

JEFFERSON COUNTY, WEST VIRGINIA
Planning and Zoning Commission

104 East Washington Street
P.O. Box 338
Charles Town, West Virginia 25414

Phone: 304-728-3228
Fax: 304-728-8126

Email: dpze@jeffersoncountywv.org

Date: July 13, 2004

To: Jefferson County Commission

c.c. Paul J. Raco, Executive Director
Planning, Zoning and Engineering Department

From: Jefferson County Planning and Zoning Commission

Re: Request For Comments – Amendments to Zoning and Development Review Ordinance

The proposed changes to the Zoning and Development Review Ordinance are comprised essentially of two major components:

1. The addition of new definitions, and changes to the Administration and Enforcement sections, and additions/changes to the Processing Procedures sections of the Zoning and Development Review Ordinance to bring them into conformity with Chapter 8A of the new State Code (Known as the Planning Bill).
2. Changes to the Conditional Use Permit section and the LESA rating system, as per the Comprehensive Plan.

Specific Comments on Proposed Amendments

The additional definitions are required because of Chapter 8A of the State Code, but there are a great number of additional definitions that must be included to bring the Ordinance up to current planning practice standards.

The current LESA (Land Evaluation Site Assessment) system is comprised of the following:

- | | | |
|----|-------------------------------------|------------|
| 1. | Soils Assessment | 25 points |
| 2. | Amenities Assessment | 75 points |
| | a) size of site | |
| | b) adjacent development | |
| | c) distance to growth corridor | |
| | d) comprehensive Plan compatibility | |
| | e) proximity to schools | |
| | f) public water availability | |
| | g) public sewer availability | |
| | h) roadway adequacy | |
| | i) emergency service availability | |
| | | 100 points |

Any project that scored more than 55 points or more was refused, and those who scored 55 points or less were advanced to the Compatibility Assessment Meeting.

The Zoning and Development Review Ordinance originally used 60 points as the cut-off, but this was amended on August 8, 2002 to 55 points. The proposed amendment would set the point cut-off back to 60 points, making it easier for developments to advance to the Compatibility Assessment Meeting.

The new rating factors proposed by this amendment are

- | | | |
|----|--|------------|
| 1. | Soils Assessment
[with an emphasis on suitability for home construction] | 25 points |
| 2. | Amenities Assessment | 75 points |
| | a) Size of site | |
| | b) Adjacent development | |
| | c) Distance to Growth Corridor | |
| | d) Comprehensive Plan Compatibility | |
| | -Highway Problem Areas | |
| | [new, and now access to 'out of county' market areas part of assessment] | |
| | -Sinkholes | |
| | [new] | |
| | -Park/Recreational | |
| | [new, 5 ac park or 10% gross acreage with amenities earns 0 points] | |
| | e) Proximity to Schools | |
| | f) Roadway Adequacy | |
| | g) Emergency Service Availability | |
| | -Distance to Emergency Services | |
| | [new, but no indication as to whether 'out of county' facilities are part of assessment] | _____. |
| | | 100 points |

General Comments on LESA Point System

More consideration should be given to the point system for soils as they relate to suitability for home or street construction. Permitting large-lot residential development in the rural portions of the County contributes to the availability of a variety of different housing types and lifestyles to residents of the area. One of the objectives of allowing new residential development in rural areas is to make provision for these houses to blend in with the natural landscape, so they become a part of the rural fabric, rather than an intrusion into the landscape. Often the land with the ability to provide "natural screening" are those very properties with soils that make them unsuitable for farming. Farm woodlots are usually an ideal place to locate the lots created by the 1 lot/10 ac rule.

The Park/Recreational factor should also be re-examined. Does our Parks and Recreation Department really want a great number of little parks scattered throughout the countryside? It is standard practice in other jurisdictions to require developers of large lot (1 ac and above) subdivisions to provide cash proffers, and these cash proffers are used to provide major recreational facilities at central locations (usually adjacent to schools so school children can make use of them as part of the school curriculum). Some jurisdictions have been able to provide indoor swimming pools, baseball diamonds, tennis courts, soccer fields, meeting rooms and convention halls for use by all residents of the community. This does not preclude developers from providing on-site parks, but they do so at their own expense to make their subdivisions more attractive to potential buyers.

One of the major factors removed from the revised LESA system is the availability of public water and public sewer services. The Planning Commission is aware of the changes to the State Code permitting essential utilities or equipment throughout the rural area. How the State will reconcile this provision with their emphasis on controlling urban sprawl remains to be seen. In any event, the Planning Commission would like to suggest that the County Commission consider establishing an Urban Service Area, with a policy that no publicly operated water or sewer system would service projects outside the Urban Service Area Boundary (privately owned ESA's would have to be permitted]. This would allow public service providers a clear indication of where growth is expected to occur, so school boards and other service providers will be able to plan their facilities to accommodate future growth in a cost-effective manner. It would also give the County another tool for controlling the location of new residential, commercial and industrial development. LESA by itself is not a tool that is very effective at controlling the location and amount of new development.

Additional Comments on the Amendment

Section 7.6 (i) on page 64 of the Zoning and Development Review Ordinance makes specific reference to Article 8, Chapter 24, Subsection 59 of the West Virginia Code. This reference needs to be amended.

