WEST VIRGINIA CODE CHAPTER 8A

WV Legislature

§8A-1-1. Legislative findings.

(a) The Legislature finds, as the object of this chapter, the following:

(1) That planning land development and land use is vitally important to a community;

(2) A planning commission is helpful to a community to plan for land development, land use and the future;

(3) A plan and a vision for the future is important when deciding uses for and development of land;

(4) That sprawl is not advantageous to a community;

(5) A comprehensive plan is a guide to a community's goals and objectives and a way to meet those goals and objectives;

(6) That the needs of agriculture, residential areas, industry and business be recognized in future growth;

(7) That the growth of the community is commensurate with and promotive of the efficient and economical use of public funds;

(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; and

(9) Governing bodies of municipalities and counties need flexibility when authorizing land development and use.

(b) Therefore, the Legislature encourages and recommends the following:

(1) The goal of a governing body should be to have a plan and a vision for the future, and an agency to oversee it;

(2) A governing body should have a planning commission, to serve in an advisory capacity to the governing body, and promote the orderly development of its community;

(3) A comprehensive plan should be the basis for land development and use, and be reviewed and updated on a regular basis;

(4) A goal of a governing body should be to reduce sprawl;

(5) That planning commissions prepare a comprehensive plan and governing bodies adopt the comprehensive plans;

(6) Governing bodies, units of government and planning commissions work together to provide for a better community;

WV Legislature

(7) Governing bodies may have certain regulatory powers over developments affecting the public welfare; and

(8) Based upon a comprehensive plan, governing bodies may:

(A) Enact a subdivision and land development ordinance;

(B) Require plans and plats for land development;

(C) Issue improvement location permits for construction; and

(D) Enact a zoning ordinance.

WV Legislature

§8A-1-2. Definitions.

As used in this chapter, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(a) "Abandonment" means the relinquishment of property or a 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.

(b) "Aggrieved" or "aggrieved person" means a person who:

(1) Is denied by the planning commission, board of subdivision and land development appeals, or the board of zoning appeals, in whole or in part, the relief sought in any application or appeal; or

(2) Has demonstrated that he or she will suffer a peculiar injury, prejudice or inconvenience beyond that which other residents of the county or municipality may suffer.

(c) "Comprehensive plan" means a plan for physical development, including land use, adopted by a governing body, setting forth guidelines, goals and objectives for all activities that affect growth and development in the governing body’s jurisdiction.

(d) "Conditional use" means a use which because of special requirements or characteristics may be permitted in a particular zoning district only after review by the board of zoning appeals and upon issuance of a conditional use permit, and subject to the limitations and conditions specified in the zoning ordinance.

(e) "Contiguous" means lots, parcels, municipal boundaries or county boundaries that are next to, abutting and having a boundary, or portion thereof, that is coterminous. Streets, highways, roads or other traffic or utility easements, streams, rivers, and other natural topography are not to be used to determine lots, parcels, municipal boundaries or county boundaries as contiguous.

(f) "Essential utilities and equipment" means underground or overhead electrical, gas, communications not regulated by the federal communications commission, water and sewage systems, including pole structures, towers, wires, lines, mains, drains, sewers, conduits, cables, fire alarm boxes, public telephone structures, police call boxes, traffic signals, hydrants, regulating and measuring devices and the structures in which they are housed, and other similar equipment accessories in connection therewith. Essential utility equipment is recognized in three categories:

(1) Local serving;

(2) Nonlocal or transmission through the county or municipality; and

www.Legislature

(3) Water and sewer systems, the activities of which are regulated, in whole or in part, by one or more of the following state agencies:

(A) Public service commission; or

(B) Department of environmental protection; or

(C) The Department of Health.

(g) "Existing use" means use of land, buildings or activity permitted or in existence prior to the adoption of a zoning map or ordinances by the county or municipality. If the use is nonconforming to local ordinance and lawfully existed prior to the adoption of the ordinance, the use may continue to exist as a nonconforming use until abandoned for a period of one year: *Provided*, That in the case of natural resources, the absence of natural resources extraction or harvesting is not abandonment of the use.

(h) "Exterior architectural features" means the architectural character and general composition of the exterior of a structure, including, but not limited to, the kind, color and texture of the building material, and the type, design and character of all windows, doors, massing and rhythm, light fixtures, signs, other appurtenant elements and natural features when they are integral to the significance of the site, all of which are subject to public view from a public street, way or place.

(i) "Factory-built homes" means modular and manufactured homes.

(j) "Flood-prone area" means any land area susceptible to repeated inundation by water from any source.

(k) "Governing body" means the body that governs a municipality or county.

(l) "Historic district" means a geographically definable area, designated as historic on a national, state or local register, possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united historically or aesthetically by plan or physical development.

(m) "Historic landmark" means a site, building, structure or object designated as historic on a national, state or local register.

(n) "Historic site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure whether standing, ruined or vanished, where the location itself possesses historical, cultural or archaeological value regardless of the value of any existing structure and designated as historic on a national, state or local register.

(o) "Improvement location permit" means a permit issued by a municipality or county, in accordance with its subdivision and land development ordinance, for the construction,

WV Legislature

erection, installation, placement, rehabilitation or renovation of a structure or development of land, and for the purpose of regulating development within flood-prone areas.

(p) "Infill development" means to fill in vacant or underused land in existing communities with new development that blends in with its surroundings.

(q) "Land development" means the development of one or more lots, tracts or parcels of land by any means and for any purpose, but does not include easements, rights-of-way or construction of private roads for extraction, harvesting or transporting of natural resources.

(r) "Manufactured home" means housing built in a factory according to the federal manufactured home construction and safety standards effective June 15, 1976.

(s) "Modular home" means housing built in a factory that meets state or local building codes where the homes will be sited.

(t) "Non-traditional zoning ordinance" means an ordinance that sets forth development standards and approval processes for land uses within the jurisdiction, but does not necessarily divide the jurisdiction into distinct zoning classifications or districts requiring strict separation of different uses, and does not require a zoning map amendment.

(u) "Permitted use" means any use allowed within a zoning district, subject to the restrictions applicable to that zoning district and is not a conditional use.

(v) "Plan" means a written description for the development of land.

(w) "Planning commission" means a municipal planning commission, a county planning commission, a multicounty planning commission, a regional planning commission or a joint planning commission.

(x) "Plat" means a map of the land development that becomes its official recorded representation in the office of the clerk of the county commission where a majority of the land to be developed lies.

(y) "Preferred development area" means a geographically defined area where incentives may be used to encourage development, infill development or redevelopment in order to promote well designed and coordinated communities.

(z) "Public place" means any lots, tracts or parcels of land, structures, buildings or parts thereof owned or leased by a governing body or unit of government.

(aa) "Sprawl" means poorly planned or uncontrolled growth, usually of a low-density nature, within previously rural areas, that is land consumptive, auto-dependent, designed without respect to its surroundings, and some distance from existing development and infrastructure.

WV Legislature

(bb) "Streets" means streets, avenues, boulevards, highways, roads, lanes, alleys and all public ways.

(cc) "Subdivision or partition" means the division of a lot, tract or parcel of land into two or more lots, tracts or parcels of land, or the recombination of existing lots, tracts, or parcels.

(dd) "Unit of government" means any federal, state, regional, county or municipal government or governmental agency.

(ee) "Urban area" means all lands or lots within the jurisdiction of a municipal planning commission.

(ff) "Utility" means a public or private distribution service to the public that is regulated by the Public Service Commission.

(gg) "Zoning" means the division of a municipality or county into districts or zones which specify permitted and conditional uses and development standards for real property within the districts or zones.

(hh) "Zoning map" means a map that geographically illustrates all zoning district boundaries within a municipality or county, as described within the zoning ordinance, and which is certified as the official zoning map for the municipality or county.

WV Legislature

§8A-2-1. Planning commissions authorized.

(a) A governing body of a municipality or county may, by ordinance, create a planning commission to promote the orderly development of its jurisdiction.

(b) Governing bodies may, by ordinance, create a multicounty planning commission, a regional planning commission or a joint planning commission to promote the orderly development of land and reduce duplication of effort.

(c) The planning commission shall serve in an advisory capacity to the governing body or governing bodies that created it and have certain regulatory powers over land planning.

(d) Governing bodies and planning commissions are authorized to carry out the objectives and overall purposes of this chapter.

(e) A planning commission has only those powers, duties and jurisdiction as given to it in the ordinance creating it.

WV Legislature

§8A-2-2. Continuation of established planning commissions.

(a) A planning commission established prior to the effective date of this chapter shall continue to operate as though established under the terms of this chapter. All actions lawfully taken under prior acts are hereby validated and continued in effect until amended or repealed by action taken under the authority of this chapter.

(b) The membership of an existing planning commission shall continue unchanged until the first regular meeting, after the enactment of this chapter, of the governing body that established the planning commission. At that time, any appointments or changes necessary shall be made to bring the membership of the existing planning commission into conformity with the provisions of this chapter.

WV Legislature

§8A-2-3. Municipal planning commission.

(a) A municipal planning commission in a Class I, II, or III city shall have not less than five nor more than 15 members, the exact number to be specified in the ordinance creating the planning commission. A municipal planning commission in a Class IV town or village shall have not less than three nor more than nine members, the exact number to be specified in the ordinance creating the planning commission.

(b) Each member of a municipal planning commission must be:

(1) A West Virginia resident who has maintained continuous West Virginia residency for the three years immediately preceding his or her appointment;

(2) A resident of the municipality for one year immediately preceding his or her appointment; and

(3) Qualified by knowledge and experience in matters pertaining to the development of the municipality.

(c) Any member who does not meet the requirements stated in subsection (b) of this section may not be grandfathered in, and may not be or remain a member of the planning commission.

(d) At least three fifths of all of the members must have been residents of the municipality for at least three years prior to nomination or appointment and confirmation.

