FY14. The reductions of \$3,603,625 assumes no funding of charitable organizations will occur in FY14.

Technology Expenditures

Currently all departments are budgeting for their computer and technology needs at a department level. It is my recommendation that all computer hardware be consolidated and budgeted within the technology department with the technology department determining the priority of replacement of computers. It is also my recommendation that all software and IT support expenditures be approved by the technology department prior to the department incurring the cost.

Other Recommendations

Until the time that the County has adequate reserves the following should be adopted.

There should be a hiring freeze for all new positions and replacement positions.

Avoid new services which require additional personnel until we determine the funds we have available and potential services which might be impacted.

Avoid purchasing any items until the purchase order has been approved by the Commissioners.

Avoid spending dollars for any service that is absolutely not necessary or state mandated.

Each manager must stay within their budgeted line items and conserve funds and continue to report budget reduction opportunities.

Proposed FY14 Budget Reductions for Discussion							Maximum
GL Acct #	Department	Description	Reduction	available to cut			
		Amount needed to restore to Fund Balance	3,900,000				
1	001-xxx-01-106-000	Various	Health Insurance budget adjustment	(207,568)		(1)	
2	001-401-xx-xxx-000	Commissioners	Printing/travel/training/equip/contracted services	(45,900)		(1)	
3	001-412-xx-xxx-000	Ag Agent	Agreed budget reductions of Ag Agent dept 412	(4,198)		(1)	
4	001-712-xx-xxx-000	Emer Communications	Agreed budget reductions of dept 712	(69,564)		(1)	
5	001-433-xx-xxx-000	GIS	Agreed budget reductions of dept 433	(24,165)		(1)	
6	001-440-xx-xxx-000	Engineering	Agreed budget reductions of dept 440	(16,145)		(1)	
7	001-711-xx-xxx-000	Homeland Security	Agreed budget reductions of dept 711	(1,800)		(1)	
8	001-439-xx-xxx-000	Planning	Agreed budget reductions of dept 439	(26,695)		(1)	
9	001-717-xx-xxx-000	Garage	Agreed budget reductions of dept 717	(15,000)		(1)	
10	001-425-02-xxx-000	Maintenace-Other Blgs	Agreed budget reductions of dept 425	(65,000)		(1)	
11	001-406-xx-xxx-000	Assessor	Assessor budget adjustment	(94,185)		(1)	
12	001-900-05-567-000	Parks/rec	Open position not filled	(18,147)		(1)	
13	001-301-TT-000	Revenue	Public Utilities Revenue	(489,000)		(1)	
14	001-301-TT-002	Revenue	AD Valorem taxes 1st yr	289,711		(1)	
15	001-301-TT-003	Revenue	AD Valorem taxes 2nd yr	158,754		(1)	
16	001-301-TT-004	Revenue	AD Valorem taxes 3rd yr	38,576		(1)	
17	001-325-IG-000	Revenue	Federal Payment in Lieu of taxes	(10,000)		(1)	
18	001-330-CS-000	Revenue	Sheriff Revenue	14,500		(1)	
19	001-330-CS-001	Revenue	Sheriff Revenue	(14,500)		(1)	
20	001-331-CS-000	Revenue	Cnty Clerk Revenue	20,000		(1)	
21	001-331-CS-001	Revenue	Voter Registration Fees	(20,000)		(1)	
22	001-331-CS-02	Revenue	Cnty Clerk Preservation	(1,500)		(1)	
23	001-382-MM-000	Revenue	Reimbursements	64,026		(1)	
24	001-394-TR-000	Revenue	Reimbursements	143,962		(1)	
25	001-304-OT-000	Revenue	Transfer tax increase	(736,000)		(1)	
26	001-401-05-567-000	Commissioners	Partnership for Affordable Housing	(40,000)	40,000		
27	001-424-xx-xxx-000	Maintenance	Estimated savings in Dept 424 CTHSE	(47,900)			
28	001-425-02-xxx-000	Maintenance	Estimated savings in Dept 425 Other bldgs	(5,000)			
29	001-699-06-675-000		reduce contingency	(786,448)	926,456		
30	Various	Various	Payroll budget adjustment	(82,763)	303,548		
31	Various	Various	Telephone Adjustment	(150,000)			
32			Coal Severance	(494,808)			
33	001-403-xx-xxx-000	Cir Court	Cir Court budget Adjustment	(5,000)			
34	001-425-02-213-001	Maintenance	Maintenance electricity	(7,500)		(2)	
35	001-402-xx-xxx-000	County Clerk	Budget adjustments of Clerk	(50,000)			
36	001-401-02-223-001	Commissioners	1/2 reduction of HRA funding	(80,000)	142,106		
37	001-916-05-567-000	Library	1/2 reduction of Library Capital funding	(130,000)	130,000	(3)	
38	001-431-05-568-000	Econ Dev	Econ Dev Contribution	(15,343)	63,929	(4)	
39	001-431-05-568-000	Econ Dev	Contribution to Airport Authority	(6,500)	11,500	(5)	
40	001-808-05-567-000	Solid Waste	Contribution to Solid Waste	(18,375)	18,375	(6)	
41	001-900-05-567-004	Parks/Rec	Fireworks	(8,000)	8,000	(7)	
42	001-900-05-567-005	Parks/Rec	Scholarship fund	(5,000)	5,000	(7)	
43	001-900-05-567-006	Parks/Rec	Audit Fees	(10,000)	10,000	(7)	
44	001-952-05-567-000	Senior Citizens	Contribution	(6,300)	6,300	(8)	
45	001-953-05-567-000	Public Trans	Contribution	(6,850)	6,850	(9)	
46	001-715-05-567000	Ambulance Authority	Ambulance Authority Contribution	(268,000)	1,118,226	(10)	
47	001-401-05-568-000	Commissioners	Commissioner contributions	(250,000)	250,000		
		Additional reductions which need to be made		296,375			
		(1) Budget adjustment ready to sign					
		(2) Per Bill if electric heaters are removed					
		(3) FY12 paid \$221,160, FY13 paid \$240,000, FY14 budget \$260,000					
		(4) FY12 paid \$73,069, FY13 pd \$127,909, FY14 budget \$127,909. Reduce 12% to funding of \$112,516					
		(5) FY12 paid zero, FY13 pd \$5000, FY14 budget \$11500. Reduce to FY13 level of \$5,000					
		(6) FY12 paid \$35,000, FY13 \$35,000, FY14 budget \$36,750					
		(7) New in FY14					
		(8) FY12 paid \$5,990, FY13 zero, FY14 budget \$6,300					
		(9) FY12 paid \$13,823, FY13 paid \$13,823, FY14 budget \$13,700					
		(10) Reduction to FY12 allocation would be \$274,000. Paid \$1,962,500 FY12, \$2,187,500 FY13; \$2,236,453 FY14. Reduce allocation by 12% or \$268,000					

Jefferson County Commission Community Grants 2012-2013	Paid FY12	Paid FY13	FY2014	FY14	
ORGANIZATIONS			Requested		Funds will be used for:
American Conservation Film Festival	0	0	5,000		Upgrade ACFF's website and improve and expand marketing
Animal Welfare Society of Jefferson County	15,300	0	15,000		Operating budget
Berkeley County Council	36,940	81,762			
Blue Ridge Mountain Watershed Coalition	0	15,000	No Request	0	
Boys & Girls Club of the Eastern Panhandle	5,000	2,000	15,000		After school & summer programs
CASA(Court Appointed Special Advocates) o/t East. Panhandle	2,000	3,000	5,000		Volunteer recruitment & training
Charles Town Race Track Chaplaincy	2,500	2,000	No request	0	
Community Alternatives to Violence (CAV)	5,000	3,000	5,000		Subsidize class fees
Community Outreash	0	1,217	No request	0	
Contemporary American Theater Festival (CATF)	0	1,000	5,000		
Duffields Station Center (train station)	1,000	0	No request	0	
Eastern Panhandle Conservation District	4,000	4,000	10,000		Annual tree sale project
Eastern Panhandle Free Clinic	16,000	25,000	25,000		Provide healthcare and medications
For the Love of Children/Outdoor Education(FLOC)	3,000	0	3,500		Operating expenses
Freedoms Run/Eastern Areas Health Education Center	0	3,000	No request	0	
Good Shepherd Interfaith Volunteer Caregivers	15,000	20,000	25,000		Operating expenses
Harpers Ferry Historical Association	0	500	No request	0	
Corp of Harpers Ferry	12,000	0	No request	0	
Hospice of the Panhandle	10,000	10,000	10,000		Furnishing 14 bed inpatient facility
Jefferson County Community Ministries	4,000	4,500	10,000		Help JC residents facing electric termination
Jefferson County Chamber	1,000	0	No request	0	
Kiwanis Club of Charles Town	1,500	1,500	1,500		Christmas toys for children in Jefferson County newborn to 12 yrs old
Meals on Wheels	5,000	5,000	10,000		Apply dollar for dollar monies toward United Way match
NAACP of Jefferson County	2,500	2,500	2,500		African American Cultural Heritage Festival cost of rental of stage/sound system
Patriot's Path Foundation, Inc.	0	0	10,000		Veterans Agriculture Training Center
Potomac Headwaters RC&D	1,200	1,000	No request	0	
Ranson Parks and Recreation	0	7,200	No request	0	
Safe Haven Child Advocacy Ctr./Children's Home Soc.	5,000	3,000	5,000		Grant matching funds
Shepherdstown Public Library	0	0	50,000		12,000 sq. ft. ADA compliant library and resource center
Corp of Shepherdstown	3,500	0	No request.	0	
Shepherdstown Area Independent Living (SAIL)	0	5,000	20,000		Executive Director Salary - <i>(one time only funding)</i>
Shepherdstown Community Club (Men's club)	1,000	3,000	9,979		Renovation of kitchen -War Memorial Bld; Replace picnic tables Morgans Grove Park
Shepherdstown Day Care	10,000	15,000	15,000		Educational and childcare services
St. Andrews Mountain Community Ctr., LLC	2,500	4,000	2,500		Offset of heating and utility costs to help keep Library operating - only
Teen Court	0	0	4,500		Staff and youth training - Rent - Copier
Total Funding	164,940	223,179	264,479		

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

AGENDA REQUEST FORM

Name: Debbie Keyser

Department or Entity: Jefferson County Commission

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

Date Requested – 1st Choice: December 5, 2013

Date Requested – 2nd Choice: _____

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

Subject: **Discussion of the Resolution for Establishment of Time and Place of Regular Jefferson County Commission Meetings**

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

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

Attachments: Resolution for of the Establishment of Time and Place of Regular Meetings (adopted the 4th of April, 2013)

RESOLUTION

ESTABLISHMENT OF TIME AND PLACE OF REGULAR MEETING

BE IT RESOLVED, the Jefferson County Commission, does hereby designate the following time and place of its regular meetings;

WHEREAS, a decision was made at the regular meeting of the County Commission on Thursday, September 27th, 2012 that effective December 1st, 2012, the Jefferson County Commission will begin a new regular Commission meeting schedule. The Commission will hold its regular meeting at 9:30 a.m. on the first and third Thursday of every month;

WHEREAS, the meeting place for the Regular meetings shall be held in the County Commission Meeting Room on the 1st floor of the Old Charles Town Library, 200 East Washington Street, Charles Town, West Virginia;

BE IT FURTHER RESOLVED, the Jefferson County Commission will publish this Resolution in the newspaper, post on the Jefferson County website, and directs that a copy of this Resolution be posted and maintained on the County's official bulletin board located at the Jefferson County Courthouse.

Adopted this 5th day of December, 2013.