Section 7.8 (a) on page 65 makes specific reference to Chapter 8, Article 24 of the West Virginia Code, and needs to be amended.

Section 7.8 (b) (6) on page 65 makes specific reference to Chapter 8, Article 24, Section 55 of the West Virginia Code of 1931, and needs to be amended.

In the opinion of the Jefferson County Planning & Zoning Commission, the proposed Amendments to the existing Zoning and Development Review Ordinance does not take into account the proposed separation of "land use control" Vs. "Development Review Procedures and Processes", as envisaged in the new Planning Bill.

8A-4-2 Contents of subdivision and land development ordinance

Please compare the title of Section **8A-4-2** above to the title for Zoning Ordinances below:

8A-7-2 Contents of zoning ordinance.

Please note that the "Development Review" portion of the current Jefferson County Zoning and Development Review Ordinance is not included in the new terminology "zoning ordinance".

This separation of the land use control function of Zoning from the process & procedures function of Subdivision and Land Development [i.e. Development Review] is further supported by the current wording of Bill 454; it is clear that the State wants Subdivision and Land Development Ordinances to include the following:

- Minor subdivisions
- Major subdivisions
- Standards for flood-prone or subsidence areas (i.e Flood Plain Ordinance)
- Improvement Location Permit process
- Standards for setback requirements, lot sizes, streets, sidewalks, walkways, parking, easement, rights-of-way, drainage, utilities, infrastructure, curbs, cutters, street lights, fire hydrants, storm water management and water and wastewater facilities,

- Subdivision or land development plan review process
- Subdivision or land development plan approval process
- A process to amend final approved subdivision or land development plans and plats
- Prohibition against any land development activities before final plat is recorded
- The acceptable methods of payment to cover the cost of the water and sewer service infrastructure, which can include, but are not limited to bonds, impact fees, escrow fees, and proffers.

[Please note that the two underlined items above constitute the "Development Review" portion of the current Zoning and Development Review Ordinance. It is the Planning Commission's understanding that the State of West Virginia regards Subdivision and Land Development Ordinances as involving mainly "process and procedures". Since the "Development Review" portion of our current Zoning and Development Review Ordinance clearly controls "process and procedures", it would appear to the Planning Commission that the Development Review portion of the current Zoning and Development Review Ordinance must be moved to the Subdivision Ordinance to conform to the new Planning Bill. The State clearly wants all matters dealing with process and procedures in one Ordinance (as was the position of the Planning Commission, as stated above), and it clearly wants zoning matters (i.e. those matters that directly control the use(s) of land) in a separate Zoning Ordinance.]

8A-7-2 of the new Code makes it mandatory for new Zoning Ordinances to consider the following matters:
 Promoting general public welfare, health safety, comfort and morals;
 A plan so that adequate light, air, convenience of access, and safety from fire, flood and other danger is secured;
 Ensuring attractiveness and convenience is promoted;
 Lessening congestion;
 Preserving historic landmarks, sites, districts and buildings;
 Preserving agricultural land, and
 Promoting the orderly development of land.

The current Zoning and Development Review Ordinance, which was written long before the new Planning Bill, clearly does not address such issues as convenience of access, safety from fire, flood and other danger (Flood plain management being in a separate Ordinance), ensuring attractiveness and convenience, preserving historic landmarks, sites, districts and buildings, and lessening of traffic congestion. These deficiencies should be addressed in a comprehensive manner before any new Zoning Ordinance is adopted and approved.

It is clear from **8A-1-1 (a)** and from **8A-1-1 (b)** that the State Legislature encourages and recommends the following:

- (8) Promoting growth that is economically sound, environmentally friendly and supportive of community livability to enhance quality of life is a good objective for a governing body; [from 8A-1-1 (a)]
- (4) A goal of a governing body should be to reduce sprawl'
- (6) Governing bodies, units of government and planning commissions work together to provide for a better community;

The Jefferson County Planning & Zoning Commission has on two separate occasions voted to abolish the LESA development review procedure, otherwise termed as "non-traditional zoning". LESA has proved to be ineffective at controlling both the location of new development, and the amount of new development. The long-term goal of "Promoting the orderly development of land" is considered to be attainable, if the County were to switch to traditional zoning. Traditional zoning by-laws have been developed that not only protects but

enhances the ability of the farming industry to maintain their livelihood, and particular attention should be paid to this extremely important segment of the rural economy. One must remember that residential development generally does not generate sufficient revenue to offset the public expenses of providing roads, schools, public water and sewer facilities, recreational facilities, etc.

The Jefferson County Planning & Zoning Commission wishes to draw to the attention of the County Commission the following excerpts from the new Planning Bill:

8A-7-4 After adoption of a comprehensive plan and before enacting a zoning ordinance, a governing body with the applicable planning commission must study the land within its jurisdiction... The planning commission must use the information from the study and the comprehensive plan and prepare a report on zoning. The report shall include the proposed zoning ordinance, with explanatory maps showing the recommended boundaries of each district, and the rules regulations and restrictions fore each district... No zoning ordinance may be enacted without a study and report.