(e) The members of a municipal planning commission must fairly represent different areas of interest, knowledge, and expertise, including, but not limited to, business, industry, labor, government, and other relevant disciplines. One member must be a member of the municipal governing body or a designee and one member must be a member of the administrative department of the municipality or a designee. The term of membership for these two members is the same as their term of office.

(f) The Legislature finds that there are persons willing to serve on planning commissions who may also own interests in businesses that regularly conduct business in front of or with planning commission staff. Such persons may have experience and expertise which would be valuable assets to a planning commission. For those reasons, notwithstanding any other provisions in this code to the contrary, any person employed by, owning an interest in, or otherwise associated with a business that regularly conducts business in front of or with planning commission staff may also serve as a member of a planning commission and shall not be disqualified from serving as a member because of a conflict of interest as defined in §61-10-15 of this code and shall not be subject to prosecution under provisions of that chapter when the violation is created solely as a result of his or her relationship with the business. This member must recuse himself or herself from any vote, discussion, participation, or other activity regarding the conflicting issue.

WV Legislature

(g) The Legislature finds that there are persons willing to serve on planning commissions who may also own interests in businesses who regularly conduct business in front of or with planning commission staff. Such persons may have experience and expertise which would be valuable assets to a planning commission. For those reasons, notwithstanding any other provisions in this code to the contrary, any person employed by, owning an interest in, or otherwise associated with a business that regularly conducts business in front of or with planning commission staff may also serve as a member of a planning commission and shall not be in violation of §6B-2-5(g) of this code if the member recuses himself or herself from any vote, discussion, participation, or other activity regarding the conflicting issue: *Provided*, That such members do not constitute a majority of the members of the planning commission at the same time.

(h) The remaining members of the municipal planning commission first selected shall serve respectively for terms of one year, two years, and three years, divided equally or as nearly equally as possible between these terms. Thereafter, members shall serve three-year terms. Vacancies shall be filled for the unexpired term and made in the same manner as original selections were made.

(i) The members of a municipal planning commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

(j) Nominations for municipal planning commission membership shall be made by the administrative authority and confirmed by the governing body when the administrative authority and the governing body are separate, or appointed and confirmed by the governing body where the administrative authority and governing body are the same.

(k) An individual may serve as a member of a municipal planning commission, a county planning commission, a multicounty planning commission, a regional planning commission, or a joint planning commission, at the same time.

(l) The governing body of the municipality may establish procedures for the removal of members of the planning commission for inactivity, neglect of duty, or malfeasance. The procedures must contain provisions requiring that the person to be removed be provided with a written statement of the reasons for removal and an opportunity to be heard on the matter.

WV Legislature

§8A-2-4. County planning commission.

(a) A county planning commission shall have not less than five nor more than 15 members, the exact number to be specified in the ordinance creating the planning commission.

(b) Each member of a county planning commission must be:

(1) A West Virginia resident who has maintained continuous West Virginia residency for the three years immediately preceding his or her appointment;

(2) A resident of the county for one year immediately preceding his or her appointment; and

(3) Qualified by knowledge and experience in matters pertaining to the development of the county.

(c) Any member who does not meet the requirements stated in subsection (b) of this section may not be grandfathered in, and may not be or remain a member of the planning commission.

(d) At least three fifths of all of the members must have been residents of the county for at least three years prior to appointment and confirmation by the county commission.

(e) The members of a county planning commission must fairly represent different areas of interest, knowledge, and expertise, including, but not limited to, business, industry, labor, farming, government, and other relevant disciplines. One member must be a member of the county commission or a designee. The term of membership for this member is the same as the term of office.

(f) The Legislature finds that there are persons willing to serve on planning commissions who may also own interests in businesses that regularly conduct business in front of or with planning commission staff. Such persons may have experience and expertise which would be valuable assets to a planning commission. For those reasons, notwithstanding any other provisions in this code to the contrary, any person employed by, owning an interest in, or otherwise associated with a business that regularly conducts business in front of or with planning commission staff may also serve as a member of a planning commission and shall not be disqualified from serving as a member because of a conflict of interest as defined in §61-10-15 of this code and shall not be subject to prosecution under provisions of that chapter when the violation is created solely as a result of his or her relationship with the business. This member must recuse himself or herself from any vote, discussion, participation, or other activity regarding the conflicting issue.

(g) The Legislature finds that there are persons willing to serve on planning commissions who may also own interests in businesses who regularly conduct business in front of or with planning commission staff. Such persons may have experience and expertise which would be valuable assets to a planning commission. For those reasons, notwithstanding any other provisions in this code to the contrary, any person employed by, owning an interest in, or

WV Legislature

otherwise associated with a business that regularly conducts business in front of or with planning commission staff may also serve as a member of a planning commission and shall not be in violation of §6B-2-5(g) of this code if the member recuses himself or herself from any vote, discussion, participation, or other activity regarding the conflicting issue: *Provided*, That such members do not constitute a majority of the members of the planning commission at the same time.

(h) The remaining members of the county planning commission first selected shall serve respectively for terms of one year, two years, and three years, divided equally or as nearly equally as possible between these terms. Thereafter, members shall serve three-year terms. Vacancies shall be filled for the unexpired term and made in the same manner as original selections were made.

(i) The members of a county planning commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

(j) Appointments for county planning commission membership shall be made and confirmed by the county commission.

(k) An individual may serve as a member of a municipal planning commission, a county planning commission, a multicounty planning commission, a regional planning commission, or a joint planning commission, at the same time.

(l) The county commission may establish procedures for the removal of members of the planning commission for inactivity, neglect of duty, or malfeasance. The procedures must contain provisions requiring that the person to be removed be provided with a written statement of the reasons for removal and an opportunity to be heard on the matter.

WV Legislature

§8A-2-5. Multicounty planning commission, regional planning commission, or joint planning commission.

(a) A multicounty planning commission, a regional planning commission, or a joint planning commission shall have not less than five nor more than 15 members, the exact number to be specified in the ordinance creating the planning commission.

(b) Each member of a multicounty planning commission, a regional planning commission, or a joint planning commission must be:

(1) A resident of the jurisdiction of the multicounty planning commission, regional planning commission, or joint planning commission for at least three years immediately preceding his or her appointment; and

(2) Qualified by knowledge and experience in matters pertaining to the development of the jurisdiction.

(c) Any member who does not meet the requirements stated in subsection (b) of this section may not be grandfathered in, and may not be or remain a member of the planning commission.

(d) The members of a multicounty planning commission, a regional planning commission, or a joint planning commission must equally represent the jurisdictions in the planning commission.

(e) The members of a multicounty planning commission, a regional planning commission, or a joint planning commission must fairly represent different areas of interest, knowledge, and expertise, including, but not limited to, business, industry, labor, farming, government, and other relevant disciplines. Each governing body participating in the planning commission must have one member from its governing body on the planning commission. The term of membership for this member is the same as the term of office.

(f) The Legislature finds that there are persons willing to serve on planning commissions who may also own interests in businesses that regularly conduct business in front of or with planning commission staff. Such persons may have experience and expertise which would be valuable assets to a planning commission. For those reasons, notwithstanding any other provisions in this code to the contrary, any person employed by, owning an interest in, or otherwise associated with a business that regularly conducts business in front of or with planning commission staff may also serve as a member of a planning commission and shall not be disqualified from serving as a member because of a conflict of interest as defined in §61-10-15 of this code and shall not be subject to prosecution under provisions of that chapter when the violation is created solely as a result of his or her relationship with the business. This member must recuse himself or herself from any vote, discussion, participation, or other activity regarding the conflicting issue.

WV Legislature

(g) The Legislature finds that there are persons willing to serve on planning commissions who may also own interests in businesses who regularly conduct business in front of or with planning commission staff. Such persons may have experience and expertise which would be valuable assets to a planning commission. For those reasons, notwithstanding any other provisions in this code to the contrary, any person employed by, owning an interest in, or otherwise associated with a business that regularly conducts business in front of or with planning commission staff may also serve as a member of a planning commission and shall not be in violation of §6B-2-5(g) of this code if the member recuses himself or herself from any vote, discussion, participation, or other activity regarding the conflicting issue: *Provided*, That such members do not constitute a majority of the members of the planning commission at the same time.

(h) The remaining members of the multicounty planning commission, regional planning commission or joint planning commission first selected shall serve respectively for terms of one year, two years, and three years, divided equally or as nearly equally as possible between these terms. Thereafter, members shall serve three-year terms. Vacancies shall be filled for the unexpired term and made in the same manner as original selections were made.

(i) The members of a multicounty planning commission, a regional planning commission, or a joint planning commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

(j) Appointments for a multicounty planning commission, a regional planning commission, or a joint planning commission membership shall be made and confirmed by each governing body participating in the planning commission.

(k) An individual may serve as a member of a municipal planning commission, a county planning commission, a multicounty planning commission, a regional planning commission, or a joint planning commission, at the same time.

(l) The governing bodies may establish procedures for the removal of members of the planning commission for inactivity, neglect of duty, or malfeasance. The procedures must contain provisions requiring that the person to be removed be provided with a written statement of the reasons for removal and an opportunity to be heard on the matter.

WV Legislature

§8A-2-6. Sharing planning commissions.

(a) The governing body of a municipality located within a county with a planning commission may, by ordinance, designate the county planning commission as the municipal planning commission. A county planning commission designated as a municipal planning commission has all the powers, authority and duties granted under this article to a municipal planning commission.

(b) The county commission of a county with a municipal planning commission may, by ordinance, designate the municipal planning commission as the county planning commission. A municipal planning commission designated as a county planning commission has all the powers, authority and duties granted under this article to a county planning commission.

(c) If a municipality is located in more than one county, this section only applies to the county where the major portion of the territory of the municipality is located.

(d) Municipalities and counties may contract annually with each other to pay expenses for shared planning commissions.

WV Legislature

§8A-2-7. Planning commission meetings.

(a) When there is business to conduct, a planning commission shall meet at least quarterly. In any event, a planning commission shall meet at least semiannually and may meet more frequently at the request of the president or by two or more members.