**PRESIDENT
JEFFERSON COUNTY COMMISSION**

ATTESTED: _____

COUNTY CLERK

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

AGENDA REQUEST FORM

Name: Jessica Carroll

Department or Entity: Jefferson County Commission

Estimation of amount of time needed for appointment: 5 minutes

Date Requested – 1st Choice: December 5, 2013

Date Requested – 2nd Choice: _____

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

Subject: **Approval of the Jefferson County Commission Holiday Schedule for 2014**

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

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **I move approval of the Jefferson County Commission Holiday Schedule for 2014 as presented.**

Attachments: listing of the Jefferson County Commission Holiday Schedule for 2014, 2014 Holiday/Pay Day Calendar

JEFFERSON COUNTY COMMISSION HOLIDAY SCHEDULE 2014



New Year's Day	Wednesday, January 1, 2014
Martin Luther King's Day	Monday, January 20, 2014
President's Day	Monday, February 17, 2014
Primary Election	Tuesday, May 13, 2014
Memorial Day	Monday, May 26, 2014
West Virginia Day	Friday, June 20, 2014
Independence Day	Friday, July 4, 2014
Labor Day	Monday, September 1, 2014
Columbus Day	Monday October 13, 2014
General Election	Tuesday, November 4, 2014
Veteran's Day	Tuesday, November 11, 2014
Thanksgiving Day	Thursday, November 27, 2014
Day after Thanksgiving	Friday, November 28, 2014
Christmas Eve	½ Day, Wednesday, December 24, 2014
Christmas Day	Thursday, December 25, 2014
New Years Eve	½ Day, Wednesday, December 31, 2014

IN ADDITION TO THE DAYS LISTED ABOVE, THE COMMISSION WILL OBSERVE AS HOLIDAYS, ANY NATIONAL, STATE OR OTHER ELECTION DAY THROUGHOUT THE COUNTY, AND ALL DAYS WHICH MAY BE APPOINTED OR RECOMMENDED BY THE GOVERNOR, OF THIS STATE, OR THE PRESIDENT OF THE UNITED STATES, AS DAYS OF THANKSGIVING, OR FOR THE GENERAL CESSATION OF BUSINESS, ANY DAY OR PART THEREOF DESIGNATED BY THE GOVERNOR AS TIME OFF, WITHOUT CHARGE AGAINST ACCRUED ANNUAL LEAVE, FOR STATE EMPLOYEES STATEWIDE MAY ALSO BE TIME OFF FOR COUNTY EMPLOYEES IF THE COUNTY COMMISSION ELECTS TO DESIGNATE THE DAY OR PART THEREOF AS TIME OFF, WITHOUT CHARGE AGAINST ACCRUED ANNUAL LEAVE FOR COUNTY EMPLOYEES. ANY ENTIRE OR PART STATE WIDE DAY OFF DESIGNATED BY THE GOVERNOR MAY, FOR ALL COURTS BE TREATED AS IF IT WERE A LEGAL HOLIDAY, AS PROVIDE FOR IN 2-2-1 OF THE WEST VIRGINIA CODE, AS AMENDED.

Date: _____

PRESIDENT, JEFFERSON COUNTY COMMISSION

§2-2-1. Legal holidays; official acts or court proceedings.

(a) The following days are legal holidays:

- (1) The first day of January is "New Year's Day";
 - (2) The third Monday of January is "Martin Luther King's Birthday";
 - (3) The third Monday of February is "Presidents' Day";
 - (4) The last Monday in May is "Memorial Day";
 - (5) The twentieth day of June is "West Virginia Day";
 - (6) The fourth day of July is "Independence Day";
 - (7) The first Monday of September is "Labor Day";
 - (8) The second Monday of October is "Columbus Day";
 - (9) The eleventh day of November is "Veterans' Day";
 - (10) The fourth Thursday of November is "Thanksgiving Day";
 - (11) The day after Thanksgiving Day is "Lincoln's Day";
 - (12) The twenty-fifth day of December is "Christmas Day";
 - (13) Any day on which a general, primary or special election is held is a holiday throughout the state, a district or an incorporated city, town or village in which the election is conducted;
 - (14) General election day on even years shall be designated Susan B. Anthony Day, in accordance with subsection (b), section one-a of this article; and
 - (15) Any day proclaimed or ordered by the Governor or the President of the United States as Thanksgiving, or a day for the general cessation of business, is a holiday.
- (b) If a holiday otherwise described in subsection (a) of this section falls on a Sunday, then that day shall be a legal holiday. If a holiday otherwise described in subsection (a) of this section falls on a Saturday, then that day shall be a legal holiday: *Provided*, That this subsection (b) shall not apply to subdivisions (13), (14) and (15) of this section.
- (c) Any day or part thereof designated by the Governor as time off, without charge against employees statewide may also be time off for county employees if the county commission elects to do so. Any day or part thereof designated as time off, without charge against accrued annual leave for county employees. Any day or part thereof designated by the Governor may, for all courts, be treated as if it were a legal holiday.

AGENDA REQUEST FORM

www.jeffersoncountywv.org



Name: Sandy Slusher McDonald, Deputy County Administrator

Department or Organization: County Commission

Estimation of amount of time needed for appointment: _____

Date Requested – 1st Choice: December 5, 2013

Date Requested – 2nd Choice: _____

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

Subject (Wording to be placed on agenda): **Set date and time for first meeting of 2014**

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

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

Motion to approve January 2, 2014 at 9:30 am for the first meeting of 2014

Are documents attachments? Yes No

If not, explain:

Is a projector needed? Yes No

Contact information:

Email address: _____

Phone number: _____

AGENDA REQUEST FORM

www.jeffersoncountywv.org



Name: Jane Tabb

Department or Organization: County Commission

Estimation of amount of time needed for appointment: _____

Date Requested – 1st Choice: Dec. 5

Date Requested – 2nd Choice: _____

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

Subject (Wording to be placed on agenda): Ambulance Fee

Please provide the County Commission with a description of your request or presentation, including any background information: Counsel opinion on proper use of ambulance fee.

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 No

Contact information:

Email address: Vinemont@frontiernet.net

Phone number: 304.725.4325

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

AGENDA REQUEST FORM

Name: Roger Goodwin

Department or Entity: Department of Engineering

Estimation of amount of time needed for appointment: 5 minutes

Date Requested – 1st Choice: November 21, 2013

Date Requested – 2nd Choice: _____

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

Subject: Bond reduction and/or release.

Please provide the County Commission with a description of your request or presentation, including any background information: Partial release of the Construction Bond security for Hospice of the Panhandle, Inc. (File #S10-05) – Letter of Credit #10010976610 with Susquehanna Bank, Martinsburg, WV.

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): I authorize a partial release of \$1,511,536.00 from the construction bond amount for Hospice of the Panhandle, Inc. (File #S10-05).

Attachments: Construction Bond Release Letter
Bond Release Request Report
Site Map



JEFFERSON COUNTY COMMISSION

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

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

Web: www.jeffersoncountywv.org

PRESIDENT

Dale Manuel

VICE PRESIDENT

Walt Pellish

COMMISSIONER

Jane Tabb

COMMISSIONER

Patsy Noland

COMMISSIONER

Lyn Widmyer

November 21, 2013

Mr. Guy Avey

Vice President

Susquehanna Bank

P. O. Box 906

Charles Town, West Virginia 25414

RE: Irrevocable Letter of Credit #10010976610 dated August 2, 2012
Construction Bond Surety for Hospice of the Panhandle, Inc. – Hospice of
the Panhandle, Inc. (PC File #S10-05).

Dear Mr. Avey:

The Jefferson County Commission authorizes a partial release of \$1,511,536.00 from the construction bond amount for Hospice of the Panhandles, Inc. – Hospice of the Panhandle, Inc., for a new construction bond amount of \$456,199.00. This project is located off of Charles Town Road (Old Route 9) on the Jefferson/Berkeley County line. Work remaining includes but is not limited to the following:

1. Seeding and mulching
2. Paving
3. Landscaping
4. Completion of sewer lines
5. Bond contingency amount

In summary, you are hereby authorized to reduce the amount for the above referenced Letter of Credit #10010976610 originally issued in the amount of \$1,967,735.00 to \$456,199.00. Please contact the Jefferson County Department of Engineering at (304)-728-3257 if you have any questions.

Sincerely,

Dale Manuel, President
Jefferson County Commission

DM:rfb

cc: Mr. Robert Eckels, PC, Architect
1927 Rock Cliff Drive
Martinsburg, West Virginia 25401
Department of Engineering

County Administrator
Debbie Keyser

Deputy County Administrator
Sandy Slusher McDonald

Email: engineering@jeffersoncountyv.org

BOND REDUCTION or RELEASE REQUEST - REPORT

Date Received: 11 / 06 / 2013

J.C.P.C. File No. S 10 - 05

Consultant/Engineer/Firm Name: ROBERT ECKELS

Mailing Address: 1927 ROCK CLIFF DRIVE

City: MARTINSBURG State: WV Zip: 25401

Contact Person: BOB ECKELS Phone: 304-267-7595

Project/Subdivision Name: HOSPICE OF THE PANHANDLE

Section/Phase: _____ Lots: _____

Review Comments:

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

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

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

_____ Bonding Policy & Unit Cost Figures attached for your use.

Comments: "AS-BUILTS" & THIRD PARTY CERTIFICATIONS HAVE BEEN RECEIVED.

RECOMMEND REDUCTION.

Approved for:
BOND REDUCTION
By: [Signature] Date: 11/06/13
County Engineer

Original Bond Amt. \$ 1,711,073 + 15% Cont. \$ 256,661 = Total Original Bond Amt. \$ 1,967,735

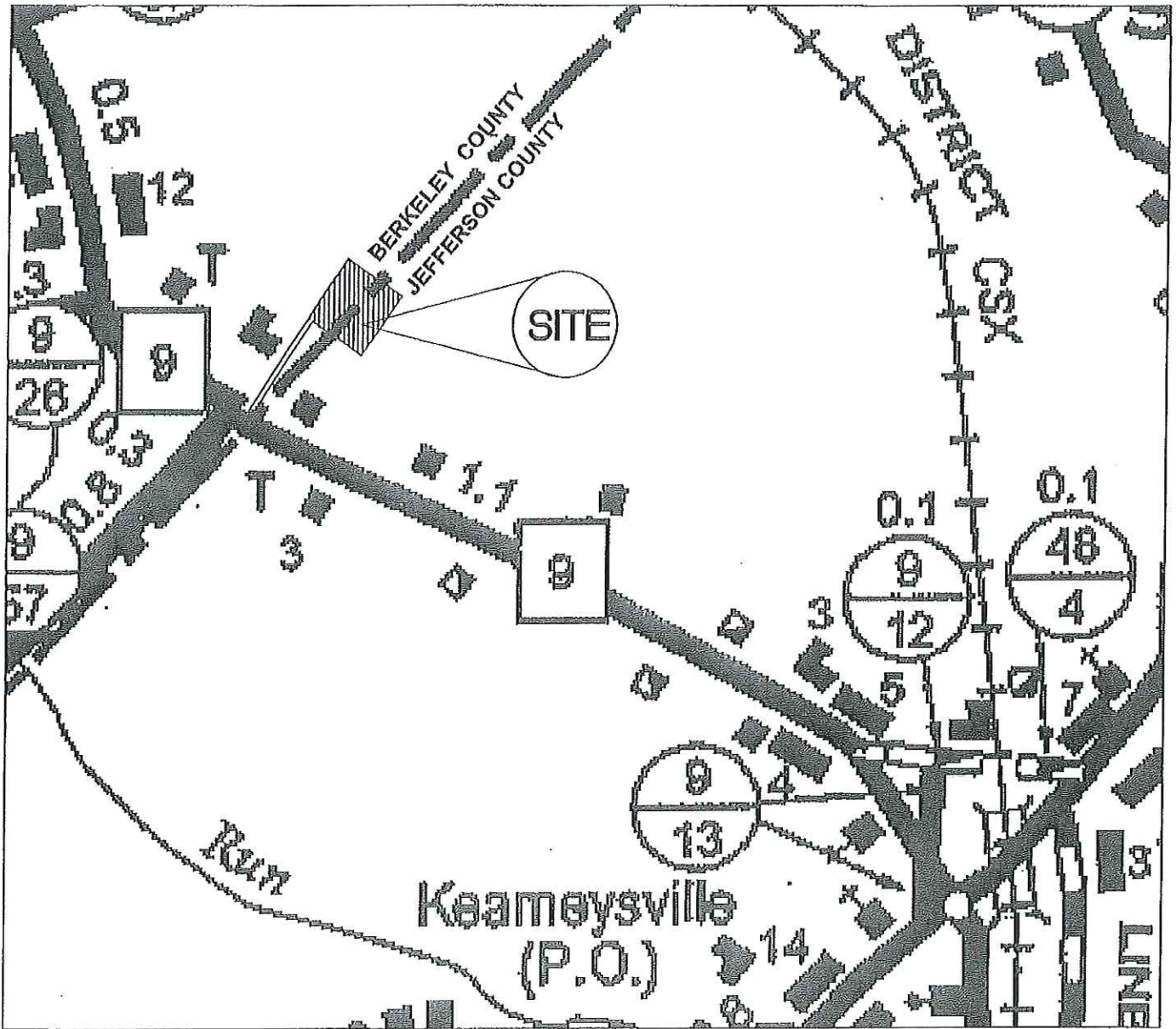
Total Current Bond Amount \$ 1,967,735.00

Cost of Work Remaining \$ 396,694.00 + Contingency Amount \$ 59,504.00

= Approved for Revised Bond Amount \$ 456,199.00

Reviewed By: Joseph W. Kent Title: L.D.I.