Please note that while municipalities may consider the research that went into their comprehensive plan to be equivalent to the required report on zoning, the legislation specifically requires that such a report be prepared after the adoption of a comprehensive plan. Please also note that it is the intent of the Legislature that the Planning Commission play a key role in the adoption of any new Zoning Ordinance.

Conclusion

A legal opinion should be sought as to whether or not the amendments being made are sufficient to bring the existing Zoning and Development Review Ordinance up to Code standards.

It is the advice of the Planning Commission that the proposed Amendments to the Zoning and Development Review Ordinance are specifically targeted at meeting **Recommendation 3.20** on page 68 of the Comprehensive Plan and are consistent with that recommendation. However, the Planning Commission advises that the Zoning and Development Review Ordinance, as amended, should not and cannot be considered to be consistent with **Recommendation 3.03** on page 25 of the Comprehensive Plan.

Technical, Organizational, and Other Deficiencies of the Existing Ordinances

[Summary of some suggested changes, as presented to Planning Commission in February, are attached to the back of this report, for the assistance of the reader]

Introductory Comments

The County Planning Commission is aware that the Chief Planner was advised by some members of the County Commission that, since these amendments will bring the Zoning and Development Review Ordinance into conformity with the new Planning Bill, all he has to do is bring the Subdivision Ordinance into conformity with the new legislation.

The Jefferson County Planning & Zoning Commission is keenly aware that the existing Zoning and Development Review Ordinance is outdated, is deficient in a number of critical areas, and is written in such a manner that the common resident of Jefferson County cannot determine what he/she can do with their land, or what standards apply, be they setbacks, stormwater, platting requirements, engineering standards, etc.

Problem: **Standards and Procedures are scattered throughout all the Ordinances**

Objective: **Place all the standards in one Ordinance, and all of the Procedures in another Ordinance**

The Zoning and Development Review Ordinance as it is currently written is not a "stand-alone" document, but is so intricately interwoven with the Subdivision Ordinance that anyone wanting to know what land uses are permitted and what standards apply to their property must read both Ordinances together.

The separation of standards from procedures would allow people interested in knowing what they can do with their land and what standards apply can easily get the information from one Ordinance. Once they know what is permitted, and what they want to do with their land, they can then refer to the Procedures in the other Ordinance to learn what steps are required to proceed.

Problems with the organization of the existing Ordinances are detailed below:

Example #1

The parking standards for a non-residential use are located in Article 11 [page 75] of the Zoning and Development Review Ordinance, but the requirements for Handicapped Parking are located in Article 11, Section 11.2 d. Parking Requirements [page 75] of the Subdivision Ordinance.

Example #2

Section 5.5 (b) [page 36] of the Zoning and Development Review Ordinance states that, for multi-family dwellings, "Impermeable surface coverage for interior streets, parking areas, and residential structures shall not exceed fifty (50) percent of the gross land area." This is clearly a subdivision design standard, but it is not included in the Subdivision Ordinance.

Example #3

Section 4.10 [page 23] of the Zoning and Development Review Ordinance establishes Site Plan Requirements for townhouse and multi-family residential development. Section 5.5 of the Zoning and Development Review Ordinance establishes Design Standards for Multi-Family Dwellings, but additional Requirements For Townhomes are found in Section 8.3 [page 58 through 61], and Section 9.3 [pages 67-68] of the Subdivision Ordinance.

Example #4

Additional confusion arises when the reader runs into statements like the following, which is found in Section 4.10(e) [page 24] of the Zoning and Development Review Ordinance:

"The Site Plan format and informational requirements that must be followed are referenced in the Jefferson County Subdivision Ordinance, and Articles 4, 5, 10 and 11 of this Ordinance."

Not only is there no reference to the specific Section(s) in the Subdivision Ordinance, in the Zoning and Development Review Ordinance Article 4 covers some 10 pages [pages 19-28], Article 5 covers some 18 [pages 33-50], Article 10 covers 4 pages [pages 71-74], and Article 11 covers 3 pages [pages 75-77], and most of these Articles also make reference to other Sections of either the Zoning and Development Review Ordinance or the Subdivision Ordinance. That is, the reader has to carefully read 35 pages, not counting additional pages referred to in those 35 pages, to determine the standards that apply to a townhouse/multi-family project.

To illustrate the problem, from the perspective of a common lay person not familiar with planning or engineering terminology, we will use as an example someone who owns a lot in a Residential/Light Industrial/Commercial District zone and wants to know what he can do with his land.

Section 5.8 (a) [page 44] of the Zoning and Development Review Ordinance sets out the permitted uses and Section 5.8 (b) sets out the standards. The attached ***FLOW DIAGRAM*** indicates how the Zoning and Development Review Ordinance and the Subdivision Ordinance are inter-connected. For a developer or a member of the public to understand what uses are permitted, and what standards apply to his/her property, they have to read, and understand, several pages of both Ordinances.

It is the objective of the Planning Commission to make the new Zoning Ordinance "user friendly", and one way of doing that is to ensure that as much as possible all the standards applying to a specific use are located in one Ordinance, at one location in that Ordinance, and are written in an unambiguous way so that "interpretations" of the Ordinance provisions by staff is kept to an absolute minimum.