(b) Notice for a special meeting must be in writing, include the date, time and place of the special meeting, and be sent to all members at least two days before the special meeting.

(c) Written notice of a special meeting is not required if the date, time and place of the special meeting were set in a regular meeting.

WV Legislature

§8A-2-8. Quorum.

A planning commission must have quorum to conduct a meeting. A majority of the members of a planning commission is a quorum. No action of a planning commission is official unless authorized by a majority of the members present at a regular or properly called special meeting.

WV Legislature

§8A-2-9. Officers.

At its first regular meeting each year, a planning commission shall elect from its members a president and vice president. The vice president shall have the power and authority to act as president of the planning commission during the absence or disability of the president.

WV Legislature

§8A-2-10. Governing body's duties.

(a) The county commission in the case of a county planning commission, and the governing body of the municipality in the case of a municipal planning commission, shall provide the planning commission with:

(1) Suitable offices for the holding of meetings and the preservation of plans, maps, documents and accounts; and

(2) Appropriate money to defray the reasonable expenses of the planning commission.

(b) In the ordinance creating a multicounty planning commission, a regional planning commission or a joint planning commission, the governing bodies shall designate office space and will each equally appropriate money sufficient to defray the reasonable expenses of the planning commission.

(c) Planning commissions are authorized to accept gifts, funds and donations which will be deposited with the appropriate governing body in a special nonreverting planning commission fund to be available for expenditures by the planning commission for the purpose designated by the donor.

WV Legislature

§8A-2-11. Planning commission's powers and duties.

A planning commission has the following powers and duties:

(1) Exercise general supervision for the administration of the affairs of the commission;

(2) Prescribe rules and regulations pertaining to administration, investigations and hearings: Provided, That the rules and regulations are adopted by the governing body;

(3) Supervise the fiscal affairs and responsibilities of the commission;

(4) With consent from the governing body, hire employees necessary to carry out the duties and responsibilities of the planning commission: Provided, That the governing body sets the salaries;

(5) Keep an accurate and complete record of all planning commission proceedings;

(6) Record and file all bonds and contracts;

(7) Take responsibility for the custody and preservation of all papers and documents of the planning commission;

(8) Make recommendations to the appropriate governing body concerning planning;

(9) Make an annual report to the appropriate governing body concerning the operation of the planning commission and the status of planning within its jurisdiction;

(10) Prepare, publish and distribute reports, ordinances and other material relating to the activities authorized under this article;

(11) Adopt a seal, and certify all official acts;

(12) Invoke any legal, equitable or special remedy for the enforcement of the provisions of this article or any ordinance, rule and regulation or any action taken thereunder;

(13) Prepare and submit an annual budget to the appropriate governing body;

(14) If necessary, establish advisory committees;

(15) Delegate limited powers to a committee composed of one or more members of the commission; and

(16) Contract for special or temporary services and professional counsel with the approval of the governing body. Upon request, a county prosecuting attorney, the county surveyor, the county engineer, or any other county employee may render assistance and service to a planning commission without compensation.

WV Legislature

§8A-3-1. Purpose and goals of a comprehensive plan.

(a) The general purpose of a comprehensive plan is to guide a governing body to accomplish a coordinated and compatible development of land and improvements within its territorial jurisdiction, in accordance with present and future needs and resources.

(b) A comprehensive plan is a process through which citizen participation and thorough analysis are used to develop a set of strategies that establish as clearly and practically as possible the best and most appropriate future development of the area under the jurisdiction of the planning commission. A comprehensive plan aids the planning commission in designing and recommending to the governing body ordinances that result in preserving and enhancing the unique quality of life and culture in that community and in adapting to future changes of use of an economic, physical or social nature. A comprehensive plan guides the planning commission in the performance of its duties to help achieve sound planning.

(c) A comprehensive plan must promote the health, safety, morals, order, convenience, prosperity and general welfare of the inhabitants, as well as efficiency and economy in the process of development.

(d) The purpose of a comprehensive plan is to:

(1) Set goals and objectives for land development, uses and suitability for a governing body, so a governing body can make an informed decision;

(2) Ensure that the elements in the comprehensive plan are consistent;

(3) Coordinate all governing bodies, units of government and other planning commissions to ensure that all comprehensive plans and future development are compatible;

(4) Create conditions favorable to health, safety, mobility, transportation, prosperity, civic activities, recreational, educational, cultural opportunities and historic resources;

(5) Reduce the wastes of physical, financial, natural or human resources which result from haphazard development, congestion or scattering of population;

(6) Reduce the destruction or demolition of historic sites and other resources by reusing land and buildings and revitalizing areas;

(7) Promote a sense of community, character and identity;

(8) Promote the efficient utilization of natural resources, rural land, agricultural land and scenic areas;

(9) Focus development in existing developed areas and fill in vacant or underused land near existing developed areas to create well designed and coordinated communities; and

WV Legislature

(10) Promote cost-effective development of community facilities and services.

(e) A comprehensive plan may provide for innovative land use management techniques, including:

(1) Density bonuses and/or density transfer;

(2) Clustering;

(3) Design guidelines, including planned unit developments;

(4) Conservation easements;

(5) Infill development;

(6) Consolidation of services; and

(7) Any other innovative land use technique that will promote the governing body's development plans.

WV Legislature

§8A-3-2. Study guidelines for a comprehensive plan.

(a) When preparing or amending a comprehensive plan, a planning commission shall make comprehensive surveys and studies of the existing conditions and services and probable future changes of such conditions and services within the territory under its jurisdiction.

(b) The comprehensive surveys and studies may cover such factors as population density, health, general welfare, historic sites, mobility, transportation, food supply, education, water and sanitation requirements, public services, accessibility for the disabled and future potential for residential, commercial, industrial or public use.

(c) The major objective of the planning process is providing information to and coordination among divergent elements in the municipality or county. The elements in the comprehensive plan shall be consistent and governing bodies, units of government and planning commissions must work together to ensure that comprehensive plans and future development are compatible.

WV Legislature

§8A-3-3. Authority for planning commission.

(a) A planning commission shall prepare a comprehensive plan for the development of land within its jurisdiction. A planning commission shall then recommend the comprehensive plan to the appropriate governing body for adoption.

(b) A county, multicounty, regional or joint comprehensive plan may include the planning of towns, villages or municipalities to the extent to which, in the planning commission's judgment, they are related to the planning of the unincorporated territory of the county as a whole: Provided, That the comprehensive plan shall not be considered a comprehensive plan for any town, village or municipality without the consent of the planning commission and/or the governing body of the town, village or municipality.

(c) A comprehensive plan should be coordinated with the plans of the Department of Transportation, insofar as it relates to highways, thoroughfares, trails, and pedestrian ways under the jurisdiction of that planning commission.

(d) A county planning commission may prepare a comprehensive plan for either the entire county or a part of the county.

(e) A multicounty, regional or joint planning commission may prepare a comprehensive plan for land within its jurisdiction.

(f) Counties and municipalities may by written agreement establish a joint airport hazard comprehensive plan for the purpose of satisfying requirements of federal aviation law, protecting the public safety, and preventing hazardous conditions. The joint written agreement shall set forth the boundaries of the airport overlay district and any requirements that would apply within the district, without the need for the adoption of a full comprehensive plan within a municipality or county. The joint agreement becomes effective once each entity takes the appropriate steps, including submission to a planning commission and public hearing, for the establishment or modification of a full or comprehensive plan within its jurisdiction. Any modifications to the written agreement made by one entity must be adopted by the other entity or entities for the agreement to become valid: Provided, That where the provisions of any such agreement result in a diminution in property value to a property owner, the governing authority responsible shall provide just compensation: Provided, however, That any joint written agreement affecting a regional airport shall require the approval of the regional airport's governing body to be effective.

WV Legislature

§8A-3-4. Mandatory components of a comprehensive plan.

(a) The comprehensive plan is a written statement on present and future land use and development patterns consisting of descriptive materials, including text, graphics and maps, covering the objectives, principles and guidelines for the orderly and balanced present and future economic, social, physical, environmental and fiscal development of the area under the jurisdiction of the planning commission.

(b) A comprehensive plan shall meet the following objectives:

(1) A statement of goals and objectives for a governing body, concerning its present and future land development;

(2) A timeline on how to meet short and long-range goals and objectives;

(3) An action plan setting forth implementation strategies;

(4) Recommend to the governing body a financial program for goals and objectives that need public financing;

(5) A statement of recommendations concerning future land use and development policies that are consistent with the goals and objectives set forth in the comprehensive plan;

(6) A program to encourage regional planning, coordination and cooperation with other governing bodies, units of government and planning commissions; and

(7) Maps, plats, charts and/or descriptive material presenting basic information on the land included in the comprehensive plan, including present and future uses.

(c) The comprehensive plan shall have, but is not limited to, the following components:

(1) Land use. -- Designate the current, and set goals and programs for the proposed general distribution, location and suitable uses of land, including, but not limited to:

(A) Residential, commercial, industrial, agricultural, recreational, educational, public, historic, conservation, transportation, infrastructure or any other use of land;

(B) Population density and building intensity standards;

(C) Growth and/or decline management;

(D) Projected population growth or decline; and

(E) Constraints to development, including identifying flood-prone and subsidence areas.

(2) Housing. -- Set goals, plans and programs to meet the housing needs for current and anticipated future residents of the jurisdiction, including, but not limited to:

WV Legislature

(A) Analyzing projected housing needs and the different types of housing needed, including affordable housing and universally designed housing accessible to persons with disabilities;

(B) Identifying the number of projected necessary housing units and sufficient land needed for all housing needs;

(C) Addressing substandard housing;

(D) Rehabilitating and improving existing housing; and

(E) Adaptive reuse of buildings into housing.