Signature: [Signature] Date: 11 / 06 / 2013



VICINITY MAP
 SCALE: 1" = 2,000'



STATE OF WEST VIRGINIA

Department of Revenue
State Tax Department

Earl Ray Tomblin
Governor

Mark W. Matkovich
Acting State Tax Commissioner

November 21, 2013

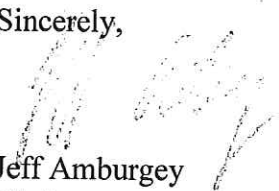
Ms. Angie Banks
Assessor of Jefferson County
104 E. Washington Street
Charles Town, West Virginia 25414

Dear Ms. Banks:

Each year the Property Valuation Training and Procedures Commission (PVC) reviews the progress of county assessors' offices in complying with standards established by the PVC. At our meeting on November 13, 2013, the PVC reviewed the county monitoring reports for Tax Year 2013.

At that meeting, we were advised that your office is in compliance with all areas that were reviewed. You and your office personnel are to be congratulated. On behalf of the members of the PVC, I wish to congratulate you on a job well done.

Sincerely,



Jeff Amburgey
Chairman
Property Valuation Training
and Procedures Commission

JA/aj

cc: Members, Property Valuation Training and Procedures Commission
President, Jefferson County Commission
Superintendent, Jefferson County Schools
Mayor, All Municipalities, Jefferson County
Mark W. Matkovich, Acting State Tax Commissioner

RECEIVED

DEC 02 2013

Jefferson County Commission

Sandy McDonald

From: jeffersoncountycommissionalerts-owner@jeffersoncountywv.org on behalf of Jefferson County Alerts [alerts@jeffersoncountywv.org]
Sent: Thursday, November 21, 2013 4:40 PM
To: jeffersoncountycommissionalerts@jeffersoncountywv.org; jhartman@jeffersoncountywv.org
Subject: Board of Zoning Appeals - December Meeting Change

NOTICE

Please be advised, the Board of Zoning Appeals meeting originally scheduled for Thursday, December 19, 2013, at 3:00 p.m. has been rescheduled to **Wednesday, December 18, 2013**, at **3:00** p.m.

The meeting will be in the Charles Town Library Conference Room located at 200 East Washington Street, at the side entrance on Samuel Street, in the City of Charles Town, WV.

By Order of the
Jefferson County Board of Zoning Appeals
Christy Huddle, Vice Chair

*****Please do not reply to this email. If you have questions or need assistance, please email info@jeffersoncountywv.org or call the County Commission office at 304-728-3284.*****



Loudoun County, Virginia

Planning Department

1 Harrison Street, S.E., 3rd Floor, P.O. Box 7000, MSC #62

Leesburg, Virginia 20177-7000

Telephone (703) 777-0246 • Fax (703) 777-0441

RECEIVED

November 20, 2013

NOV 25 2013

Debbie Keyser
County Administrator
PO Box 250
Charles Town, WV 25414-0250

Jefferson County Commission

Dear Ms. Keyser:

As part of the legal notice requirements contained in Section 15.2-2204 (amended) of the Code of Virginia, the following regulations must be addressed relating to notification of adjacent localities:

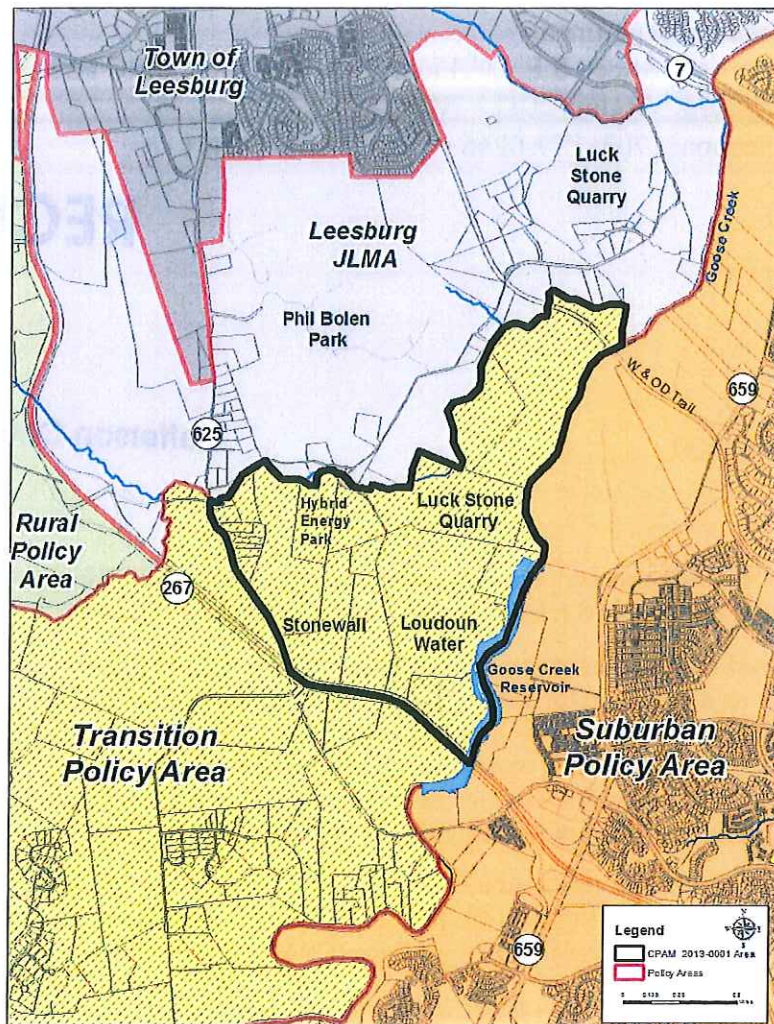
“When a proposed comprehensive plan or amendment thereto; a proposed change in zoning map classification; or an application for special exception for a change in use ..., involves any parcel of land located within one-half mile of a boundary of an adjoining locality of the Commonwealth, then, in addition to the advertising and written notification as above required, written notice shall also be given by the local commission, or its representative, at least 10 days before the hearing to the chief administrative officer, or his designee, of such adjoining locality.”

In accordance with these regulations, this is to inform you that on **December 11, 2013** the Loudoun County Board of Supervisors will hold a public hearing on a Comprehensive Plan Amendment (CPAM) for the northern portion of the Lower Sycolin Subarea of the Transition Policy Area (CPAM 2013-0001).

On November 7, 2012 the Loudoun County Board of Supervisors initiated CPAM 2013-0001 to amend the Revised General Plan, in order to revise certain land use designations shown on the Planned Land Use Map, and certain land use policies applicable to the northern portion of the Lower Sycolin Subarea of the Transition Policy Area, and to amend the Loudoun County 2010 Countywide Transportation Plan in order to revise the alignment of a section of Cochran Mill Road (Route 653) located within the subject area. This CPAM is intended to better reflect the emerging industrial character of the subject area.

Under existing Revised General Plan policies, the Transition Policy area is recommended to have a more rural character, with lower residential densities of 1 dwelling unit per 10 acres in a clustered pattern, or non-residential uses that achieve a visual and spatial transition between the Suburban and Rural Policy Areas. Recently the County approved four large rezonings that encompass over 700 acres of previously undeveloped land within the subject area that will permit the future development of a natural gas fueled electric power plant, data centers, a quarry, and a water treatment plant. The approved rezonings acknowledged the unique man-made and natural features of the subject area which include proximity to a major natural gas transmission line and a high-voltage overhead electric transmission line as well as concentrations of diabase rock in proximity to existing quarrying operations.

The northern portion of the Lower Sycolin Subarea of the Transition Policy Area, is generally located on the northeast side of Sycolin Road (Route 625) and the Dulles Greenway (Route 267), east of the Leesburg Joint Land Management Area (JLMA), and west of the Goose Creek, and is more particularly shown on the map below.



This public hearing will take place in the Board of Supervisors Meeting Room, County Government Center, 1 Harrison Street, S.E., Leesburg, VA, on **Wednesday, December 11, 2013, at 6:00 p.m.** Written comments can be provided to the Loudoun County Board of Supervisors, c/o Loudoun County Department of Planning, 1 Harrison St., S.E., 3rd Floor, P.O. Box 7000, MSC #62, Leesburg, Virginia, 20177-7000 (attention: Pat Giglio).

The Board of Supervisors staff report, proposed policies and all attachments will be available online at <http://www.loudoun.gov/bos> after November 26, 2013. A second notification letter will be sent to you on December 5, 2013.

Should you have any questions, please do not hesitate to contact me at 703-777-0246.

Sincerely,

Pat Giglio

Pat Giglio, Project Manager

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

Week Ending Date	Week Ending November 16, 2013 FY14 November 22, 2013
To be Deposited on:	
Amount Played	58,082,656.13
Amount Won	51,976,740.95
Amount Promo	217,932.00
MWAP Contribution	<u>2,986.47</u>
Adjusted Gross Terminal Revenue	<u>5,884,996.71</u>
Administrative Costs @ 4%	235,399.87
Excess Lottery Fund @ 4%	<u>0.00</u>
Net Terminal Revenue	<u>5,649,596.84</u>
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>
Adjusted Net Terminal Revenue	<u>5,649,596.84</u>
Racetrack @ 46.50% / 42%	2,627,062.53
Lottery Fund @ 30% / 0%	1,694,879.08
Excess Lottery Fund @ 0% / 41%	0.00
Race Track Purses @ 7% / 14% / 8%	790,943.56
Workers' Compensation Debt Reduction @ 7% / 0%	0.00
Employee Pension Fund @ 1% / .5%	56,495.96
Greyhound Development @ .75%	42,371.98
Thoroughbred Development @ .75%	42,371.98
Racing Commission @ 1%	56,495.96
County/Municipality @ 2%	112,991.92
3% Funds:	
Tourism Promotion Fund @ 1.375%	77,681.96
Development Office Promotion Fund @ .375%	21,185.99
Research Challenge Fund @ .5%	28,247.98
Capitol Renovation and Improvement Fund @ .6875%	38,840.98
2004 Capitol Complex Parking Garage Fund @ .0625%	3,531.00
1% Funds:	
State Capitol Complex Parking Garage @ 1%	0.00
Cultural Facilities and Capitol Resources @ .5%	28,247.98
Capitol Dome and Capitol Improvements @ .5% / 1%	<u>28,247.98</u>
	<u>5,649,596.84</u>

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
11/16/13	\$ 112,991.92	\$ 56,495.96	\$ 56,495.96	\$ 4,480.13	\$ 22,541.89	\$ 1,225.96	\$ 19,027.84	\$ 9,220.14
Subtotal	\$ 2,336,631.64	\$ 1,624,347.56	\$ 712,284.08	\$ 56,484.12	\$ 284,201.36	\$ 15,456.56	\$ 239,897.27	\$ 116,244.77

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	11/16/2013	56,495.96
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
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05/29/2010	67,157.40	05/28/2011	64,724.06	05/26/2012	67,396.24	06/01/2013	65,920.66
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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
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06/30/2010	29,667.19	06/30/2011	34,351.16	06/30/2012	58,207.40	06/30/2013	11,509.54

TOTALS **4041141.56**

4016541.01

4124906.8

3580645.18

1624348

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	October, 2013	81,066.09
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		
Total 2010-2011	1297391.7	Total 2011-2012	1602900.84	Total 2012-2013	1530462.31	Total 2013-2014	372625.94

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	October, 2013	243,198.27
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		
Total 2011-2012	4,808,702.50	Total 2012-2013	4,608,334.13	Total 2013-2014	1,117,877.82