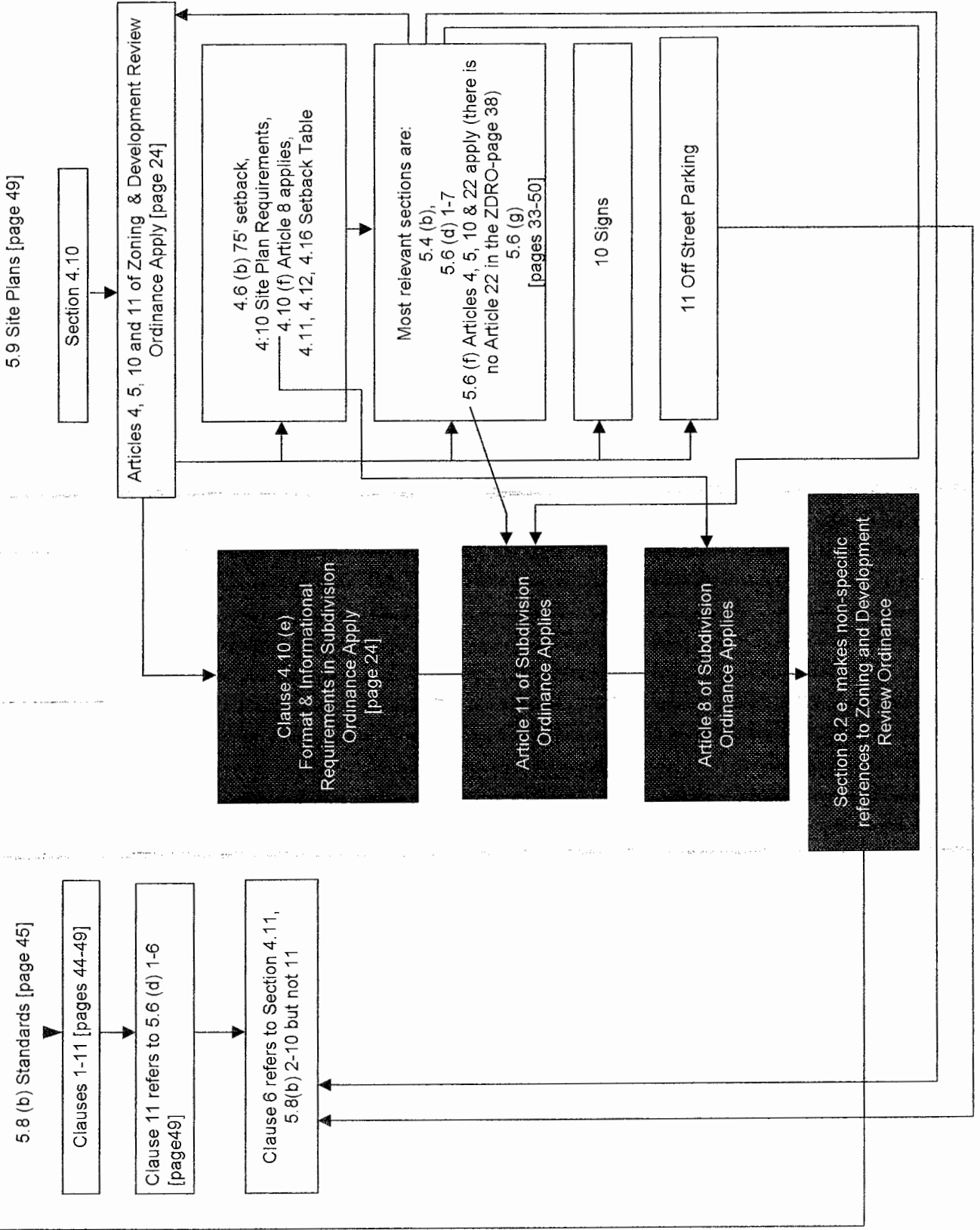
Problem: ***Some procedures are duplicated, and all are time consuming***

Objective: ***Streamline the review/approval process, make the Ordinances more flexible***

The current Ordinances discourage the submission of all required development review applications affecting a specific project at the same time. That is, a project that requires a Conditional Use Permit, a Community Impact Statement, Site Plan Approval, and Variances from certain provisions of the Zoning and Development Review Ordinance are not permitted to submit all these applications at the same time (i.e. the Long John Silvers Restaurant on Router 340, which is slated to be demolished and replaced by a new facility). The Ordinances should be amended to permit the concurrent processing of multiple applications as a means of expediting the approval process.

The new Planning Bill now permits downward delegation of approval for minor applications, and the new Zoning Ordinance and the Subdivision and Land Development Ordinance should take advantage of these provisions.

Zoning and Development Review/Subdivision Ordinance Linkages
Section 5.8 Residential/Light Industrial/Commercial District-page 44



Problem: *Additional Deficiencies in the current Zoning and Development Review Ordinance*

Objective: *Resolve the deficiencies through a comprehensive re-writing of the Ordinance provisions*

The Ordinance standards are either out of date with modern planning practice, or non-existent. For instance, there are no standards for mini-storage or self storage facilities, no standards for traditional neighborhood developments such as Huntfield, no standards for multiple use developments (in fact the Ordinances almost without exception do not allow more than one principle use on a lot) no standards for cluster subdivisions, no standards for controlling light pollution, no or few provisions for the sale of development rights, land trusts, Folk Art Workshops, and there is a need to re-visit how the Ordinance handles Child Care Certified Day Care Providers, Day Care Facilities, and Day Care Centers.