(3) Transportation. -- Consistent with the land use component, identify the type, location, programs, goals and plans to meet the intermodal transportation needs of the jurisdiction, including, but not limited to:

(A) Vehicular, transit, air, port, railroad, river and any other mode of transportation system;

(B) Movement of traffic and parking;

(C) Pedestrian and bicycle systems; and

(D) Intermodal transportation.

(4) Infrastructure. –- Designate the current, and set goals, plans and programs, for the proposed locations, capabilities and capacities of all utilities, essential utilities and equipment, infrastructure and facilities to meet the needs of current and anticipated future residents of the jurisdiction.

(5) Public services. -- Set goals, plans and programs, to ensure public safety, and meet the medical, cultural, historical, community, social, educational and disaster needs of the current and anticipated future residents of the jurisdiction.

(6) Rural. –- Consistent with the land use component, identify land that is not intended for urban growth and set goals, plans and programs for growth and/or decline management in the designated rural area.

(7) Recreation. -- Consistent with the land use component, identify land, and set goals, plans and programs for recreational and tourism use in the area.

(8) Economic development. -- Establish goals, policies, objectives, provisions and guidelines for economic growth and vitality for current and anticipated future residents of the jurisdiction, including, but not limited to:

(A) Opportunities, strengths and weaknesses of the local economy and workforce;

(B) Identifying and designating economic development sites and/or sectors for the area; and

WV Legislature

(C) Type of economic development sought, correlated to the present and projected employment needs and utilization of residents in the area.

(9) Community design. –- Consistent with the land use component, set goals, plans and programs to promote a sense of community, character and identity.

(10) Preferred development areas. -- Consistent with the land use component, identify areas where incentives may be used to encourage development, infill development or redevelopment in order to promote well designed and coordinated communities and prevent sprawl.

(11) Renewal and/or redevelopment. -- Consistent with the land use component, identify slums and other blighted areas and set goals, plans and programs for the elimination of such slums and blighted areas and for community renewal, revitalization and/or redevelopment.

(12) Financing. –- Recommend to the governing body short and long-term financing plans to meet the goals, objectives and components of the comprehensive plan.

(13) Historic preservation. -- Identify historical, scenic, archaeological, architectural or similar significant lands or buildings, and specify preservation plans and programs so as not to unnecessarily destroy the past development which may make a viable and affordable contribution in the future.

WV Legislature

§8A-3-5. Optional components of a comprehensive plan.

The comprehensive plan may have, but is not limited to, the following components:

(1) History. -- An analysis of the history of the area to better provide for the future.

(2) Environmental. –- Recommend programs where appropriate to appropriate regulatory agencies to protect the area from all types of pollution and promote a healthy environment.

(3) Tourism. –- Recommend programs to promote tourism and cultural and heritage development in the area.

(4) Conservation. -- Recommend programs to conserve and protect wildlife, natural habitats, sensitive natural areas, green spaces and direct access to sunlight.

(5) Safety. -- Recommend public safety programs to educate and protect the public from disasters, both natural and man-made.

(6) Natural resources use. –- Identify areas for natural resources use in an urban area.

WV Legislature

§8A-3-6. Notice and public participation requirement for a comprehensive plan.

(a) Prior to recommending a new or amended comprehensive plan to a governing body for adoption, the planning commission shall give notice and hold a public hearing on the new or amended comprehensive plan.

(b) At least thirty days prior to the date set for the public hearing, the planning commission shall publish a notice of the date, time and place of the public hearing as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area shall be the area covered by the comprehensive plan.

(c) A planning commission shall include public participation throughout the process of studying and preparing a comprehensive plan and amending a comprehensive plan. A planning commission shall adopt procedures for public participation throughout the process of studying and preparing or amending a comprehensive plan.

(d) A planning commission shall request input from other affected governing bodies and units of government.

WV Legislature

§8A-3-7. Submission of comprehensive plan.

(a) After the comprehensive plan is prepared and before it is approved, the planning commission shall hold a public hearing. After the public hearing and approval, the planning commission shall submit the recommended comprehensive plan to the applicable governing body for consideration and adoption.

(b) At the first meeting of the applicable governing body following the submission of the recommended comprehensive plan by the planning commission to the governing body, the planning commission shall present the recommended comprehensive plan to the governing body.

(c) After the presentation of the recommended comprehensive plan by the planning commission to the governing body and prior to adoption, the governing body shall hold a public hearing after giving notice.

(d) At least fifteen days prior to the date set for the public hearing, the planning commission shall publish a notice of the date, time and place of the public hearing as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area shall be the area covered by the comprehensive plan.

WV Legislature

§8A-3-8. Adoption of comprehensive plan by governing body.

(a) Within the latter of ninety days or three scheduled meetings after the submission of the recommended comprehensive plan to the governing body, the governing body must act by either adopting, rejecting or amending the comprehensive plan.

(b) If the comprehensive plan is adopted by the governing body, then the governing body may adopt the comprehensive plan as an ordinance or designate what other effect the comprehensive plan may have.

(c) If the comprehensive plan is adopted by the governing body and an ordinance is published, the comprehensive plan may be incorporated by reference in the ordinance and the full text of the comprehensive plan does not have to be published.

WV Legislature

§8A-3-9. Filing the comprehensive plan.

After the adoption of a comprehensive plan by a governing body, the governing body must file the adopted comprehensive plan in the office of the clerk of the county commission where the comprehensive plan applies. If an adopted comprehensive plan covers more than one county, a certified copy of the adopted comprehensive plan must be filed in the office of the clerk of the county commission of each county covered by the adopted comprehensive plan.

WV Legislature

§8A-3-10. Rejection or amendment of comprehensive plan by governing body.

(a) If a governing body rejects or amends the recommended comprehensive plan, then the comprehensive plan must be returned to the planning commission for its consideration, with a written statement of the reasons for the rejection or amendment.

(b) The planning commission has forty-five days to consider the rejection or amendment and make recommendations to the governing body.

(c) If the planning commission approves the amendment to the comprehensive plan, then the comprehensive plan shall stand as adopted by the governing body.

(d) If the planning commission disapproves of the rejection or amendment, then the planning commission shall state its reasons in its written recommendations to the governing body.

(e) Within forty-five days of receipt of the planning commission's written recommendations for disapproval, the governing body must act on the comprehensive plan.

(f) If the planning commission does not file a written recommendation with the governing body within forty-five days, then the action in rejecting or amending the comprehensive plan is final.

WV Legislature

§8A-3-11. Amending comprehensive plan after adoption.

(a) After the adoption of a comprehensive plan by the governing body, the planning commission shall follow the comprehensive plan, and review the comprehensive plan and make updates at least every ten years.

(b) After the adoption of a comprehensive plan by the governing body, all amendments to the comprehensive plan shall be made by the planning commission and recommended to the governing body for adoption in accordance with the procedures set forth in sections six, seven, eight and nine of this article. The planning commission shall hold a public hearing prior to its recommendation to the governing body.

(c) If a governing body wants an amendment, it may request in writing for the planning commission to prepare an amendment. The planning commission must hold a public hearing within one hundred twenty days after the written request by the governing body to the planning commission is received.

(d) Within the latter of ninety days or three scheduled meetings after the submission of the recommended amendment to the comprehensive plan to the governing body, the governing body must act by either adopting, rejecting or amending the comprehensive plan.

WV Legislature

§8A-3-12. Validation of prior comprehensive plans.

(a) The adoption of a comprehensive plan or any general development plans by a planning commission, under the authority of prior acts, is hereby validated and the plans may continue in effect for ten years after the effective date of this chapter or until the plans are revised, amended or replaced in accordance with this chapter.

(b) After the effective date of this chapter, amendments to prior plans shall be made in accordance with the provisions of this article.

WV Legislature

§8A-3-13. Intergovernmental cooperation.

(a) With a view to coordinating and integrating the planning of municipalities and/or counties with each other, all governing bodies and units of government within the lands under the jurisdiction of the planning commission preparing or amending a comprehensive plan, all governing bodies and units of government affected by the comprehensive plan, and any other interested or affected governing body, unit of government or planning commission, must cooperate, participate, share information and give input when a planning commission prepares or amends a comprehensive plan.

(b) All planning commissions, governing bodies and units of government are authorized to cooperate and share information with each other and may adopt rules and regulations to coordinate and integrate planning.

(c) All planning commissions, governing bodies and units of government must make available, upon the request of a planning commission, any information, maps, documents, data and plans pertinent to the preparation of a comprehensive plan.

WV Legislature

§8A-3-14. Jurisdiction of municipal planning commission.

The jurisdiction of a municipal planning commission shall not extend beyond the corporate limits of the municipality.

WV Legislature

§8A-4-1. Subdivision and land development ordinances authorized.

(a) The governing body of a municipality or a county may regulate subdivisions and land development within its jurisdiction by:

(1) Adopting a comprehensive plan and enacting a subdivision and land development ordinance; or

(2) Establishing a planning commission, enacting a subdivision and land development ordinance, and adopting a comprehensive plan for the area included in the subdivision and land development ordinance within three years of the enactment of the subdivision and land development ordinance.

(b) A municipality may adopt, by reference, the subdivision and land development ordinance of the county in which it is located.

(c) With the prior approval of the county planning commission, a municipality may, by ordinance, designate the county planning commission as the planning commission for the municipality to review and approve subdivision or land development plans and plats.