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

Week Ending Date	Week Ending
	November 23, 2013
	FY14
To be Deposited on:	December 2, 2013
Amount Played	52,702,843.96
Amount Won	47,447,784.72
Amount Promo	186,835.00
MWAP Contribution	<u>2,742.64</u>
Adjusted Gross Terminal Revenue	<u>5,065,481.60</u>
Administrative Costs @ 4%	202,619.27
Excess Lottery Fund @ 4%	<u>0.00</u>
Net Terminal Revenue	<u>4,862,862.33</u>
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>
Adjusted Net Terminal Revenue	<u>4,862,862.33</u>
Racetrack @ 46.50% / 42%	2,261,230.98
Lottery Fund @ 30% / 0%	1,458,858.71
Excess Lottery Fund @ 0% / 41%	0.00
Race Track Purses @ 7% / 14% / 8%	680,800.73
Workers' Compensation Debt Reduction @ 7% / 0%	0.00
Employee Pension Fund @ 1% / .5%	48,628.62
Greyhound Development @ .75%	36,471.47
Thoroughbred Development @ .75%	36,471.47
Racing Commission @ 1%	48,628.62
County/Municipality @ 2%	97,257.24
3% Funds:	
Tourism Promotion Fund @ 1.375%	66,864.36
Development Office Promotion Fund @ .375%	18,235.73
Research Challenge Fund @ .5%	24,314.31
Capitol Renovation and Improvement Fund @ .6875%	33,432.18
2004 Capitol Complex Parking Garage Fund @ .0625%	3,039.29
1% Funds:	
State Capitol Complex Parking Garage @ 1%	0.00
Cultural Facilities and Capitol Resources @ .5%	24,314.31
Capitol Dome and Capitol Improvements @ .5% / 1%	<u>24,314.31</u>
	<u>4,862,862.33</u>

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
11/16/13	\$ 112,991.92	\$ 56,495.96	\$ 56,495.96	\$ 4,480.13	\$ 22,541.89	\$ 1,225.96	\$ 19,027.84	\$ 9,220.14
11/23/13	\$ 97,257.24	\$ 48,628.62	\$ 48,628.62	\$ 3,856.25	\$ 19,402.82	\$ 1,055.24	\$ 16,378.12	\$ 7,936.19
Subtotal	\$ 2,433,888.88	\$ 1,672,976.18	\$ 760,912.70	\$ 60,340.37	\$ 303,604.18	\$ 16,511.80	\$ 256,275.39	\$ 124,180.96

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	11/16/2013	56,495.96
11/21/2009	59,547.05	11/20/2010	56,010.08	11/19/2011	60,690.60	11/24/2012	65,888.86	11/23/2013	48,628.62
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05/29/2010	67,157.40	05/28/2011	64,724.06	05/26/2012	67,396.24	06/01/2013	65,920.66
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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
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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		
Total 2010-2011	1297391.7	Total 2011-2012	1602900.84	Total 2012-2013	1530462.31	Total 2013-2014	372625.94

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	October, 2013	243,198.27
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		
<u>Total 2011-2012</u>	<u>4,808,702.50</u>	<u>Total 2012-2013</u>	<u>4,608,334.13</u>	<u>Total 2013-2014</u>	<u>1,117,877.82</u>

Ethics Reporter

Since the Last Reporter

Since the October edition of the **REPORTER**, the West Virginia Ethics Commission published eight Advisory Opinions interpreting provisions of the West Virginia Governmental Ethics Act and the laws governing Boards of Education.

At its November 7 meeting, the West Virginia Ethics Commission approved opinions relating to the permissibility of a county land surveyor having potential conflicts (after reconsideration), the permissibility of municipal police officers participating in a program where reward coupons are given to citizens, the permissibility of municipal officials soliciting donations of

gifts that can be given to citizens, the permissibility of a city or its police department soliciting and accepting gifts from a private foundation, the permissibility of state employees assigned to county offices benefiting from a state program administered by the county, the permissibility of a county ambulance authority purchasing land from the authority president's brother, the permissibility of a board of education member voting on a bank relationship when he owns stock in the bank, and the permissibility of a county assessor's family owning property in the county.

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.

This is the third time this opinion appeared before the Ethics Commission and, in this instance, the opinion was reconsidered and modified from the version voted upon in October.

The Commission maintained its general opinion that the individual cannot serve as the county floodplain manager while also conducting private business on behalf of clients that may be regulated by the floodplain manager. However, the Commission modified its opinion to permit the individual to perform private client activities that do not fall under the floodplain manager's jurisdiction.

The Commission also made it clear that the manager may not have relationships with companies having mineral interests he or his father own.

The Commission again recommended that the

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county replace the manager due to these conflicts and stayed the effect of its decision for 90 days.

Advisory Opinion 2013-45 concerned the permissibility of municipal police officers participating in a program where rewards are given to citizens.

In this case, a local restaurant desires to provide police officers with coupons to reward citizens for "good deeds" they perform. Officers would sign the coupons. No one from the city solicited this offer from the restaurant.

Of interest to the Ethics Commission were the provisions of 6B-2-5(b)(1) prohibiting a public official from using their office to produce a private gain for themselves or another.

In its opinion, the Ethics Commission ruled that the activity proposed would be impermissible because the officer who endorsed and awarded a coupon for the restaurant would, in essence, be "endorsing"

the restaurant and using his official position to do so. The Commission found that there was no overriding public benefit in permitting an officer to "endorse" the restaurant.

Advisory Opinion 2013-46 addressed the permissibility of municipal officials soliciting donations of gift certificates to present as gifts to citizens.

A town's mayor would like to reward volunteers and good citizens for their work and seeks permission to solicit donations for the awards, which are proposed as a way to inspire others to volunteer and serve the town.

At issue for the Ethics Commission in this case were the provisions of 6B-2-5(c) prohibiting a public official from soliciting gifts unless for a charitable purpose, as well as the legislative rules of the Ethics Commission governing the solicitation of gifts.

In its opinion, the Commission ruled that there was no charitable purpose served by the

proposed solicitation of gifts, nor was there an overriding public benefit at stake either. Consequently, the proposed activity was declared to be impermissible.

Advisory Opinion 2013-49 concerned a situation where a city or police officials desire the ability to seek or accept funds from a private foundation for the benefit of the police department.

In this case, the city or the police department would be applying to a private foundation for grants to fund various items outside of the normal budget of the department. Officers would not be involved in the solicitation of support for the foundation, nor would the grants from the foundation be used to benefit individuals in the department or to fund the department's normal operations.

The Ethics Commission analyzed the provisions of 6B-2-5(b) prohibiting the use of public office for private gain in light of the facts presented in this request, those of 6B-2-5 (c) prohibiting a

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public official from soliciting or accepting gifts unless there is a charitable purpose, as well as the legislative rules pertaining to gifts.

The Commission ruled in this case that the city and the police department may apply for funds from the private foundation, provided that all rules on the solicitation and acceptance of gifts are followed, and that no foundation funds be used for the benefit of individuals.

Advisory Opinion 2013-50 addressed the permissibility of state employees who are assigned to county agencies may apply for funding from a state program that is administered by that county agency.

In this instance, a program to provide incentives for the use of best land management practices is funded by the state but administered by conservation districts. State employees are assigned to these districts but have no

authority over the program at the local level.

The Commission reviewed the provisions of 6B-2-5(b) prohibiting the use of public office to produce to generate a private gain and those of 6B-2-5(d) prohibiting a public official from having an interest in a contract over which they have authority or control.

In its opinion, the Ethics Commission ruled that the affected state employees may participate in the land management program and accept the associated financial assistance. The Commission determined that the state workers assigned to conservation districts have no authority over the land management program or who receives funds.

Advisory Opinion 2013-52 concerned the permissibility of a county ambulance authority board president's brother selling land to the authority.

The ambulance authority conducted a search for property and

identified a parcel that was best for the authority's interests, but it is owned by the board president's brother. The president and his brother have no joint business interests and do not reside together.

The Commission examined the language of 6B-2-5(b) 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(j) defining when public officials may not vote on certain matters.

In addition, the Commission analyzed the relevance of the language found in Chapter 61-10-15 making it unlawful for a county official to have direct or indirect pecuniary interests at stake in matters over which they exercise voice, influence or control.

In its ruling, the Ethics Commission determined that the proposed

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purchase of the ambulance authority president's brother's property is permissible because the brothers have no joint financial interests at stake, do not live with one and other and are not indirectly associated financially either. No violation of the Ethics Act or the 61-10-15 standards would occur in this instance.

Advisory Opinion 2013-53 addressed the permissibility of a county board of education member voting on a relationship with a bank when the member holds stock in the bank.

The board of education member owns .2% interest in the bank under consideration by the board. The member earns dividends of approximately \$3,200 annually from his interest in the bank stock.

The Ethics Commission analyzed the provisions of 6B-2-5(b) prohibiting a public official from using their position to produce a private gain for themselves or another, the language of

6B-2-5(d)(1) prohibiting a public official from having an interest in a contract over which they have authority or control, (d)(2) and (3) further refining the limits on the prohibition.

In addition, the Commission examined the language of Chapter 61-10-15 making it unlawful for a board of education member to have direct or indirect pecuniary interests in a contract over which they have voice, influence or control, and the associated subdivision (f) exempting bank matters from the statute unless the individual has deliberative or deposit responsibilities in the public realm relative to a financial institution. Recusal is permitted as a curative measure relative to the provisions of (f).

The Commission ruled that the board member must recuse himself from all deliberations and voting on board matters involving the bank in which he owns stock. However, should the board choose to conduct business with the bank in question, there would be no prohibitions beyond

recusal of the individual member involved and the relationship could proceed.

In Advisory Opinion 2013-55, the Commission addressed the question of whether members of a county assessor's family may ~~permissibly~~ own property in the county served by the assessor.

The assessor seeks guidance on the permissibility of he and his wife acquiring property in the county, and of his independent adult daughter owning property as well.

The Commission examined 6B-2-5(b) prohibiting public officials from using their office to produce a private gain for themselves or another, as well as the language of 6B-2-5(h) making it impermissible for a public official to purchase, sell or lease property in circumstances involving individuals who have had or have matters pending before their agency and where they or a subordinate has authority.

The Ethics Commission ruled that the assessor's adult and independent daughter faces no restrictions on her ability to conduct property transactions. The Commission further ruled that the assessor and his wife are not restricted in their personal transactions involving homes, but are not permitted (as is no assessor) from conducting commercial property transactions in the county.

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MISCELLANEOUS

NONE PUBLISHED

FILED

ADVISORY OPINION NO. 2013-52

2013 NOV 20 PM 12: 39

Issued On November 7, 2013 By The
WEST VIRGINIA ETHICS COMMISSION

OFFICE WEST VIRGINIA
 SECRETARY OF STATE

OPINION SOUGHT

A **County Ambulance Authority** asks if it may purchase land from the brother of the Board President. The Requester further asks what procedures it must follow to ensure an arm's length transaction.

FACTS RELIED UPON BY THE COMMISSION

The Requester provides emergency ambulance services to residents of the county in which it is located. Pursuant to W. Va. Code § 7-15-5, its members, including the President, are appointed by the County Commission and serve only part-time.

The County Ambulance Authority ("Authority") asks if the Ethics Act permits it to purchase land owned by the Board President's brother. The Requester states that the Board President and his brother do not have any businesses together, do not reside together, and to the Requester's knowledge, have no financial relationship. The Requester further states that after an exhaustive search for alternative property, the Board President's brother's land is the only land in the area suitable for the Authority's needs.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

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

A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in *de minimis* private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

...

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

(1) ... [N]o elected . . . official . . . or member of his or her immediate family . . . may be a party to or have an interest in the profits or benefits of a contract which the official . . . may have direct authority to enter into, or

over which he or she may have control: Provided, however, That nothing herein shall be construed to . . . prohibit a part-time appointed public official from entering into a contract which the part-time appointed public official may have authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation therefore, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

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 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(f) reads, in relevant part:

"Immediate family", with respect to an individual, means a spouse with whom the individual is living as husband and wife and any dependent child or children, dependent grandchild or grandchildren and dependent parent or parents.