With respect to affordable housing, the existing Ordinance is exclusionary, and needs to be made inclusionary. Any development involving the division of land is automatically, by existing Ordinance requirements, restricted to one (1) single family dwelling, which means that granny flats, servants quarters (if they include a kitchen and bathroom), etc. are excluded. Basement apartments are considered to be quite acceptable provided Building Code requirements are met; these units can provide affordable housing units, but are not permitted in the current Ordinance. Technically speaking, dwellings to accommodate farm help are not specifically permitted as a right in the list of Principal Permitted Uses [page 40-41], which is a deficiency that needs to be corrected.

There are a great number of "definitions" which need to be included in the Zoning Ordinance. For instance, the definition of "family", "abattoir", "accessory apartment", "accessory dwelling", "adaptive reuse", "adult retirement community" [or facility, or project], "aesthetic zoning", "affordable", "agricultural building", "agricultural land-prime", "agricultural or farmer's market", "agritourism", "air quality criteria", air quality standards", "aisle", "alley", "alternate living arrangement", "ambiance", "amusement and recreation services", "amusement arcade", "amusement park", "animal hospital", animal kennel", "animal shelter", "animal unit", "annexation", "apartment, garden", "apartment hotel", "apartment house", "dwelling, apartment", "dwelling, efficiency apartment", "aquaculture", "archery range", [shooting range], "architectural control", "architectural feature", "artist studio", "arts center", "auction house" [flea market], "automated teller machine(ATM)", "automatic car wash", "automobile dealership", "automobile mall", "automobile repair services-major", "automobile sales-used", "automobile service station", "automobile wrecking yard", "average annual daily traffic (AADT)", "average daily traffic (ADT)", "average finished grade", "average setback", "awning", etc. And these are only the "A" definitions that are missing.

There is a problem with the wording of some sections of the Zoning and Development Review Ordinance. The current wording often results in "Requests for A Determination", or "Requests for An Interpretation" from the public or their representatives on what the Ordinance permits, or what standards apply. To illustrate that this is a problem common to all of the County's existing Ordinances, *APPENDIX A* illustrates the deficiency of the Subdivision Ordinance as it relates to how Mini-Storage and Self-Storage projects are processed. A properly worded Ordinance should be unambiguous as to interpretation of its standards and requirements, so Requests for a Determination are indicative of a need to make the ordinances clear and understandable.

Infill development is going to be increasingly controversial, particularly since smart growth and the control of sprawl encourage land use intensification, while adjacent landowners are particularly opposed to intensive forms of land development. The current Ordinances do not establish any land use planning principles to be followed with respect to land use compatibility, and there are no urban design guidelines and principles to follow. This is a major workload item in itself, and it should be addressed given the fact that the new Planning Bill now specifically gives the County more control over architectural design. Such new powers could be a real asset in terms of protecting both individual historical buildings and the many historical communities in the County.

There is a major deficiency in the Ordinances the way they are currently set up. It is standard practice in almost every other jurisdiction to include sections specifically devoted to Ordinance Interpretations and Variance/Exception applications. Ordinance Interpretations should be minimal if the Ordinance is properly drafted, but there will always be exceptions that require specific interpretations. Each interpretation and each variance application request should be recorded in a ledger section of each Ordinance, the specific section of the Ordinance should be cited, and the outcome (interpretation, variance refused, approved, approved with modifications) is stated. That way, all members of the public have easy access to the historical records and can compare their situation to similar applications that have come before the Planning Commission. As it now stands, in Jefferson County there is no consolidated records management for Variances, or Conditional Use Permits. Anyone wanting to search the historical records is faced with the daunting task of reading each and every individual Variance file in the Department's file room. In terms of **OPEN GOVERNMENT**, justice, and transparency of actions, this deficiency needs to be addressed in any new Zoning Ordinance.

Another deficiency is the lack of provision for temporary uses. Other jurisdictions have a simple permitting system that allows such uses as construction trailers, mobile homes as temporary residential accommodation for people building or rebuilding their own homes, tents for shelter so merchants can sell cut flowers, plants, fruits and vegetables, etc. Lumped in with temporary uses are temporary signs and their control.

The Ordinances contain contradictory requirements. For instance, Section 8.1 c. [page 35] of the Subdivision Ordinance requires Final Plats to be drawn or reproduced on opaque linen, yet Section 8.1 d 1 [page 38] permits the use of either mylar or linen, and requires a sepia reproduction of the final plat. Aside from being contradictory, opaque linen has not been used since the early 1970's, mainly because plastic mylar or chronoflex material is dimensionally much more stable than linen material (linen tends to shrink or swell according to humidity conditions, which makes them unreliable when scaling distances by mechanical means).

Another example is Section 8.2 a 6 and 8.2 a 7 [page 40]. Clause 6 says roads serving 12 or fewer dwelling units are classified as "local subdivision roads", while clause 7 says roads serving more than 10 dwelling units are termed "primary subdivision roads". The contradiction is quite evident without the need for further explanation.