WV Legislature

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

(a) A subdivision and land development ordinance shall include the following provisions:

(1) A minor subdivision or land development process, including criteria, requirements and a definition of minor subdivision;

(2) The authority of the planning commission and its staff to approve a minor subdivision or land development;

(3) A major subdivision or land development process, including criteria and requirements;

(4) The authority of the planning commission to approve a major subdivision or land development;

(5) The standards for setback requirements, lot sizes, streets, sidewalks, walkways, parking, easements, rights-of-way, drainage, utilities, infrastructure, curbs, gutters, street lights, fire hydrants, storm water management and water and wastewater facilities;

(6) Standards for flood-prone or subsidence areas;

(7) A review process for subdivision or land development plans and plats by the planning commission;

(8) An approval process for subdivision or land development plans and plats by the planning commission, including the authority to approve subdivision or land development plans and plats with conditions;

(9) A process to amend final approved subdivision or land development plans and plats;

(10) A requirement that before development of the land is commenced, subdivision and land development plans and plats must be approved by the applicable planning commission, in accordance with the comprehensive plan, if a comprehensive plan has been adopted;

(11) A requirement that after approval of the subdivision or land development plat by the planning commission or by the planning commission staff if approval has been appropriately delegated to staff, and before any construction on the land is commenced, the subdivision and land development plat shall be recorded in the office of the clerk of the county commission where a majority of the land to be developed lies;

(12) A schedule of fees to be charged which are proportioned to the cost of checking and verifying proposed plats;

(13) The process for granting waivers from the minimum standards of the subdivision and land development ordinance;

WV Legislature

(14) Improvement location permit process, including a requirement that a structure or development of land is prohibited without an improvement location permit;

(15) 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;

(16) The process for cooperating and coordinating with other governmental agencies affected by the subdivision and land development and use; and

(17) Penalties for violating the subdivision and land development ordinance.

(b) A subdivision and land development ordinance may include the following provisions:

(1) Establishing a board of subdivision and land development appeals with the same powers, duties and appeals process as set out for the board of zoning appeals under the provisions of article eight of this chapter;

(2) Requirements for green space, common areas, public grounds, walking and cycling paths, recreational trails, parks, playgrounds and recreational areas;

(3) Guidelines for the use of renewable energy systems and energy-conserving building design;

(4) Vested property right, including requirements;

(5) Exemptions of certain types of land development from the subdivision and land development ordinance requirements, including, but not limited to, single-family residential structures and farm structures; and

(6) Any other provisions consistent with the comprehensive plan the governing body considers necessary.

(c) All requirements, for the vesting of property rights contained in an ordinance enacted pursuant to this section that require the performance of any action within a certain time period for any subdivision or land development plan or plat valid under West Virginia law and outstanding as of January 1, 2010, shall be extended until July 1, 2012, or longer as agreed to by the municipality, county commission or planning commission. The provisions of this subsection also apply to any requirement that a use authorized pursuant to a special exception, special use permit, conditional use permit or other agreement or zoning action be terminated or ended by a certain date or within a certain number of years.

WV Legislature

§8A-4-3. Enactment of subdivision and land development ordinance.

(a) Before a governing body enacts a subdivision and land development ordinance, the governing body shall hold at least one public hearing and give public notice.

(b) The public notice of the date, time and place of the public hearing must be published in a local newspaper of general circulation in the area as a Class I legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code, at least thirty days prior to the public hearing. The public notice must contain a brief summary of the principal provisions of the proposed subdivision and land development ordinance and a reference to the place or places where copies of the proposed subdivision and land development ordinance may be examined.

(c) After the public hearing, if the governing body makes other than technical amendments to the proposed subdivision and land development ordinance prior to voting on it, the governing body shall hold another public hearing and give public notice. The public notice shall be as provided in subsection (b) of this section, and must contain a brief summary of the amendments.

WV Legislature

§8A-4-4. Filing the subdivision and land development ordinance.

After the enactment of the subdivision and land development ordinance by a governing body, the governing body must file the enacted subdivision and land development ordinance in the office of the clerk of the county commission where the subdivision and land development ordinance applies.

WV Legislature

§8A-4-5. Amendments to the subdivision and land development ordinance.

After the enactment of the subdivision and land development ordinance by the governing body, all amendments to the subdivision and land development ordinance shall be made by the governing body after holding a public hearing with public notice.

WV Legislature

§8A-4-6. Effect of adopted subdivision and land development ordinance.

After enactment of a subdivision and land development ordinance by the governing body, all subsequent subdivisions and land development must be done in accordance with the provisions of the subdivision and land development ordinance.

WV Legislature

§8A-4-7. Validation of prior subdivision and land development ordinance.

All subdivision and land development ordinances, all amendments, supplements and changes to the ordinance, legally adopted under prior acts, and all action taken under the authority of the ordinance, are hereby validated and the ordinance shall continue in effect until amended or repealed by action of the governing body taken under authority of this article. These ordinances shall have the same effect as though previously adopted as a comprehensive plan of land use or parts thereof.

WV Legislature

§8A-5-1. Jurisdiction of planning commissions.

(a) A planning commission has the authority to:

(1) Approve a minor subdivision or land development application within its jurisdiction;

(2) Exempt an application for a minor subdivision or land development within its jurisdiction; and

(3) Approve a major subdivision or land development application within its jurisdiction.

(b) The staff of a planning commission has the authority to approve a minor subdivision or land development application within its jurisdiction, if granted such authority by the governing body in the subdivision and land development ordinance.

(c) If a subdivision or land development plan and plat cannot be approved through the minor subdivision or land development process, then an applicant must use the major subdivision or land development approval process.

(d) If a governing body has adopted detailed standards for final plats as part of a subdivision and land development ordinance, the planning commission may delegate to its staff the authority to approve preliminary or provisional land development plan or subdivision plat that is consistent with the adopted standards for final plats and the requirements of the adopted subdivision and land development ordinance.

(e) The planning commission may delegate to its staff the authority to determine completeness, phasing, changes, and technical review for major subdivisions or land development applications, if a governing body has adopted detailed process provisions, procedures, or checklists for major subdivisions or land development applications: *Provided*, That a staff review does not take longer than would a planning commission review. Any applicant may request, in writing to the planning commission, that such a delegated review shall revert to a planning commission review, in which case the time required for review begins at the date of the request.

WV Legislature

PART I. MINOR SUBDIVISION OR LAND DEVELOPMENT PROCESS.

§8A-5-2. Requirements for a minor subdivision or land development.

(a) An application for approval of a subdivision or land development plan and plat may be considered a minor subdivision or land development if it meets the following requirements:

(1) Only creates the maximum number of lots specifically permitted by the subdivision and land development ordinance for a minor subdivision or land development;

(2) Will not require the development of new or the extension of existing off-tract infrastructure; and

(3) Such other requirements as determined by the governing body to ensure that required improvements are installed and not avoided by a series of minor subdivisions or land developments.

(b) The following can be considered a minor subdivision or land development if approved by the planning commission:

(1) Merger or consolidation of parcels of land;

(2) Land transfers between immediate family members; and

(3) Minor boundary line adjustments.

WV Legislature

§8A-5-3. Application for minor subdivision or land development.

(a) An applicant submits a copy of a land development plat and the fees to the planning commission having jurisdiction over the land.

(b) Within seven days after the submission of the subdivision or land development plat, the staff of the planning commission shall offer to meet with the applicant to discuss the proposed subdivision or land development and the criteria used to classify the proposal as minor: *Provided*, That if the applicant requests such a meeting, staff shall meet with the applicant to discuss the proposed subdivision or land development and the criteria used to classify the proposal as minor.

(c) The staff of the planning commission may make a site inspection of the proposed subdivision or land development.

(d) Within ten days after the submission of the subdivision or land development plat or within five days of the meeting, between the planning commission staff and the applicant, whichever comes later, the staff of the planning commission shall notify the applicant in writing whether the proposed subdivision or land development has been classified a minor subdivision or land development.

PART II. MAJOR SUBDIVISION OR LAND DEVELOPMENT PROCESS.

WV Legislature

§8A-5-4. Approval of minor subdivision or land development plans and plats.

(a) Within ten days after a plat has been classified a minor subdivision or land development, then the planning commission or staff, if the authority has been given by the governing body, shall approve or deny the plat.

(b) If the planning commission approves the plat, then the planning commission shall affix its seal on the plat.

(c) If the planning commission approves the plat with conditions, then the planning commission must state the conditions.

(d) If the planning commission denies the plat, then the planning commission shall notify the applicant in writing of the reasons for the denial.

WV Legislature

§8A-5-5. Recording of minor subdivision or land development plat.

After approval of a minor subdivision or land development plat by the planning commission and before the subdivision or development is commenced, the subdivision or land development plat shall be recorded by the applicant in the office of the clerk of the county commission where the land is located.

WV Legislature

§8A-5-6. Application for major subdivision or land development.

(a) An applicant for approval of a major subdivision or land development plan and plat shall submit written application, a copy of the proposed land development plan and plat, and the fees to the planning commission having jurisdiction over the land.

(b) Within 45 days after receipt of the application, the planning commission, or its staff if the planning commission has delegated such authority, shall review the application for completeness and either accept or deny it: *Provided*, That if the planning commission's next regularly scheduled meeting that would meet public notice requirements is scheduled within 60 days of receipt of the application, it may review the application for completeness and either accept or deny it at its next regularly scheduled meeting.

(c) If the application is not complete, then the planning commission may deny the application and must notify the applicant in writing stating the reasons for the denial.

WV Legislature

§8A-5-7. Contents of a major subdivision or land development plan and plat.

(a) A land development plan and plat must include everything required by the governing body's subdivision and land development ordinance.

(b) If a governing body does not have a subdivision and land development ordinance or if a governing body's subdivision and land development ordinance does not specify what may be included in a subdivision or land development plan and plat, then the following may be included, when applicable, in a subdivision or land development plan and plat:

(1) Show that the subdivision or land development conforms to the governing body's comprehensive plan;

(2) A method of payment to cover the cost of the water and sewer service infrastructure, which can include, but is not limited to, bonds, impact fees, escrow fees and proffers;

(3) Coordination among land development with adjoining land owners, including, but not limited to, facilities and streets;

(4) Distribution of population and traffic in a manner tending to create conditions favorable to health, safety, convenience and the harmonious development of the municipality or county;

(5) Show that there is a fair allocation of areas for different uses, including, but not limited to, streets, parks, schools, public and private buildings, utilities, businesses and industry;

(6) Show that there is a water and sewer supply;

(7) Setback and lot size measures were used;

(8) The standards used for designating land which is subject to flooding or subsidence, details for making it safe, or information showing that such land will be set aside for use which will not endanger life or property and will not further aggravate or increase the existing menace;

(9) The control measures for drainage, erosion and sediment;

(10) The coordination of streets, sidewalks and pedestrian pathways in and bordering the land development, including a letter from the Division of Highways stating that the plan provides sufficient access to state roads; and

(11) The design, construction and improvement measures to be used for the streets, sidewalks, easements, rights-of-way, drainage, utilities, walkways, curbs, gutters, street lights, fire hydrants, water and wastewater facilities, and other improvements installed, including the width, grade and location for the purpose of accommodating prospective traffic, customers and facilitating fire protection.