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

It is unlawful for any member of a county commission . . . 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

Both the Ethics Act and W. Va. Code § 61-10-15, a criminal misdemeanor statute, prohibit public servants from being a party to, or having a financial interest in a public contract over which their public positions give them control. W. Va. Code § 6B-2-5(d)(1). Since the Requester is a county entity, the Commission must also consider

W. Va. Code § 61-10-15.

The first issue to address is whether the Board President has a prohibited financial interest in the purchase of the land of his brother. If an immediate family member, e.g. a son, resides with the county official or if the county official has a financial relationship with the relative (e.g. business together or co-sponsor of a loan), then the county official has a financial interest in a county contract. See Advisory Opinion 2012-03. In that opinion, the Commission found that because the Requester's son resided with his father (Deputy Chief), the father had financial interest in the employment of his son, and therefore a financial interest in any employment contract. See also Advisory Opinion 2012-11, wherein the Commission held that unrelated, unmarried adults have a financial interest in the employment of each other under W. Va. Code § 61-10-15.

By contrast, the Commission held in Advisory Opinion 2012-02 that a County Commissioner, who was also a licensed real estate sales associate, could purchase property from a real estate business with which he was associated. The Commission considered W. Va. Code § 6B-2-5 (d), (f) and (j). In that opinion, the County Commissioner, as a real estate agent, did not have a financial interest in the sale of property because mere agents are not included in the statutory definition of "associated" with a business as defined by the Act and its Legislative Rule. The County Commissioner, however, was not permitted to participate in the voting under W. Va. Code § 6B-2-5(j), because the definition of "associated" is broader under the voting provision.

Likewise here, W. Va. Code § 6B-2-5(d) does not prohibit the contract at issue because the definition of "immediate family member" does not include "brother" or "sibling" (as it does "child" in Advisory Opinion 2012-03). W. Va. Code § 6B-1-3(f). Further, there is no financial relationship between the brothers. Therefore, the Board President does not have "an interest in the profits or benefits of the contract" under W. Va. Code § 6B-2-5(d). Even further, the Board President would not be subject to (d) because he is a part-time, appointed public official.

In regard to voting, the Ethics Commission must consider and apply the voting provision of the Ethics Act, codified at W.Va. Code § 6B-2-5(j). For the reasons set forth above, the Commission hereby finds that the Board President does not have a financial interest--as defined by the Ethics Act-- in the proposed property purchase. Therefore, the Board President may deliberate and vote thereon.

While the Ethics Act assists public servants in avoiding conflicts, the Legislature has also recognized that "[S]tate 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...." W.Va. Code § 6B-1-2 (c).

Next, the Commission hereby finds that the President of the County Ambulance Authority is a county official subject to the restrictions of W.Va. Code § 61-10-15. This criminal provision strictly prohibits a county official from having a direct or indirect financial interest in a contract. Since the Board President does not have a financial relationship with his brother and they live separately, the Board President is not "pecuniarily interested, directly or indirectly, in the proceeds" of the purchase of land from his brother.

Accordingly, the Commission hereby finds that the purchase of land from the Board President's brother is not prohibited under the Ethics Act nor W. Va. Code § 61-10-15, and that the Board President may participate in the deliberation and vote related to the purchase pursuant to W.Va. Code § 6B-2-5(j) because the Board President's brother is not an immediate family member for purposes of § 6B-2-5(j) as herein set forth.¹

The Requester also asks what procedures it must follow to ensure an arm's length transaction. First, the private gain provision of the Ethics Act prohibits favoritism in the selection process by virtue of the familial relationship. See W. Va. Code § 6B-2-5(b). The Ethics Commission has not been made aware of any facts to suggest that the proposal is based on favoritism. Before the Requester purchases the property, it shall carefully evaluate and document the reasons why this particular land is most suitable to the Authority. Further, the purchase price shall be based upon a reliable appraisal, and shall not exceed the fair market value of the property.

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

¹The Commission further notes that it granted a contract exemption to a city allowing it to purchase property from its Mayor where "there does not appear to be other suitable property which is available for this purpose". See Contract Exemption 2012-03.

FILED

ADVISORY OPINION NO. 2013-53

2013 NOV 20 PM 12:39

Issued On November 7, 2013 By The
WEST VIRGINIA ETHICS COMMISSION

OFFICE WEST VIRGINIA
SECRETARY OF STATE**OPINION SOUGHT**

A **County Board of Education** member asks if he may vote to change the Board's financial institution to a local bank in which he is a shareholder. The Requester also asks if he is permitted to remain on the board if the measure passes.

FACTS RELIED UPON BY THE COMMISSION

Requester holds a position on a County Board of Education (BOE). Apparently, the BOE is considering changing banks. The Requester also owns two-tenths of a percent (0.2%) of the bank in question's stock. The bank pays the Requester dividend checks quarterly, which average eight hundred dollars (\$800.00) per quarter, or three thousand two hundred dollars (\$3200.00) per year.

CODE PROVISIONS AND LEGISLATIVE RULES RELIED UPON BY THE COMMISSION

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

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) states in relevant part:

In addition to [W. Va. Code § 61-10-15], no elected or appointed public official . . . 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*, [t]hat nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body.

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

In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate

family or a business with which he or she is associated shall not be considered as having a prohibited financial interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is awarded a public contract.

W. Va. Code § 6B-2-5(d)(3) states:

(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 61-10-15(a) states:

It is unlawful for any member of a county commission, district school officer, secretary of a board of education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control.

W. Va. Code 61-10-15(f) states:

The provisions of subsection (a) of this section do not apply to any person who has a pecuniary interest in a bank within the county serving or under consideration to serve as a depository of funds for the county or board of education, as the case may be, if the person does not participate in the deliberations or any ultimate determination of the depository of the funds.

158 W. Va. C.S.R. § 8.4 states:

The prohibition of W. Va. Code §6B-2-5(d) against being a party to or having an interest in the profits or benefits of a contract applies only to public contracts involving a governmental body or agency.

Public officials or public employees or members of their immediate family are considered to be "associated" with a business if they or their immediate family member are a director, officer or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

158 W. Va. C.S.R. § 8.5 states:

5.1. For the purposes of W. Va. Code §6B-2-5(d), the Ethics Commission will consider a person "recused" if he or she:

(1) has made a full disclosure of his or her interest in the public contract, (2) has refrained from discussing, voting on or otherwise influencing or deciding the matter, and (3) is absent from the room during the discussion and voting process.

5.2. Making a full disclosure of one's interest means making a prior public disclosure including the amount of interest held directly or indirectly by a public employee or public official or immediate family thereof in a public contract.

ADVISORY OPINION

In establishing the Ethics Act, the Legislature sought to maintain the public's confidence in the impartiality and independence of decisions and actions by public officials and employees, and to ensure that all such decisions be made free of undue influence, favoritism or threat at all levels of government. W. Va. Code § 6B-1-2(a).

In creating these ethical standards for public officials, the Legislature additionally recognized that "many part-time public officials and public employees serv[e] in elected and appointed capacities; and that certain conflicts of interest are inherent in part-time service...." W. Va. Code § 6B-1-2(c).

The Ethics Act's prohibition against use of office for private gain was designed to steer public servants away from inherently questionable situations. This prohibition is intended to prevent not only actual impropriety, but also situations that give the appearance of impropriety.

Under W. Va. Code § 61-10-15(a), it is generally impermissible for county officials to become pecuniarily interested in a contract over which they have control. The Code makes a specific exception for interest in banks in W. Va. Code § 61-10-15(f), though, as long as the person recuses himself or herself from the "deliberations or ultimate determination" of the depository or the funds.

The interaction between W. Va. Code § 61-10-15(a) and W. Va. Code § 6B-2-5(d) is dispositive here. W. Va. Code § 61-10-15 was rewritten in 2002. Before then, officials governed by W. Va. Code § 61-10-15 could not avail themselves of the hardship exception codified at W. Va. Code § 6B-2-5(d)(4). The Ethics Commission did not (and does not) have the ability to grant an exception to W. Va. Code § 61-10-15; therefore, county officials could not escape the strict construction of the code.

After 2002, W. Va. Code § 61-10-15 added a statutory exception to the code specifically for officials who hold a financial interest in a bank. Nevertheless, the exception codified at W. Va. Code § 61-10-15(a) does not relieve officials who qualify for that exception from compliance with the Ethics Act, and the Ethics Act contains no such exemption for officials with a private interest in a bank. In these situations, the exemption contained in W. Va. Code § 61-10-15 exists merely to remove the statutory bar; affected officials must still comply with the plain language of the Ethics Act.

W. Va. Code § 6B-2-5(d)(1) bars elected officials or businesses with which they are associated from being a party to a contract into which the official may have direct authority to enter. Legislative Rule 158 W. Va. § 8.4 defines a prohibited business association as one in which the official holds stock constituting five percent (5%) or more of the total stocks. The Requester owns less than one percent (1%) of the outstanding stock. Accordingly, neither W. Va. Code § 61-10-15 nor the Ethics Act prohibit the BOE from contracting with the bank in which the Requester owns stock.

Limitations apply. First, W. Va. Code § 6B-2-5(b) prohibits public officials from using their public positions for financial benefit. Here, the Requester has provided very few facts. It is unclear why the BOE is considering changing banks, who initiated the idea, whether the Requester has had any role in any preliminary discussions, or what the BOE's total deposits with the bank will approximately total. The Requester is prohibited from steering BOE business to his bank. He must also always guard against exercising undue influence in casual conversation or at other opportune times.

Under Legislative Rule 158 W. Va. § 8.5, the Requester is still required to recuse himself from all deliberations and voting regarding the bank. For a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue.

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


R. Kemp Morton, III, Chairperson

FILED

ADVISORY OPINION NO. 2013-29-NP 2013 NOV 20 PM 12:38

Issued On November 7, 2013 By The OFFICE WEST VIRGINIA
WEST VIRGINIA ETHICS COMMISSION SECRETARY OF STATE

[NOTE: THIS IS A RECONSIDERATION AND REVISION OF AN EARLIER
ADVISORY OPINION 2013-29 ISSUED OCTOBER 3, 2013. THIS OPINION IS
INTENDED TO REPLACE THE EARLIER OPINION.]

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 states that he performs many types of land surveying in his private capacity, the bulk of which is related to boundary surveying. The Requester states that only ten percent of his private survey business involves floodplain or elevation surveys. This includes the retracement of already existing boundary lines and creating new lots or parcels of land. These surveys have nothing to do with FEMA or the duties/jurisdiction of the County Floodplain Manager.

Further, 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:

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 surveys required for FEMA elevation certificates, he will not know until **after** performing the survey whether a potential

customer is subject to his regulatory authority as County Floodplain Manager.¹ 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 demarcate his public job duties, the interests of the Association, and the interests of his constituents....

Thus the Requester is prohibited from performing any elevation or floodplain surveys in his private capacity while serving as the County Floodplain Manager.

He may, however, continue to perform other private survey work unrelated to his duties as County Floodplain Manager, such boundary surveying since those surveys do not have anything to do with FEMA or otherwise come under the Floodplain Manager's jurisdiction. Restrictions apply. The Requester may not perform any duties in his capacity as the County Floodplain Manager on any properties in which he has conducted private survey work within the preceding six months or six months thereafter. Additionally, if the Requester has performed any actions relating to his public position on a piece of property, he may not perform any private survey work on the same property for the following six months. *See generally* Advisory Opinion 2012-07 in which the Commission prohibited a Mayor from presiding over any judicial matters involving customers of his private business when the transaction occurred within the preceding six months.

Instead, any other county official authorized to act in that capacity must perform those duties when the Requester has such a conflict of interest. Upon information and belief, one of the County Commissioners is also certified to perform the duties of Floodplain Manager. If and when that occurs, however, the County Commissioner is required to recuse himself from any appeal of any actions in the performance of such duties.

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.