There a number of technical errors in the numbering in the current Zoning and Development Review Ordinance. For instance, there are there are **three (3) Section 4.3(h)**'s that were added by amendments made on February 11, 1998, October 14, 1999 and January 10, 2002.

There are also **three (3) Section 4.4(j)**'s that were added by amendments made on February 11, 1998, October 14, 1999 and November 7, 2002.

Amendments made to Section 5.7 a on July 1, 1998 added new clause 20

(20) Wireless telecommunication facilities pursuant to Article 4B

but then on October 14, 1999 amendments were made to the same Section 5.7 a to add new clauses 20, 21 and 22

20) Horse breeding and/or boarding

21) Equestrian riding/training facility

22) Model homes/sales office (pursuant to 4.18)

Obviously we cannot have **two (2) Clause 20's in the same Section**.

In fact there has been some **190 individual amendments** to the Zoning and Development Review Ordinance and **220 individual amendments** to the Subdivision Ordinance. This has resulted in a patchwork document, with references and cross-references that lead to other references and cross-references.

CONCLUSIONS

There is a continuing need to bring the existing Ordinances up to date with modern standards and practices

It is hoped that the above comments will support the need to pursue *Recommendation 3:03* of the Comprehensive Plan. Just because the proposed Zoning and Development Review Ordinance amendments are suppose to bring that Ordinance into conformity with the new Planning Bill does not mean that we should view as an urgent matter bringing all Ordinances up to modern planning standards.

It is clear that not only the public but professionals, such as lawyers, surveyors, planners, and engineers have difficulty interpreting the Ordinances.

The Chief Planner estimates that a minimum of 1/3 of his time each day is spent interpreting the ordinance provisions for other people, and suggests that the Executive Director and his Administrative Assistant spend at least the same amount of time interpreting the ordinances for other people. One complicated "interpretation" request can take up to 3 days of research to reach a conclusion. With the ever-increasing workload, his advice is that by re-writing the Ordinances so they are easy to understand by anyone, the County would save money by not having to hire more planners to keep up with development applications. That would free up some of the planners' time to do additional research on long term planning issues, some of which have been identified in the Comprehensive Plan.

Existing Processes must be streamlined, and Standards must be clear and reasonable, or Annexations will continue.

Once major concern of the Planning Commission is that if the current Ordinances remain substantially unaltered, there will be a continuing trend for developers to request annexation by incorporated municipalities. The Planning Commission is aware of at least one more major annexation that is likely to happen once the developer's other projects near final build-out. The Planning Commission advises that the current ordinances need to be streamlined and made more flexible, or the County will continue to lose additional sources of revenue, and may in the long run cease to exist.

This continuing concern was discussed on page 24 of the Comprehensive Plan. One of the solutions to this problem was incorporated into the Comprehensive Plan at page 25, as follows:

The County Commission has determined that comprehensive revision of the Ordinances is necessary. The volume and nature of changes to the documents could cause the existing documents to become cumbersome and confusing

When the package of Ordinance changes is prepared, particular attention should be paid to their structure and organization so that they are the most concise, effective development management tools that can be created. Such an effort cannot be done effectively in stages or piecemeal by ordinance. Cumberse as such an effort may be, it should be undertaken as a single project so that all revisions can be coordinated into a well integrated set of ordinances.

RECOMMENDATION 3.03: When considering amendments to the Ordinances and Zoning Map to incorporate decisions based on the recommendations of this Plan, the County should address the Ordinances in their entirety including:

- a. The preparation of a comprehensive "existing land use map"; and,***
- b. A new zoning map showing at a reasonable scale the new boundaries of the cities.***

As stated previously, it is the advice of the Planning Commission that the proposed Amendments to the Zoning and Development Review Ordinance are specifically targeted at meeting ***Recommendation 3.20*** on page 68 of the Comprehensive Plan are consistent with that recommendation. However, the Planning Commission advises that the Zoning and Development Review Ordinance, as amended, should not and cannot be considered to be consistent with ***Recommendation 3.03*** on page 25 of the Comprehensive Plan.

APPENDIX A

JEFFERSON COUNTY, WEST VIRGINIA
Department of Planning, Zoning & Engineering
 104 East Washington Street
 P.O. Box 338
 Charles Town, West Virginia 25414

Phone: 304-728-3221

Fax: 304-728-8121

Email: dpze@jeffersoncountywv.org

Date: June 15, 2004

To: Mark A. Dyck, Associate
 Senior Landscape Architect
 William H. Gordon Associates, Inc.
 322 West Washington Street, Suite 4
 Charles Town WV 25414-1529

c.c. Jefferson County Planning Commission/
 Paul J. Raco, Executive Director
 Department of Planning, Zoning and Engineering

From: Roger Hunter, MCIP
 Chief Planner

Re: Old 340 Mini Storage and Office

Further to our telephone conversation today, Section 4.10 requires Site Plan approval for all new commercial uses. Section 4:11 and 4:12 set out landscaping, screening, buffer yard and outdoor lighting requirements/standards, while the Table in Section 4:16 sets out building, parking and access drive, screened and unscreened buffer, and minimum distance requirements. Access standards are contained in Section 5.4 (d). Article 10 establishes standards for signs, while Article 11 sets out off-street parking standards.