WV Legislature

§8A-5-8. Approval of major subdivision or land development plans and plats.

(a) Upon written request of the applicant for a determination, the planning commission must determine by vote at the next regular meeting or at a special meeting, whether or not the application is complete based upon a finding that the application meets the requirements set forth in its governing body's subdivision and land development ordinance. The planning commission may delegate this review to planning commission staff.

(b) If a governing body's subdivision and land development ordinance does not specify what may be included in a land development plan and plat, then the planning commission must determine that an application is complete if the application meets the requirements set forth in subsection (b), section seven of this article.

(c) At a meeting where the application is determined to be complete, the planning commission must set a date, time and place for a public hearing and a meeting to follow the public hearing to vote on the application. The public hearing must be held within 45 days: *Provided*, That if the planning commission's next regularly scheduled meeting that would meet public notice requirements is scheduled within 60 days of receipt of the application, it may hold the public hearing at its next regularly scheduled meeting. The planning commission shall notify the applicant of the public hearing and meeting in writing unless notice is waived in writing by the applicant. The planning commission must publish a public notice of the public hearing and meeting in a local newspaper of general circulation in the area at least 21 days prior to the public hearing.

(d) At a meeting at the conclusion of the public hearing or a meeting held within fourteen days after the public hearing, the planning commission shall vote to approve, deny or hold the application.

(e) The application may be held for additional information necessary to make a determination. An application may be held for up to forty-five days.

(f) The planning commission shall approve the application after the planning commission determines that an application is complete and meets the requirements of the governing body's subdivision and land development ordinance; or if the governing body does not have a subdivision and land development ordinance or if the subdivision and land development ordinance does not specify what may be included in a subdivision or land development plan and plat, that the application meets the requirements set forth in subsection (b) section seven of this article.

(g) If the planning commission approves the application, then the planning commission shall affix its seal on the subdivision or land development plan and/or plat.

(h) If the planning commission approves the application with conditions, then the planning commission must specify those conditions.

WV Legislature

(i) If the planning commission denies the application, then the planning commission shall notify the applicant in writing of the reasons for the denial. The applicant may request, one time, a reconsideration of the decision of the planning commission, which request for reconsideration must be in writing and received by the planning commission no later than ten days after the decision of the planning commission is received by the applicant.

WV Legislature

§8A-5-9. Recording of major subdivision or land development plat.

After approval of a major subdivision or land development plat by the planning commission and after the conditions of the planning commission are met, the subdivision or land development plat shall be recorded by the applicant in the office of the clerk of the county commission where the land is located. If the land is located in more than one county, then the land development plat shall be recorded in the county of the initial land development and subsequently recorded in the other counties when there is land development in that county.

WV Legislature

§8A-5-10. Appeal process.

(a) An appeal may be made by an aggrieved person from any decision or ruling of the planning commission to:

(1) The circuit court, pursuant to the provisions of article nine of this chapter; or

(2) A board of subdivision and land development appeals, if the governing body has established a board of subdivision and land development appeals by ordinance.

(b) Within thirty days after the date of the denial, the petition, specifying the grounds of the appeal in writing, must be filed with:

(1) The circuit court of the county in which the affected land or the major portion of the affected land is located; or

(2) The board of subdivision and land development appeals that has jurisdiction over the affected land.

WV Legislature

§8A-5-11. Effect of approval of land development plans and plats.

A land development plan and plat that has not been approved by the planning commission is without legal effect: Provided, That failure to comply with this article shall not invalidate or affect the title to any land within the area of the land development plat.

WV Legislature

§8A-5-12. Vested property right.

(a) A vested property right is a right to undertake and complete the land development. The right is established when the land development plan and plat is approved by the planning commission and is only applicable under the terms and conditions of the approved land development plan and plat.

(b) Failure to abide by the terms and conditions of the approved land development plan and plat will result in forfeiture of the right.

(c) Subject to section ten-a, article thirteen-e, chapter sixteen of this code, the vesting period for an approved land development plan and plat which creates the vested property right is five years from the approval of the land development plan and plat by the planning commission.

(d) Without limiting the time when rights might otherwise vest, a landowner's rights vest in a land use or development plan and cannot be affected by a subsequent amendment to a zoning ordinance or action by the planning commission when the landowner:

(1) Obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project;

(2) Relies in good faith on the significant affirmative governmental act; and

(3) Incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

(e) A vested right is a property right, which cannot be taken without compensation. A court may award damages against the local government in favor of the landowner for monetary losses incurred by the landowner and court costs and attorneys' fees resulting from the local government's bad faith refusal to recognize that the landowner has obtained vested rights.

(f) Any subdivision or land development plan or plat, whether recorded or not yet recorded, valid under West Virginia law and outstanding as of January 1, 2010, shall remain valid until July 1, 2012, or such later date provided for by the terms of the planning commission or county commission's local ordinance or for a longer period as agreed to by the planning commission or county commission. Any other plan or permit associated with the subdivision or land development plan or plat shall also be extended for the same time period: Provided, That the land development plan or plat has received at least preliminary approval by the planning commission or county commission by March 1, 2010.

WV Legislature

§8A-6-1. Bond requirements.

(a) If a bond is used as an acceptable method of security for infrastructure construction, then it shall meet the following requirements:

(1) Be in an amount to cover the infrastructure construction, as determined by the governing body;

(2) Be payable to the governing body;

(3) Have adequate surety and be satisfactory to the governing body;

(4) Specify the time for the completion of the infrastructure construction; and

(5) Specify the date and/or condition for when the bond will be released.

(b) The money from the bond shall only be used by the governing body to which the bond is payable, for the completion of the infrastructure construction, when the infrastructure construction is not completed as approved at the issuance of the bond.

WV Legislature

§8A-6-2. Conditions as part of final plat approval.

(a) A subdivision and land development ordinance may provide for the voluntary proffering by a landowner as a requirement of final plat approval for a development project.

(b) For purposes of this section, a "voluntary proffer" is a written offer by a landowner to a governing body whereby the landowner offers to satisfy certain reasonable conditions as a requirement of the final plat approval for a development project. A voluntary proffer made to a governing body shall be in lieu of payment of an impact fee as authorized by section four, article twenty, chapter seven of this code: Provided, That no proffer may be accepted by a governing body in lieu of an impact fee that would otherwise go to schools without the approval of the county board of education.

(c) For purposes of this section, a condition contained in a voluntary proffer is considered reasonable if:

(1) The development project results in the need for the conditions;

(2) The conditions have a reasonable relation to the development project; and

(3) All conditions are in conformity with the comprehensive plan adopted pursuant to this chapter.

(d) No proffer may be accepted by a governing body unless it has approved a list detailing any proposed capital improvements from all areas within the jurisdiction of the governing body to which the proffer is made, which list contains descriptions of any proposed capital improvements, cost estimates, projected time frames for constructing the improvements and proposed or anticipated funding sources: Provided, That the approval of the list does not limit the governing body from accepting proffers relating to items not contained on the list.

(e) For purposes of this section, "capital improvement" has the same definition as found in section three, article twenty, chapter seven of this code.

(f) If a voluntary proffer includes the dedication of real property or the payment of cash, the proffer shall provide for the alternate disposition of the property or cash payment in the event the property or cash payment is not to be used for the purpose for which it was proffered.

(g) Notwithstanding any provision of this code to the contrary, a municipality may transfer the portion of the proceeds of a voluntary proffer intended by the terms of the proffer to be used by the board of Education of a county in which the municipality is located upon the condition that the portion so transferred may only be used by the board for capital improvements.

WV Legislature

§8A-6-3. Enforcement and guarantees.

(a) The planning commission is vested with all the necessary authority to administer and enforce conditions attached to the final plat approved for a development project, including, but not limited to, the authority to:

(1) Order, in writing, the remedy for any noncompliance with the conditions;

(2) Bring legal action to ensure compliance with the conditions, including injunction, abatement, or other appropriate action or proceeding; and

(3) Require a guarantee satisfactory to the planning commission in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of the improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the planning commission upon the submission of satisfactory evidence that construction of the improvements has been completed in whole or in part.

(b) Failure to meet all conditions attached to the final plat approved for a development project shall constitute cause to deny the issuance of any of the required use, occupancy or improvement location permits, as may be appropriate.

WV Legislature

§8A-7-1. Authority for zoning ordinance.

(a) The governing body of a municipality or a county may regulate land use within its jurisdiction by:

(1) Adopting a comprehensive plan;

(2) Working with the planning commission and the public to develop a zoning ordinance; and

(3) Enacting a zoning ordinance.

(b) A zoning ordinance may cover a county's entire jurisdiction or parts of its jurisdiction.

(c) A zoning ordinance shall cover a municipality's entire jurisdiction.

(d) A municipality may adopt, by reference, the zoning ordinance of the county in which it is located.

WV Legislature

§8A-7-2. Contents of zoning ordinance.

(a) The following must be considered when enacting a zoning ordinance:

(1) Promoting general public welfare, health, safety, comfort and morals;

(2) A plan so that adequate light, air, convenience of access and safety from fire, flood and other danger is secured;

(3) Ensuring attractiveness and convenience is promoted;

(4) Lessening congestion;

(5) Preserving historic landmarks, sites, districts and buildings;

(6) Preserving agricultural land; and

(7) Promoting the orderly development of land.