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

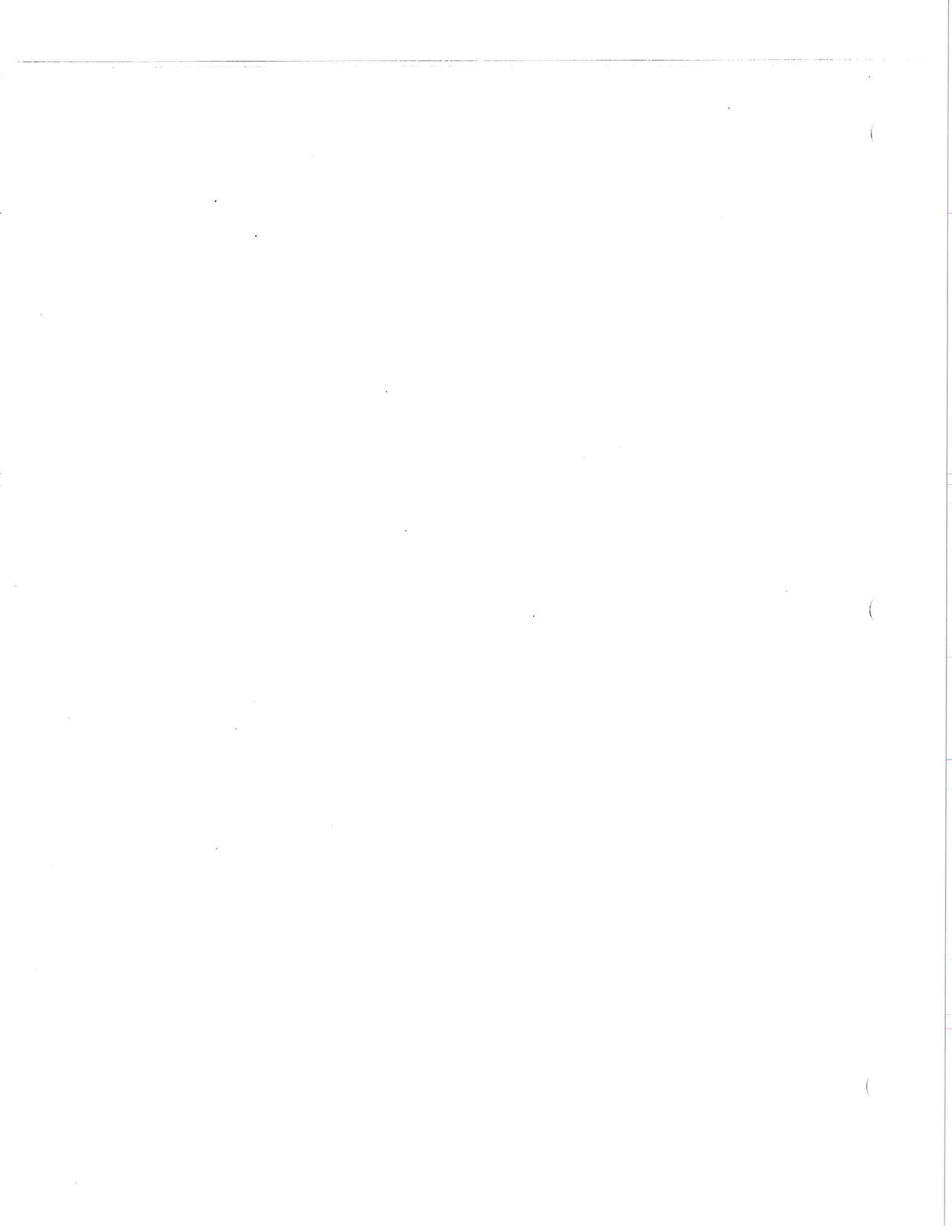
As a result of the foregoing, the Commission hereby finds:

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 continue his part-time employment as County Floodplain Manager while continuing to operate his private surveying business in the same county so long as he does not conduct any floodplain-related surveys and does not conduct perform private and public surveys on the same property within six months.
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



FILED

ADVISORY OPINION NO. 2013-52

2013 NOV 20 PM 12:39

Issued On November 7, 2013 By The
WEST VIRGINIA ETHICS COMMISSION

OFFICE WEST VIRGINIA
SECRETARY OF STATE**OPINION SOUGHT**

A **County Ambulance Authority** asks if it may purchase land from the brother of the Board President. The Requester further asks what procedures it must follow to ensure an arm's length transaction.

FACTS RELIED UPON BY THE COMMISSION

The Requester provides emergency ambulance services to residents of the county in which it is located. Pursuant to W. Va. Code § 7-15-5, its members, including the President, are appointed by the County Commission and serve only part-time.

The County Ambulance Authority ("Authority") asks if the Ethics Act permits it to purchase land owned by the Board President's brother. The Requester states that the Board President and his brother do not have any businesses together, do not reside together, and to the Requester's knowledge, have no financial relationship. The Requester further states that after an exhaustive search for alternative property, the Board President's brother's land is the only land in the area suitable for the Authority's needs.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

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

A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in *de minimis* private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

...

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

(1) ... [N]o elected . . . official . . . or member of his or her immediate family . . . may be a party to or have an interest in the profits or benefits of a contract which the official . . . may have direct authority to enter into, or

over which he or she may have control: Provided, however, That nothing herein shall be construed to . . . prohibit a part-time appointed public official from entering into a contract which the part-time appointed public official may have authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation therefore, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

...

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 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(f) reads, in relevant part:

"Immediate family", with respect to an individual, means a spouse with whom the individual is living as husband and wife and any dependent child or children, dependent grandchild or grandchildren and dependent parent or parents.

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

It is unlawful for any member of a county commission . . . 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

Both the Ethics Act and W. Va. Code § 61-10-15, a criminal misdemeanor statute, prohibit public servants from being a party to, or having a financial interest in a public contract over which their public positions give them control. W. Va. Code § 6B-2-5(d)(1). Since the Requester is a county entity, the Commission must also consider

W. Va. Code § 61-10-15.

The first issue to address is whether the Board President has a prohibited financial interest in the purchase of the land of his brother. If an immediate family member, e.g. a son, resides with the county official or if the county official has a financial relationship with the relative (e.g. business together or co-sponsor of a loan), then the county official has a financial interest in a county contract. See Advisory Opinion 2012-03. In that opinion, the Commission found that because the Requester's son resided with his father (Deputy Chief), the father had financial interest in the employment of his son, and therefore a financial interest in any employment contract. See also Advisory Opinion 2012-11, wherein the Commission held that unrelated, unmarried adults have a financial interest in the employment of each other under W. Va. Code § 61-10-15.

By contrast, the Commission held in Advisory Opinion 2012-02 that a County Commissioner, who was also a licensed real estate sales associate, could purchase property from a real estate business with which he was associated. The Commission considered W. Va. Code § 6B-2-5 (d), (f) and (j). In that opinion, the County Commissioner, as a real estate agent, did not have a financial interest in the sale of property because mere agents are not included in the statutory definition of "associated" with a business as defined by the Act and its Legislative Rule. The County Commissioner, however, was not permitted to participate in the voting under W. Va. Code § 6B-2-5(j), because the definition of "associated" is broader under the voting provision.

Likewise here, W. Va. Code § 6B-2-5(d) does not prohibit the contract at issue because the definition of "immediate family member" does not include "brother" or "sibling" (as it does "child" in Advisory Opinion 2012-03). W. Va. Code § 6B-1-3(f). Further, there is no financial relationship between the brothers. Therefore, the Board President does not have "an interest in the profits or benefits of the contract" under W. Va. Code § 6B-2-5(d). Even further, the Board President would not be subject to (d) because he is a part-time, appointed public official.

In regard to voting, the Ethics Commission must consider and apply the voting provision of the Ethics Act, codified at W.Va. Code § 6B-2-5(j). For the reasons set forth above, the Commission hereby finds that the Board President does not have a financial interest--as defined by the Ethics Act-- in the proposed property purchase. Therefore, the Board President may deliberate and vote thereon.

While the Ethics Act assists public servants in avoiding conflicts, the Legislature has also recognized that "[S]tate 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...." W.Va. Code § 6B-1-2 (c).

Next, the Commission hereby finds that the President of the County Ambulance Authority is a county official subject to the restrictions of W.Va. Code § 61-10-15. This criminal provision strictly prohibits a county official from having a direct or indirect financial interest in a contract. Since the Board President does not have a financial relationship with his brother and they live separately, the Board President is not "pecuniarily interested, directly or indirectly, in the proceeds" of the purchase of land from his brother.

Accordingly, the Commission hereby finds that the purchase of land from the Board President's brother is not prohibited under the Ethics Act nor W. Va. Code § 61-10-15, and that the Board President may participate in the deliberation and vote related to the purchase pursuant to W.Va. Code § 6B-2-5(j) because the Board President's brother is not an immediate family member for purposes of § 6B-2-5(j) as herein set forth.¹

The Requester also asks what procedures it must follow to ensure an arm's length transaction. First, the private gain provision of the Ethics Act prohibits favoritism in the selection process by virtue of the familial relationship. See W. Va. Code § 6B-2-5(b). The Ethics Commission has not been made aware of any facts to suggest that the proposal is based on favoritism. Before the Requester purchases the property, it shall carefully evaluate and document the reasons why this particular land is most suitable to the Authority. Further, the purchase price shall be based upon a reliable appraisal, and shall not exceed the fair market value of the property.

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

¹The Commission further notes that it granted a contract exemption to a city allowing it to purchase property from its Mayor where "there does not appear to be other suitable property which is available for this purpose". See Contract Exemption 2012-03.

FILED

2013 NOV 20 PM 12:39

ADVISORY OPINION NO. 2013-55
Issued on November 7, 2013 By the
WEST VIRGINIA ETHICS COMMISSION

OFFICE WEST VIRGINIA
SECRETARY OF STATE

OPINION SOUGHT

A **County Assessor** asks if his daughter may purchase property in the County, and whether he and his wife may purchase property in the County in which he serves as Assessor.

FACTS RELIED UPON BY THE COMMISSION

A County Assessor's adult daughter, who lives separately from the Requestor, would like to purchase property in the County in which her father serves as the elected County Assessor. The Assessor also asks if he and his wife may purchase property for themselves.

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 (h) reads, in relevant part:

- (1) No full-time official or full-time public employee ... may 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.

ADVISORY OPINION

W. Va. Code § 11-3-1 mandates that all property be assessed annually as of the first day

of July at its true and actual value. The responsibility for determining the annual assessment for each property lies with the elected County Assessor and those in his/her employ. This assessment is used as the basis for the levy of a property tax upon the property owner. This assessment is a governmental action by the County Assessor, and constitutes a "regulatory action" upon each property owner within the county.

The Ethics Act prohibits full-time public servants from purchasing, selling, or leasing either real or personal property to or from any person who had a matter on which he took, or a subordinate is known to have taken, regulatory action within the preceding twelve months or who has a matter before the agency on which the public servant or a subordinate is working. The rationale behind such prohibition, including an attempted sale or purchase, is to prevent a conflict of interest and/or a coercive contract.

The language of W. Va. Code § 6B-2-5(h) does not extend the prohibition on the purchase of real or personal property to non-dependent family members. Additionally, nothing in the Ethics Act creates such a prohibition. Therefore, the Requester's adult, non-dependent daughter is not prohibited from purchasing property in the County in which her father, the Requester, is the elected County Assessor, so long as neither he nor his wife have any ownership interest themselves.

This prohibition does not, however, apply to purely personal transactions; the Requester may buy and sell a personal home. See W. Va. Code § 11-3-17 (authorizing the assessor to assess the property of deputy assessors, and a deputy assessor to assess the assessor's property).

Additionally, the limited exception contained in W. Va. Code § 11-3-17 does not prohibit the Requester and his wife from purchasing property within the County in which he serves as County Assessor for purely personal transactions. County Assessors are prohibited from engaging in real estate transactions for commercial purposes, either through a business, or more informally by buying and selling property on the side. See Advisory Opinion 2011-14.

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. Pursuant to 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.



R. Kemp Morton, III, Chairperson

FILED

ADVISORY OPINION NO. 2013-45

2013 NOV 20 PM 12:38

Issued On November 7, 2013 By The
WEST VIRGINIA ETHICS COMMISSION

OFFICE WEST VIRGINIA
SECRETARY OF STATE

OPINION SOUGHT

A **Municipality** asks whether its Police Officers may participate in a program with a local restaurant wherein the Police Officers would hand out reward coupons to private citizens for performing good deeds.

FACTS RELIED UPON BY THE COMMISSION

A local fast food restaurant owner approached the Chief of Police about a program that the restaurant wants to implement wherein Police Officers would hand out coupons as rewards to citizen for their "good deeds". Such good deeds include, for example, helping another person across the street or wearing a bicycle helmet. The coupon would entitle the redeemer to a small sandwich with a value fry and drink which could be redeemed at the restaurant's franchises located throughout the State of West Virginia. The Police Officer's signature would be on the coupon. The municipality would **not** and has not **solicited** the restaurant for the reward coupons.