Dealing with the Subdivision Ordinance, Article 11 establishes requirements for non-residential subdivisions. It is your contention that self storage and mini storage facilities should not be treated as a "subdivision", since the land is not being divided for sale to 3rd parties.

The Subdivision Ordinance defines "subdivision" as:

Subdivision. The partition or division of land into two or more lots, tracts, parcels, plots, sites, areas, units, interests or other division of land, for the purpose, whether immediate or future, of recorded contract, sale, lease, transfer of ownership, building construction, development, or land use. Subdivision applies to all forms of development including residential, commercial, and industrial, and includes the division of land either by deed, deed of trust, contract of sale, metes and bounds description, devise, intestacy, lease, map, plat or other instrument, or

by act of construction or land use. Subdivision includes resubdivision and, when appropriate to the context, shall relate to the land subdivided. This definition excludes subleases for shopping centers.

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]

According to the Subdivision Ordinance definition, self-storage and mini-storage facilities are considered to be Condominium subdivisions, even though there is no future intent to transfer ownership of storage units to 3rd parties.

It is important to note that the above definition includes an exception for shopping centers. In my professional opinion, the lease of store space in a shopping center is very similar to the lease of storage space in a mini-storage facility. That is, there is no long-term intent to sell store sites within the shopping center to 3rd parties, which is essentially the same with respect to self-storage and mini-storage facilities. Also, there is no intent to establish new public or private roads in either shopping centers or self-storage facilities. That is, access is provided to the rental units from internal driveways and aisles, which also serve as access to parking spaces. Unlike shopping centers, self-storage facilities are very low traffic generators. In my opinion parking lot aisles and aisles connecting aisles between rows of parking spaces are not private roads but aisles within a parking lot.

However, the balance of the definition of "Subdivision" states:

Three types of subdivisions are recognized by this Ordinance:

- a. Minor subdivision of not more than three lots (see definition above).
- b. Conventional subdivision (see definition above).
- c. Condominium subdivision consisting of two or more building sites (whether vertical, or horizontal) on a single tract.

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]

Since there are 46 individual buildings, each with individual storage units, and one office building, the project falls under the definition of Condominium subdivision in c. above.

The definition of Building Site reaffirms this interpretation, as follows:

Building Site. A specific area within a condominium subdivision that is identified for the location of one principal building. A building site within a Condominium subdivision is similar to an individual lot within a conventional subdivision. Building sites are outlined, dimensioned and scaled on Condominium subdivision plats but (unlike lots) are not labeled with directional references.

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JANUARY 1, 1997]

The Ordinance does not lend itself to the interpretation of "Building Site" as the "entire site", on which several individual buildings will be constructed. There are in fact 47 individual building

sites, and as such this is by existing Ordinance definition a condominium subdivision.

It is interesting to note that the definition of "Condominium" in the Subdivision Ordinance is:

Condominium. A common interest community in which portions of the real estate are designated for separate fee simple ownership of cubic air interior spaces and the remainder of the real estate is designated for common ownership solely by the owners of those portions. Said common interest community may be residential, commercial or industrial depending on provisions of the Zoning and Development Review Ordinance. All such projects are subject to the West Virginia Uniform Common Interest Ownership Act. In the event that a specific requirement within the Uniform Common Interest Ownership Act is inconsistent with a commercial or industrial project, that specific requirement shall not apply. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990

Obviously there will be no separate fee simple ownership of interior spaces, and the sole owner will be the owner of the mini-storage facility itself (no shared or joint ownership by tenants)

New Ordinance Implications

While self-storage and mini-storage facilities are by current Subdivision Ordinance definition either a condominium subdivision or a non-residential subdivision (depending upon the number of buildings on an individual site, it is my professional opinion that they should be treated in the Subdivision Ordinance in the same fashion as a shopping center. That is, these facilities should be treated as a commercial site plan only, since there is no intention to sell or otherwise transfer ownership of individual units to 3rd parties.

Processing Procedures

What this Department has done in the past is to support specific Variances

- A. from the Condominium Subdivision standards specified in Article 9 and Article 8 of the Subdivision Ordinance. You may want to look specifically at Section 9.2 a. through i (specifically watch for building separation distance of 50 ft), and Section 8.1 starting on page 30.
- B. from Article 9 the Condominium Subdivision process to permit processing under Section 11.2 of the Subdivision Ordinance. This Section deals with Site Plan requirements for all uses that require Site Plans, and a review of the requirements in this section indicates that all of the planning and engineering design standards for a self or mini-storage facility are included in this Section, including entrance design, internal circulation, parking, landscaping, signage, site grading, green space, stormwater management, and utilities.
- C. waiving the Final Plat requirements of Section 8.1 c on page 35.

Since this is by current Subdivision Ordinance definition a condominium subdivision, a Community Impact Statement is required.

Unfortunately the definition of 'subdivision' cannot be amended to include an exemption for mini-storage facilities, due to the provisions of Senate Bill 454.