(b) A zoning ordinance may include the following:

(1) Regulating the use of land and designating or prohibiting specific land uses;

(2) Authorizing flexible planning standards to create, redevelop, reuse, protect and enhance the physical qualities of the community;

(3) Designating historic districts and regulating the uses of land and the design of buildings within the historic district;

(4) Establishing corridor overlay districts to achieve land design goals and regulating the uses of land within the corridor overlay districts;

(5) Establishing design standards and site plan approval procedures;

(6) Dividing the land of the governing body into different zone classifications regulating the use of land, establishing performance standards for various land uses when dividing is not desired or any combination of both;

(7) Authorizing overlay districts and special design districts within which specific additional development standards for each permitted, accessory and conditional use shall apply;

(8) Regulating the height, area, bulk, use and architectural features of buildings, including reasonable exterior architectural features and reasonable aesthetic standards for factory-built homes;

(9) Authorizing a process and standards for factory-built homes: Provided, That a governing body is prohibited from establishing a process and standards for regulating factory-built

WV Legislature

homes that is more restrictive than a process and standards for site-built homes;

(10) Preserving green spaces and requiring new green spaces, landscaping, screening and the preservation of adequate natural light;

(11) Regulating traffic flow and access, pedestrian flow and access, parking and loading;

(12) Identifying flood-prone areas subject to periodic flooding and regulating with specific control the permitted use, type of construction and height of floor levels above base flood elevation permitted in the area so as to lessen or avoid the hazards to persons and damage to property resulting from the accumulation of storm or flood waters;

(13) Designating an airport area and establishing land-use regulations within a specific distance from the boundaries of the airport;

(14) Authorizing planned unit developments to achieve more efficient use of land and setting standards and regulations for the developments; and

(15) Identifying, establishing and designating urban growth boundaries, as defined in section four-a, article six, chapter eight of this code, for municipalities.

(c) A zoning ordinance shall:

(1) Create a board of zoning appeals;

(2) Specify certification requirements for zoning district maps that are consistent with the governing body's comprehensive plan;

(3) Adopt procedures and requirements for nonconforming land uses;

(4) Adopt procedures and requirements for variances; and

(5) Adopt procedures and requirements for conditional use permits.

WV Legislature

§8A-7-3. Zoning -- Generally.

(a) A zoning ordinance may cover a county's entire jurisdiction or parts of its jurisdiction.

(b) The different zones created in a zoning ordinance by a governing body do not have to cover or include the same territory, and may overlap.

(c) Overlay districts and special design districts may have specific additional development standards for each permitted, accessory and conditional use.

(d) Each zone will be subject to the same rules, regulations, standards and designations throughout the zone, unless specific provisions are made by the governing body in the zoning ordinance. (e) Essential utilities and equipment are a permitted use in any zoning district.

(f) Several areas of a municipality or county may be classified in a zone even though the areas are not contiguous.

(g) The boundaries of each zone and the designated classifications must be shown on a zoning district map. The boundaries may only be changed after appropriate public hearing and zoning district map changes are adopted by the governing body.

(h) A governing body shall certify the original zoning district map. Subsequent versions of the zoning district map shall be certified and clearly identified with an effective date.

(i) All certified zoning district maps must be filed with the clerk of the applicable governing body, the applicable planning commission and the office of the clerk of the applicable county commission.

WV Legislature

§8A-7-4. Study and report on zoning.

(a) 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 study may include:

(1) Evaluating the existing conditions, the character of the buildings, the most desirable use for the land and the conservation of property values in relation to the adopted comprehensive plan; and

(2) Holding public hearings and meetings with notice to receive public input.

(b) 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 for each district.

(c) No zoning ordinance may be enacted without a study and report.

WV Legislature

§8A-7-5. Enactment of zoning ordinance.

(a) After the study and the report, and before the governing body enacts the proposed zoning ordinance, the governing body shall hold at least two public hearings and give public notice. At least one public hearing shall be held during the day and at least one public hearing shall be held during the evening.

(b) The public notice shall be published in a local newspaper of general circulation in the area affected by the proposed zoning ordinance, as a Class II legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code, at least fourteen consecutive days prior to the public hearing. The public notice must contain the following:

(1) The date, time and place of the public hearings;

(2) That it is a public hearing on a proposed zoning ordinance;

(3) A brief summary of the principal provisions of the proposed zoning ordinance;

(4) A reference to the place where copies of the proposed zoning ordinance may be examined; and

(5) That written objections to the proposed zoning ordinance may be made and will be heard at the public hearings and must be filed with the clerk of the applicable governing body.

(c) Copies of the proposed zoning ordinance must be made available to the public, at least two weeks prior to the public hearings, at the office of the governing body and all public libraries in the area to be zoned.

(d) After the public hearings, if the governing body makes substantial amendments to the proposed zoning ordinance prior to voting on the zoning ordinance, the governing body shall hold another public hearing, after public notice. The public notice shall be as provided in subsections (b) and (c) of this section, and must contain a brief summary of the amendments.

(e) After the public hearings and any amendments, the governing body may enact the zoning ordinance or it may hold an election to have the qualified voters residing in the affected area approve the zoning ordinance.

WV Legislature

§8A-7-6. Filing the zoning ordinance.

After the enactment of a zoning ordinance by a governing body, the governing body shall file the enacted zoning ordinance in the office of the clerk of the county commission where the zoning ordinance applies.

WV Legislature

§8A-7-7. Election on a zoning ordinance.

(a) The governing body of a municipality or a county may submit a proposed zoning ordinance for approval or rejection at any primary election or general election, to the qualified voters residing:

(1) Within the entire jurisdiction of the governing body, if the proposed zoning ordinance is for the entire jurisdiction; or

(2) In the specific area to be zoned by the proposed zoning ordinance, if the proposed zoning ordinance only applies to part of the governing body's jurisdiction.

(b) The election laws of this state apply to any election on a proposed zoning ordinance.

(c) If a petition for an election on a zoning ordinance is filed with the clerk of a governing body within 90 days after the enactment of a zoning ordinance by a governing body without an election, then a zoning ordinance does not take effect until an election is held and a majority of the voters approves it. At least 10 percent of the total eligible voters in the area to be affected by the proposed zoning ordinance must sign, in their own handwriting, the petition for an election on a zoning ordinance.

(d) Notice for an election on a proposed zoning ordinance must be published in a local newspaper of general circulation in the area affected by the proposed zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 of this code.

(e) The ballots for an election on a zoning ordinance shall have the following:

/ / For Zoning

/ / Against Zoning

(f) The zoning ordinance is adopted if it is approved by a majority of the voters and is effective on the date the results of an election are declared. If a zoning ordinance is rejected, the zoning ordinance does not take effect. The governing body may submit the zoning ordinance to the voters again at the next primary or general election.

WV Legislature

§8A-7-8. Amendments to the zoning ordinance by the governing body.

(a) Before amending the zoning ordinance, the governing body with the advice of the planning commission, must find that the amendment is consistent with the adopted comprehensive plan. If the amendment is inconsistent, then the governing body with the advice of the planning commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.

(b) When a proposed amendment to the zoning ordinance involves a change in the zoning map classification of any parcel of land, or a change to the applicable zoning ordinance text regulations that changes the allowed dwelling unit density of any parcel of land, the governing body shall, at least thirty days prior to the enactment of the proposed amendment if there is not an election, or at least thirty days prior to an election on the proposed amendment to the zoning ordinance:

(1) Give written notice by certified mail to the landowner(s) whose property is directly involved in the proposed amendment to the zoning ordinance; and

(2) Publish notice of the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code.

WV Legislature

§8A-7-8a. Requirements for adopting an amendment to the zoning ordinance.

(a) After the enactment of the zoning ordinance, the governing body of the municipality may amend the zoning ordinance in accordance with §8A-7-8 of this code, without holding an election.

(b) After the enactment of the zoning ordinance, the governing body of the county may amend the zoning ordinance in accordance with §8A-7-8 of this code, as follows:

(1) Without holding an election;

(2) Holding an election on the proposed amendment; or

(3) Holding an election on the proposed amendment pursuant to a petition.

(c) If the governing body of the county chooses to hold an election on the proposed amendment, then it must:

(1) Publish notice of the election and the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 *et seq*. of this code; and

(2) Hold an election on the question of adopting or rejecting the proposed amendment to the zoning ordinance at any primary or general election for the qualified voters residing in:

(A) The entire jurisdiction of the county, if the zoning ordinance applies to the entire county; or

(B) The specific area to which the zoning ordinance applies, if the zoning ordinance only applies to a part of the county.

(d) The governing body of a county must hold an election on an amendment to a zoning ordinance if a petition, signed by at least 10 percent of the eligible voters in the area to which the zoning ordinance applies, is filed:

(1) With the governing body of the county prior to enactment of an amendment to a zoning ordinance; or

(2) After the enactment of an amendment to a zoning ordinance without an election, if the petition for an election on the amendment to a zoning ordinance is filed with the governing body of the county within 90 days.

(e) The governing body of the county holding an election on the proposed amendment pursuant to a petition must:

WV Legislature

(1) Publish notice of the election and the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 *et seq*. of this code; and

(2) Hold an election on the question of adopting or rejecting the proposed amendment to the zoning ordinance at any primary or general election for the qualified voters residing in:

(A) The entire jurisdiction of the county, if the zoning ordinance applies to the entire county; or

(B) The specific area to which the zoning ordinance applies, if the zoning ordinance only applies to a part of the county.

(f) If an election is held, then the proposed amendment to the zoning ordinance does not take effect until a majority of the voters approve it.

(g) If an election is held and the proposed amendment to the zoning ordinance is rejected, then the proposed amendment does not take effect. The governing body of the county may resubmit the proposed amendment to the zoning ordinance to the voters at another election.

(i) The election laws of this state apply to any election on a proposed amendment to a zoning ordinance.

WV Legislature

§8A-7-9. Amendments to the zoning ordinance by petition.