CODE PROVISIONS AND LEGISLATIVE RULE RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b) provides:

- (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in *de minimis* private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

ADVISORY OPINION

The Requester states that it will not solicit the restaurant for the rewards coupons. Therefore, the provisions of the Ethics Act which limit the solicitation of gifts are not at issue. W. Va. Code § 6B-2-5(c)(1). Likewise, the Requester makes no indication that the reward coupons would be available to the Police Officers or any other public employees or officials. Presumably, the Police Officers would not award themselves these coupons. Therefore, the provisions of the Ethics Act governing a public servant's acceptance of gifts are not at issue. W. Va. Code § 6B-2-5(c)(2).

Generally, however, the Ethics Act prohibits public officials from endorsing products pursuant to W. Va. Code § 6B-2-5(b) which prohibits a public official from using his or her office for the improper private gain to another. In Advisory Opinion 2012-31, the Ethics Commission ruled:

In the abstract, the Ethics Commission is unable to envision a circumstance where a public servant could appear, or be referenced, in an advertisement for a product, service or business without violating the Ethics Act. Nonetheless, public servants and entities are encouraged to contact the Ethics Commission for advice if such a situation arises and there is an argument that there is an overriding public benefit.

The first question here is whether a Police Officer handing out reward coupons which contain his or her signature amounts to endorsing the restaurant. In Advisory Opinion 98-22, the Commission held that it would not violate the Ethics Act for a State Agency to be referenced in a private industry brochure. The private company asked the Director of the State Agency to allow it to reference its work with the Agency in a brochure distributed to potential customers. This brochure did not contain a product endorsement from the State Agency. The Ethics Commission determined that no provision in the Ethics Act prohibits a public official from permitting a public company to reference its work with a state agency in a brochure "which does not contain a product endorsement from the agency or the public official". Further, in Advisory Opinion 2012-31, the Ethics Commission concluded that the Ethics Act permits a public servant or entity to be listed on a vendor's promotional materials solely as a previous customer. Any language that tends to refer to the public servant or entity as a "satisfied customer" or otherwise serve to promote or endorse the vendor is expressly prohibited.

By contrast, in Advisory Opinion 2000-21, the Ethics Commission explained that although a public authority may reference its work with a state agency in its brochure, it may not actively endorse a private business. For example, in Advisory Opinion 2000-19, issued the same day as 2000-21, the Commission ruled that a State Agency may not serve as a "reference account" for a Vendor's software if the endorsement tends to promote the Vendor's private business and no overriding public benefit for the State or its citizens has been demonstrated. In both opinions, the Commission found that each reference amounted to an endorsement because they included a "subjective evaluation of the product (training) [and software] in affirmative, if not laudatory, terms."

Here, the Commission finds that a Police Officer handing out reward coupons with his or her signature thereon would constitute a product endorsement by his act of personally handing out the coupons. A reasonable citizen may find that the Police Officer was actively promoting a private restaurant.

The inquiry, however, does not end here. The Ethics Commission explained, in Advisory Opinion 2012-31 and other Advisory Opinions that a public official **may** endorse products if it demonstrates that there is an "overriding public benefit" even if there is some private gain as well. Thus, even where there is some private gain, "[t]he Commission has discretion to conclude that the public benefit outweighs any potential for improper private gain". Advisory Opinion 2012-31. Therefore, since the Commission determined that the facts at hand –a police officer handing out restaurant coupons with his/her signature - amount to a product endorsement, the Commission must decide whether the Requester demonstrated an overriding public benefit sufficient to justify the endorsement of a product.

The Commission has had multiple occasions to analyze whether an overriding public benefit permits the use of public office for what might otherwise be construed a prohibited endorsement. For example, Advisory Opinion 2005-04 involved an agency dedicated to facilitating small business development and the Commission found that the proposed agreement to link the State Agency's website with a software company was permissible because of the overriding public benefit of promoting small business growth and the State's economy.

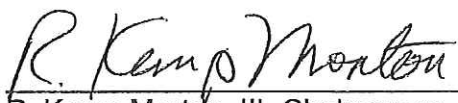
Further, in Advisory Opinion 2012-10, the Commission found that a University may allow a vendor to use the University name and logo in its external marketing materials in exchange for the University's use of the Partner's information management system because the University had demonstrated an overriding benefit of obtaining critical free access to a system that greatly enhances the University Program's ability to produce quality reports.

Conversely, in Advisory Opinions 2000-19 and 21, a public employee asked if she could actively endorse a training program that she attended in the course of her employment. In that opinion the Commission found that endorsing a training program did not provide an overriding public benefit. Likewise in Advisory Opinions 2003-03 and 2003-09, the Commission ruled that public entities could not accept free emergency vehicles covered with commercial advertising.

Here, the Ethics Commission finds that the Requester has not demonstrated an overriding public benefit in handing out these coupons. The Ethics Commission commends the Requester's desire to reward the good deeds of private citizens, promote good relations between them and the Police Officers, and to encourage people to help others. The Ethics Commission finds, however, that such purposes do not rise to a level sufficient to overcome the prohibition against public officials actively endorsing private companies and products.

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 the Constitutions of the United States or West Virginia, nor 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 as hereinabove set forth unless and until it is amended or revoked, or the law is changed.


R. Kemp Morton, III, Chairperson

FILED

ADVISORY OPINION NO. 2013-46

2013 NOV 20 PM 12: 38

Issued On November 7, 2013 By The
WEST VIRGINIA ETHICS COMMISSION

OFFICE WEST VIRGINIA
SECRETARY OF STATE

OPINION SOUGHT

A **Municipality** asks whether its elected officials or employees may solicit donations of gift certificates from local restaurants to present as gifts to private citizen volunteers.

FACTS RELIED UPON BY THE COMMISSION

The Mayor would like to recognize private community volunteers and "good neighbors" with gift certificates from local restaurants and an introduction at a town council meeting. The Mayor, other city officials or employees would solicit area restaurants to donate gift certificates in the amount of \$10.00-15.00. The Municipality asserts that the public recognition of those who engage in service to the community can be expected to help inspire other community members to join in these efforts.

CODE PROVISIONS AND LEGISLATIVE RULE RELIED UPON BY THE COMMISSION

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

(c) *Gifts.* -- (1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: *Provided*, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position is subordinate to the soliciting official or employee. . . .

The Commission's Legislative Rule governing solicitation of charitable gifts, 158 W.Va.C.S.R. § 7.6, states, in relevant part:

6.1. Public officials and public employees may solicit gifts for a charitable purpose when there is no resulting direct pecuniary benefit to the public official or public employee or an immediate family member.

6.2. The Ethics Commission may recognize programs or activities as involving a charitable purpose on a case-by-case basis.

* * *

6.5. A reasonable amount of public resources may be used for a charitable solicitation or fund-raising drive that is conducted in furtherance

of the West Virginia State Employees' Coordinated Campaign or a fund raising campaign officially approved by either the executive, legislative or judicial branch of State Government or the governing body of any political subdivision.

* * *

6.7. State government agencies and the governing bodies of political subdivisions may solicit funds to support or underwrite agency programs which are statutorily created or authorized and are intended to help the poor and disadvantaged. If a state government agency or governing body of a political subdivision seeks to solicit funds for use by the agency for any other purpose, then the state government agency or governing body of a political subdivision must first seek permission from the Executive Director of the West Virginia Ethics Commission or the Ethics Commission through issuance of a formal Advisory Opinion. The Executive Director or Ethics Commission may only authorize such a solicitation if it serves a public purpose. . . .

ADVISORY OPINION

The Ethics Commission explained, in Advisory Opinion 2012-49, as follows:

The Ethics Act restricts public servants from soliciting funds for non-charitable purposes. One underlying purpose of this provision is to ensure that public servants do not solicit for their own benefit or that of another. Another underlying purpose is that public agencies should not solicit donations to cover their operational costs or to underwrite traditional governmental functions. An equally compelling concern is that potential donors should not feel compelled to donate or face unfavorable treatment, or be led to believe that by donating, they will receive preferential treatment by a government agency.

Therefore, public officials and public employees may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family. W. Va. Code § 6B-2-5(c). Advisory Opinion 2012-49.

Although neither the statute nor its corresponding Legislative Rule cited above define "charitable purpose", the Ethics Commission, in Advisory Opinion 2005-02, held:

As a general guideline, the Commission recognizes two main categories of programs or activities which constitute a charitable purpose: (1) Those which benefit the poor or disadvantaged; and, (2) Those which serve a public purpose or provide a significant public benefit."

The Commission explained in Advisory Opinion 2012-08:

In seeking outside monetary assistance, however, public agencies raise the potential for a coercive solicitation. For this reason, the Commission established a case-by-case review of "charitable" solicitations and has been stringent in its holding that "the overriding purpose of the solicitation must be to provide a benefit to the public as opposed to defraying the internal administrative costs of the [Agency]. Advisory Opinion 2005-02.

The Commission found that solicitations for the purchase of a police canine and shotgun/rifle racks are not permissible under the Ethics Act as they do not constitute charitable gifts. Advisory Opinion 2012-08.

Conversely, in Advisory Opinion 2013-40, the Ethics Commission held that educating the children of West Virginia was indeed a significant public benefit. Likewise, in Advisory Opinions 2005-02, 2010-17 (non-precedential) and 2011-11, the Ethics Commission found that the overriding purposes of the solicitations were indeed to provide a benefit to the public. These purposes include: a public health program administered by a County Board of Health; public broadcasting throughout the state by an agency tasked with administering on-air broadcasting to offset its own operating costs; and, a recreational department for the homeless by an agency tasked with housing veterans.

Here, the Commission finds that recognizing volunteers in an effort to promote volunteerism, while laudable, does not provide an overriding public purpose sufficient to overcome the prohibition against soliciting the public. While volunteers provide valuable services to West Virginia communities, actively soliciting donations from local businesses to recognize them would violate W. Va. Code § 6B-2-5(c).

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 as hereinabove set forth unless and until it is amended or revoked, or the law is changed.


R. Kemp Morton, III, Chairperson



FILED

ADVISORY OPINION NO. 2013-49

2013 NOV 20 PM 12:39

Issued On November 7, 2013 By The
WEST VIRGINIA ETHICS COMMISSION

OFFICE WEST VIRGINIA
SECRETARY OF STATE

OPINION SOUGHT

A **City Chief of Police** asks if either the Police Department or the City may seek and/or accept funds from a private foundation established by a local businessperson for the sole support of the Police Department.

FACTS RELIED UPON BY THE COMMISSION

A private businessperson and resident approached the City and proposed the creation and facilitation of a police foundation. This foundation would be funded by business leaders around the community who want to contribute funds to help the Police Department.

The foundation would be established and administrated through an area community foundation or through a local bank's investment group. In order to receive any money, the Chief of Police and the Mayor would jointly request funding from the foundation. Then, the foundation would decide if it will provide the funding. The foundation's funds could only be given to the Police Department.

Neither the Police Department nor any of their employees would be involved in soliciting funds for the foundation at any time.

CODE PROVISIONS AND LEGISLATIVE RULE RELIED UPON BY THE COMMISSION

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

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

A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family; *Provided*, That no public official or public employee may solicit for a

charitable purpose any gift from any person who is also an official or employee of the state and whose position is subordinate to the soliciting official or employee....

158 W. Va. C.S.R. § 7.6 reads, in relevant part:

6.1. Public officials and public employees may solicit gifts for a charitable purpose when there is no resulting direct pecuniary benefit to the public official or public employee or an immediate family member.

6.2. The Ethics Commission may recognize programs or activities as involving a charitable purpose on a case-by-case basis.

...

6.7. State government agencies and the governing bodies of political subdivisions may solicit funds to support or underwrite agency programs which are statutorily created or authorized and are intended to help the poor and disadvantaged. If a state government agency or governing body of a political subdivision seeks to solicit funds for use by the agency for any other purpose, then the state government agency or governing body of a political subdivision must first seek permission from the Executive Director of the West Virginia Ethics Commission or the Ethics Commission through issuance of a formal advisory opinion. The Executive Director or Ethics Commission may only authorize such a solicitation if it serves a public purpose.

158 W. Va. C.S.R. § 7.8 states, in part:

8.1. The Ethics Commission finds that the interest of the public is served by having stricter limitations which govern solicitations by law enforcement officers due to the unique nature of the authority which law enforcement officers exercise over the public, including arrest powers.

8.2. "Law-enforcement officer" means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality thereof.

8.3. Except as otherwise provided for in these rules, law enforcement officers may not solicit for charity while in uniform, but may show identification upon request.