Frontage Road

Finally, you have requested some guidance from me on the matter of the required 50 ft Frontage Road right-of-way dedication, given the irregular southern lot line boundary. The proposed 50 ft Frontage Road right-of-way, and the proposed 50 ft landscape buffer, as shown on the preliminary layout, regularizes the lot right-of-way and landscape buffer boundaries. The Zoning Ordinance requirements stated below currently apply to this proposed development:

Section 5.8 (b) 9 (page 48) **FRONTAGE ROAD**

Easements or fee simple dedications will be provided along all limited access highways at the site plan or subdivision phases. Said easement/dedication shall not exceed 60 feet in width. The width may vary but must be adequate for extension, continuation or establishment of a minimum 20' wide paved frontage road.

Section 5.8 (b) 10. **LANDSCAPE BUFFER**

A fifty (50) foot wide landscape buffer strip will be provided along all limited access highways. Said buffer shall be adjacent to the frontage road. In the case where existing roads not adjacent to controlled access highway serve as frontage road the landscape buffer may be placed against the highway right-of-way. All front set backs (building and parking lot) are to be measured from the landscape buffer.

Mr. Raco has determined that all Frontage Road easement/dedications must be OUTSIDE the right-of-way of the highway, as per the strict interpretation of the diagram on page 48 of the Zoning and Development Review Ordinance. A Variance request would have to be submitted to the Board of Zoning Appeals for a determination on the matter.

The legal process of accomplishing this "regularized" southern lot boundary will be the responsibility of your client. It may require a series of lot line adjustments with the adjacent property owner.

I am uncertain as to which public road this site will use as its main access, since the only access location shown on the preliminary layout is at the eastern edge of the property. If this access is to a public road that intersects with Route 340, Mr. Goodwin should be contacted with respect to possible realignment of Frontage Road. That is, wherever possible the County has been realigning Frontage Road so it intersects roads directly accessing Route 340 some distance from the actual intersection, so that there is some vehicle storage space between the actual intersection with 340 and the intersection with Frontage Road. If this describes your client's situation, I would recommend that you discuss this matter with Mr. Goodwin.

I trust this is the information you require.

original signed by Roger Hunter

APPENDIX B

**WHAT CHANGES SHOULD BE CONSIDERED
FOR THE SUBDIVISION, ZONING AND DEVELOPMENT REVIEW,
IMPROVEMENT LOCATION PERMIT, FLOOD PLAIN MANAGEMENT
AND SALVAGE YARD ORDINANCES**

Objectives

Everyone, including members of the public, should be able to look at the Ordinances and find out

- I What uses they can have on their property,
- II What standards apply to that use, be they setbacks, stormwater, platting requirements, engineering standards for road access, etc.,
- III What the procedures are from initial contact through formal application to final approval, including timelines,
- IV What interpretations have been given to any provision of the Ordinances, to ensure fairness and consistency,
- V What exceptions to the Ordinances have been approved, to ensure fairness and consistency.

Approach

To achieve the above objectives, it would appear that the following elements must be included in the new Ordinances

- 1) All requirements pertaining to a particular use in a particular Zoning District must be located in one Ordinance, and as much as possible at one location within that Ordinance,
- 2) The number of cross-references must be minimized, even at the expense of duplicating provisions and increasing the size of the overall document,
- 3) Definitions of uses, technical terminology, etc. must be comprehensive in scope, unambiguous in interpretation, and easy to understand. Where existing Ordinances are found to be lacking, recommendations must be included to bring the Ordinance up-to-date with current requirements (and the Comprehensive Plan when approved-but the lack of such approval should not delay work on updating the Ordinance(s)),
- 4) Procedures re Platting Standards, review process, etc. should be located in one Section, with flow charts included so people can understand where their applications would be in the process and what still needs to be done to get to final approval stage,

- 5) Since one of the major concerns expressed by residents and developers to the Planning Commission has been the length of time required to get County approvals, recommendations must be made as to how the procedures can be simplified so as to shorten approval times while at the same time ensuring that current development standards are maintained,
- 6) Map Schedules must be sufficiently large to determine the precise boundary between various Zoning Districts, and be easy to relate to major roads, topographic features, and major public uses.
- 7) Since the size of the final document(s) is expected to be considerably larger in bulk, provision must be made to sell "Certified Excerpts" from the Ordinance(s) to those people who do not require complete copies of the Ordinance(s). The overall County Zoning Map should be made available, and specific geographic areas where more detail is required (i.e. Charles Town and Ranson, Harpers Ferry, Shepherdstown) Zoning Maps should be available, so members of the public have a choice in which maps to buy.
- 8) The revised Ordinances should be added to the website, with provision made for easy downloading of the entire document or selected sections of the document. Where a reference in one section is made to another section (say Definitions), links to the sections referred to must be added to make the document user friendly. A functioning "Back" button is essential. Every effort should be made to ensure that a reference to a different section does not include a reference to a third or fourth section. The Zoning Map should be added as a new "Overlay", so people will be able to "zoom in" on a specific location to determine the Zoning District with complete accuracy.
- 9) Any member of the public that does not have access to the Internet should be able to access the County Website from any Library or Municipal Office. This may require the establishment of separate workstations in these facilities.
- 10) The Ordinances should be available for sale to the public on Diskette, although Zoning Maps may have to remain as hard copy.
- 11) A subscription service should be made available, for a fee, which would provide updated pages to the Ordinances on a periodic basis (quarterly, or more frequently if required). This would necessitate the provision of Ordinances in three-ring binders to those people who subscribe to the service.