8.4. Public officials or employees may solicit donations for charity while out of uniform and when they are off duty.

...

8.6. Law enforcement officers or associations composed of law enforcement officers may conduct telephonic or oral solicitations in their official capacity; Provided, That, when conducting a telephonic solicitation, law enforcement officers may not identify themselves by rank or title or otherwise reference their rank or title during the conversation unless specifically requested by the person with whom they are having a conversation.

...

8. 8. Law enforcement officers may wear their uniforms while participating in fund-raising activities based on an exchange of value. Further, they may wear their uniforms while participating in a fund-raising event such as a motorcycle ride, walk or other activities where the public, for a fee or donation, is invited to join a law enforcement officer as part of a fund-raising activity.

ADVISORY OPINION

The Ethics Act and related Legislative Rule impose clear limitations on the solicitation of gifts by law enforcement officers. It is important to note that those rules do not bar law enforcement officers from soliciting for charity entirely. In fact, the rules give explicit permission for it in some circumstances. See 158 W. Va. C. S. R. §§ 7.8.6, 7.8.8. Here, though, only the foundation is engaging in solicitation. According to the Requester, "The [...] Police Department or any member at any time would not be involved in soliciting funds for this foundation."

This is an important distinction because W. Va. Code § 6B-2-5(c) generally prohibits public officials from soliciting gifts to cover operating expenses. In Advisory Opinion 2005-02 the Commission established a case-by-case review of "charitable" solicitations and has been stringent in its holding that "the overriding purpose of the solicitation must be to provide a benefit to the public as opposed to defraying the internal administrative costs of the [Agency]". 158 W. Va. C.S.R. §7.6.7, however, authorizes solicitation for statutorily-created agency programs intended to help the poor or disadvantaged. In all other cases, the agency seeking to solicit said funds must obtain the express permission of the Ethics Commission. The Ethics Commission and/or the Executive Director is permitted, but not required, to give permission only if the program is for a charitable or other public purpose as provided by 158 W. Va. C.S.R. § 7.6.7.

For example, in Advisory Opinion 2012-08, the Commission ruled that it would be improper for a police department to solicit funds for the purchase of a police canine and shotgun/rifle racks because the solicitation was not for an overriding public purpose. The Commission reasoned: "Rather, the desired solicitations appear to be more related to defraying internal administrative costs associated with purchasing the desired items."

See also Advisory Opinions 1992-06, 2001-14, and 2010-19. However, the Commission has just as often permitted solicitation due to the "overriding public purpose" doctrine or because of explicit statutory authority. See, e.g., Advisory Opinions 2005-02, 2011-11, and 2013-40.

Here, though, the privately funded foundation is the only entity that could be involved in soliciting donations. Such private solicitations are outside the purview of the Ethics Act, and this type of private solicitation is not prohibited by the Act; the prohibition against solicitation by public servants would not apply to private solicitation, even if the solicitation is for the benefit of a public entity. Although in Advisory Opinion 2012-08 the Commission prohibited a police department from soliciting funds for the purchase of a police canine and shotgun/rifle racks, the Commission also rightly noted:

Finally, the Commission's holding applies to solicitation by the Requester, and does not prevent the police department from accepting an unsolicited gift. As the Commission held in A.O. 90-176, government agencies may accept gifts as an entity if the acceptance of such gifts inures to the benefit of the public generally or is in furtherance of the operation of the office. See also A.O. 92-06. The key is that the gift is given to, and utilized by, the government agency, and is not for the personal, private gain of a particular public servant. See W.Va. Code § 6B-2-5(c)(1).

It is important to note that while there may be some initial concern that this private organization would in effect become a *de facto* private solicitation arm of the Police Department in order to evade the stricter requirements placed on police officer solicitation, this concern is unfounded.

Such solicitation is already permissible under the West Virginia Code; the Ethics Act already permits longstanding police-affiliated groups such as the West Virginia Troopers Association, chapters of the Fraternal Order of Police, and the West Virginia Sheriff's Association to solicit donations that directly or indirectly benefit area police. Notably, both the West Virginia Sheriffs' and Troopers Association grant scholarships to dependents of law enforcement officials who apply for them, in a process similar to the one proposed in the instant situation.

Additionally, the concept of a Police Foundation designed to function in this fashion is not an unusual, or unethical, one. Police Foundations are becoming increasingly popular around the United States. Cities as diverse as Stamford, Connecticut¹, Burbank, California², Washington, D.C.³, Gastonia, North Carolina⁴, and Riverton, Wyoming⁵, all have police foundations set up in roughly the same fashion proposed here and for the same essential purpose: to provide money to assist the Police

¹ www.stamfordpolicefoundation.org/index.htm

² <http://burbankepolicefoundation.org/>

³ <http://www.dcpolicefoundation.org/>

⁴ <http://www.gastoniapolicefoundation.com/>

⁵ http://www.rivertonwy.gov/departments/police/police_foundation1/index.php

Department with items outside the normal budget. While generally not the most reliable source of data, Wikipedia contains a sizeable list of cities which have police foundations, none of which appear to have violated their respective state Ethics laws.⁶

Next, it is necessary to determine whether the actual interaction proposed here between the Mayor and Police Chief on one hand, and the Foundation on the other, constitutes solicitation or is more like applying for a grant. Different rules apply to each. The solicitation rules are described above. The grant process rules will be described below.

Here, the Police Chief and the Mayor must request the funds for specific projects from the foundation, and the foundation will then determine if it will provide funding. This process is more akin to a grant application process than it is a solicitation. While the Ethics Act does not specifically define grants, the *Oxford English Dictionary* defines them as "a sum of money given by an organization . . . for a particular purpose."

Further, the process proposed here is difficult to distinguish from the process state and local governmental bodies go through when seeking funding from the federal government or from a charitable organization. For example, the Federal Emergency Management Agency (FEMA) requires applicants for the Assistance to Firefighters Grant Program to explain what the proposed project is, and why the applicant cannot afford it themselves.⁷ Accordingly, the Commission concludes that seeking funds from a police foundation is to be treated as a grant application, not a solicitation, and the appropriate rules apply.

The question then becomes whether it is permissible for the Requester to apply for funding for Police Department needs and/or projects from the police foundation, and what restrictions apply to that process, if any.

In Advisory Opinion 2001-14, a State Agency asked whether it was permitted to: solicit financial support for work supplies for the project from vendors or other interested persons, or apply for grants from established grant programs underwritten by interested persons.

The Commission wrote:

The Agency's project is not a charitable purpose and agency personnel may not solicit financial support for the project from vendors, regulated persons, licensees or the general public . . . Agency personnel may, however, apply to existing grant programs for a grant to fund, or help fund, the project. *The existence of a grant program is an offer of financial assistance for those purposes for which the grant program was established.* The Commission finds that making an application for a grant from such a program is in effect an effort to accept an existing offer of

⁶ http://en.wikipedia.org/wiki/Police_Foundation

⁷ <http://www.fema.gov/welcome-assistance-firefighters-grant-program>

financial aid and is not covered by the Act's gift solicitation provisions.
(Italics added).

Therefore, it would not be a violation of the Ethics Act for agency personnel to seek a grant from an established grant program with eligibility criteria or parameters matching the agency's project . . . [this ruling] is expressly limited to situations where . . . the primary benefit from the grant will flow to the public . . . This opinion does not deal with the propriety of seeking or accepting grants intended to shift the normal cost of conducting an agency's routine activities from budgeted tax revenues to vendors, regulated persons or licensees.

Thus, the Commission left for another day whether a public entity was permitted to seek or accept a grant for operational expenses. That day has dawned.

As mentioned at the outset, W. Va. Code § 6B-2-5(c) prohibits solicitation of gifts to fund operating expenses. The Commission takes administrative notice that government agencies increasingly rely on grants from public and private sources to fund specific projects and operating expenses. The Commission now concludes that applying for a grant to fund operational expenses is permissible, and does not constitute solicitation of a gift. Accordingly, the Police Department or the City may seek and/or accept funds from a private foundation established by a local businessperson for the sole support of the Police Department without violating the Ethics Act.

City officials and employees must still comply with the prohibition against the use of public office for personal gain found in W. Va. Code § 6B-2-5(b). For example, the Mayor and Police Chief may not apply for any grant that would directly benefit themselves or their immediate families. Additionally, any funds received from the police foundation become public funds. As stated in Advisory Opinion 2012-50, "Regardless of the source of funds, all funds in the possession of a government entity are part of the 'public coffers'. Without exception, money in the public coffers may only be expended by a government entity for an authorized purpose."

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

FILED

ADVISORY OPINION NO. 2013-50

2013 NOV 20 PM 12:39

Issued on November 7, 2013 By the
WEST VIRGINIA ETHICS COMMISSION

OFFICE WEST VIRGINIA
SECRETARY OF STATE

OPINION SOUGHT

A **State Agency** asks if its employees assigned to the various Conservation Districts may participate in the state-funded Agricultural Enhancement Program that is administered by the districts.

FACTS RELIED UPON BY THE COMMISSION

Conservation Districts were created to conserve land from soil erosion. See W. Va. Code § 19-21A-2. The districts have been in existence in some form since 1939 and were originally called "Soil Conservation Districts" until 2002 when their name was changed to "Conservation Districts." A district may consist of land in one or more counties. Landowners in one or more counties may form a district by petitioning the State Conservation Committee.

Conservation Districts participate in the Agricultural Enhancement Program (AgEP) which offers a cost share program to local landowners who qualify for the program. This program provides cost-share for a variety of best management practices farmers can implement to reduce soil erosion, improve water quality and enhance production on their farms, e.g., one cost-share practice involves the spreading of lime.

The AgEP mission is to assist the agriculture cooperators of West Virginia with the voluntary implementation of best management practices on agricultural lands in order to conserve and improve land and water quality. Practices are determined by each Conservation District and applications are presented to each Conservation District Board for review and approval at monthly board meetings.

Districts have the statutory power to conduct surveys relating to the character of soil erosion. Districts may also expend public funds for demonstration projects on land within a district for the purpose of determining which "means, methods and measures" best prevent soil erosion. Some of the Districts' programs involve cost-sharing whereby landowners receive certain benefits but also pay a portion of the cost.

The State Agency is a board that oversees the implementation of soil conservation and watershed programs in the State. The State Agency is also charged with working with the Conservation Districts and the elected Conservation Supervisors to implement conservation programming at the local level.

The Requester asks if the employees assigned to the various Conservation Districts may participate in the AgEP that is administered by the districts. The employees provide

services to the districts and to the AgEP. They are not, however, members of any Conservation District.

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(d) reads, in relevant part:

(1) No 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.

...

(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.

ADVISORY OPINION

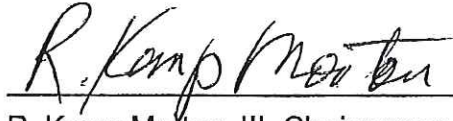
In Advisory Opinion 2010-20, the Commission ruled that a Conservation District was not permitted to expend public funds to construct a soil conservation project on property owned by an Elected Board Member of the District. In reaching this conclusion, the Commission relied upon W. Va. Code § 6B-2-5(d)(1) which prohibits full-time public servants from having more than a limited interest in the profits or benefits of a public contract over which he or she has direct authority or control.

The State Agency employees assigned to work with the Conservation Districts either serve as administrative staff who take minutes at District meetings and accept payments or are technicians who verify that the work required for various programs was completed. Therefore, the Commission finds that the State Agency's employees **may** participate in the AgEP program because the employees do not exercise direct authority or control over the program. The employees are cautioned, however, not to take any actions relating to their own involvement in the AgEP program beyond ministerial functions, including

evaluating whether the necessary work was completed to fit with the AgEP program's guidelines for their own participation, or approving any payment thereof.

The staff advice rendered herein is based upon the facts provided. If all material facts have not been provided, or if new facts arise, you should contact us for further advice as it may alter the analysis and render this advice invalid. This advice is limited to the analysis of whether the Ethic Act would be violated by the proposed conduct. The Ethics Commission is without authority to determine whether other laws or rules, including the policies of the government agency by which you are employed or serve, prohibit or otherwise restrict the proposed conduct.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.*, and W. Va. Code § 61-10-15 and does not purport to interpret other laws or rules. 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". The signature is written in black ink and is positioned above a horizontal line.

R. Kemp Morton, III, Chairperson