(a) After the enactment of the zoning ordinance, the planning commission or the owners of fifty percent or more of the real property in the area to which the petition relates may petition to amend the zoning ordinance. The petition must be signed and be presented to the planning commission or the clerk of the governing body.

(b) Within sixty days after a petition to amend the zoning ordinance is received by the planning commission or the governing body, then the planning commission or the governing body must hold a public hearing after giving public notice. The public notice of the date, time and place of the public hearing must be published in a local newspaper of general circulation in the area affected by the proposed zoning ordinance, as a Class I legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code, at least fifteen days prior to the public hearing.

(c) If the petition to amend the zoning ordinance is from the owners of fifty percent or more of the real property in the area, then before amending the zoning ordinance, the governing body with the advice of the planning commission, must find that the amendment is consistent with the adopted comprehensive plan. If the amendment is inconsistent, then the governing body with the advice of the planning commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.

WV Legislature

§8A-7-10. Effect of enacted zoning ordinance.

(a) After enactment of a zoning ordinance by a municipality or county, all subsequent land development shall be done in accordance with the provisions of the zoning ordinance.

(b) All zoning ordinances, and all amendments, supplements and changes thereto, legally adopted under any prior enabling acts, and all actions taken under the authority of any such ordinances, are hereby validated and continued in effect until amended or repealed by action of the governing body of the municipality or the county taken under authority of this article. These ordinances shall have the same effect as though previously adopted as a comprehensive plan of land use or parts thereof.

(c) Land, buildings or structures in use when a zoning ordinance is enacted may continue the same use and that use may not be prohibited by the zoning ordinance so long as the use of the land, buildings or structures is maintained, and no zoning ordinance may prohibit alterations or additions to or replacement of buildings or structures owned by any farm, industry or manufacturer, or the use of land presently owned by any farm, industry or manufacturer but not used for agricultural, industrial or manufacturing purposes, or the use or acquisition of additional land which may be required for the protection, continuing development or expansion of any agricultural, industrial or manufacturing operation of any present or future satellite agricultural, industrial or manufacturing use. A zoning ordinance may provide for the enlargement or extension of a nonconforming use, or the change from one nonconforming use to another.

(d) If a use of a property that does not conform to the zoning ordinance has ceased and the property has been vacant for one-year, abandonment will be presumed unless the owner of the property can show that the property has not been abandoned: *Provided*, That neither the absence of natural resources extraction or harvesting nor the absence of any particular agricultural, industrial or manufacturing process may be construed as abandonment of the use. If the property is shown to be abandoned, then any future use of the land, buildings or structures shall conform with the provisions of the zoning ordinance regulating the use where the land, buildings or structures are located, unless the property is a duly designated historic landmark, historic site or historic district.

(e) Nothing in this chapter authorizes an ordinance, rule or regulation preventing or limiting, outside of municipalities or urban areas, the complete use (i) of natural resources by the owner; or (ii) of a tract or contiguous tracts of land of any size for a farm or agricultural operation as defined in §19-19-2 by the owner. For purposes of this article, agritourism includes, but is not limited to, the definition set forth in §19-36-2.

WV Legislature

§8A-7-11. Variance.

(a) A variance is a deviation from the minimum standards of the zoning ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classifications of a parcel of land.

(b) The board of zoning appeals shall grant a variance to the zoning ordinance if it finds that the variance:

(1) Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;

(2) Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance;

(3) Would eliminate an unnecessary hardship and permit a reasonable use of the land; and

(4) Will allow the intent of the zoning ordinance to be observed and substantial justice done.

WV Legislature

§8A-7-12. Validation of prior zoning ordinance.

All zoning ordinances, all amendments, supplements and changes to the ordinance, legally adopted under prior acts, and all action taken under the authority of the ordinance, are hereby validated and the ordinance shall continue in effect until amended or repealed by action of the governing body taken under authority of this article.

WV Legislature

§8A-7-13. Process to replace nontraditional zoning ordinance.

(a) A governing body that has adopted or enacted a nontraditional zoning ordinance may replace the nontraditional zoning ordinance with a zoning ordinance. A nontraditional zoning ordinance may be replaced with a zoning ordinance by:

(1) The governing body; or

(2) A petition by the voters in the affected area. If the voters petition to replace the nontraditional zoning ordinance with a zoning ordinance, then the provisions of this section and this chapter shall be followed.

(b) At least 10 percent of the total eligible voters in the affected area may petition the governing body to replace the nontraditional zoning ordinance with a zoning ordinance. The petition must include:

(1) The governing body's name to which the petition is addressed;

(2) The reason for the petition, including:

(A) Replacing the nontraditional zoning ordinance with a zoning ordinance; and

(B) That the question of replacing the nontraditional zoning ordinance with a new zoning ordinance be put to the voters of the affected area; and

(3) Signatures in ink or permanent marker.

(c) Each person signing the petition must be a registered voter in the affected area and in the governing body's jurisdiction. The petition must be delivered to the clerk of the affected governing body. There are no time constraints on the petition.

(d) Upon receipt of the petition with the required number of qualifying signatures, the governing body shall place the question on the next primary or general election ballot.

Notice for an election on replacing a zoning ordinance must be published in a local newspaper of general circulation in the area affected by the nontraditional zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 *et seq*. of this code.

(e) The ballots for an election on replacing a zoning ordinance shall have the following:

"Shall _____ (name of governing body) replace _____ (name of commonly known nontraditional zoning ordinance) with a zoning ordinance?

___ Yes ___ No"

(f) Upon a majority vote of the voters voting in favor of replacing a nontraditional zoning

WV Legislature

ordinance with a zoning ordinance, the governing body shall immediately begin the process of adopting and enacting a zoning ordinance, in accordance with the provisions of this chapter. The governing body has a maximum of three years from the date of the election to adopt a zoning ordinance.

(g) The governing body may amend its nontraditional zoning ordinance during the process of adopting and enacting a zoning ordinance.

(h) If a majority of the voters reject replacing the nontraditional zoning ordinance with a zoning ordinance, the affected voters may not petition for a vote on the issue for at least two years from the date of the election.

(i) Nothing in this section shall prevent a governing body from amending its zoning ordinance in accordance with this chapter.

(j) If a governing body of a county chooses to replace a nontraditional zoning ordinance with a traditional zoning ordinance without holding an election, a petition, signed by at least 10 percent of the eligible voters who reside in the area affected by the zoning ordinance, for an election on the question of adopting a traditional zoning ordinance may be filed with the governing body of the county within 90 days after the enactment of the traditional zoning ordinance by the governing body of the county. If a petition is timely filed, then the traditional zoning ordinance does not take effect until:

(1) Notice of the election and the zoning ordinance is published in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 *et seq*. of this code;

(2) An election is held; and

(3) A majority of the voters approve it.

WV Legislature

PART I. BOARD OF ZONING APPEALS.

§8A-8-1. Board of zoning appeals authorized.

If a governing body adopts a zoning ordinance, then as part of that zoning ordinance it shall create a board of zoning appeals to hear appeals on zoning issues.

WV Legislature

§8A-8-2. Continuation of established boards of zoning appeals.

A board of zoning appeals established prior to the effective date of this chapter shall continue to operate as though established under the terms of this chapter. All actions lawfully taken under prior acts are hereby validated and continued in effect until amended or repealed by action taken under the authority of this chapter.

WV Legislature

§8A-8-3. Municipal board of zoning appeals.

(a) A municipal board of zoning appeals shall have five members to be appointed by the governing body of the municipality.

(b) The members of a municipal board of zoning appeals must be:

(1) Residents of the municipality for at least three years preceding his or her appointment;

(2) Cannot be a member of the municipal planning commission; and

(3) Cannot hold any other elective or appointive office in the municipal government.

(c) Upon the creation of a board of zoning appeals, the members shall be appointed for the following terms: One for a term of one year; two for a term of two years; and two for a term of three years. The terms shall expire on January 1, of the first, second and third year, respectively, following their appointment. Thereafter, members shall serve three-year terms. If a vacancy occurs, the governing body of the municipality shall appoint a member for the unexpired term.

(d) The governing body of the municipality may appoint up to three additional members to serve as alternate members of the municipal board of zoning appeals. The alternate members must meet the same eligibility requirements as set out in subsection (b) of this section. The term for an alternate member is three years. The governing body of the municipality may appoint alternate members on a staggered term schedule.

(e) An alternate member shall serve on the board when one of the regular members is unable to serve. The alternate member shall serve until a final determination is made in the matter to which the alternate member was initially called on to serve.

(f) The municipal board of zoning appeals shall establish rules and procedures for designating an alternate member. An alternate member shall have the same powers and duties of a regular board member.

(g) The members and alternate members of a county board of zoning appeals shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

WV Legislature

§8A-8-4. County board of zoning appeals.

(a) A county board of zoning appeals shall have five members to be appointed by the governing body of the county.

(b) The members of a county board of zoning appeals must be:

(1) Residents of the county for at least three years preceding his or her appointment;

(2) Cannot be a member of the county planning commission; and

(3) Cannot hold any other elective or appointive office in that county's government: *Provided*, That a member of the county board of zoning appeals may also serve as a member of the county board of subdivision and land development appeals.

(c) Where only a portion of the county is zoned, the members of the board of zoning appeals for that part of the county that is zoned, must be:

(1) Residents of that part of the county that is zoned for at least three years preceding his or her appointment;

(2) Cannot be a member of the county planning commission; and

(3) Cannot hold any other elective or appointive office in the county government: *Provided*, That a member of the county board of zoning appeals may also serve as a member of the county board of subdivision and land development appeals.

(d) Upon the creation of a board of zoning appeals, the members shall be appointed for the following terms: One for a term of one year; two for a term of two years; and two for a term of three years. The terms shall expire on January 1, of the first, second and third year, respectively, following their appointment. Thereafter, members shall serve three-year terms. If a vacancy occurs, the governing body of the county shall appoint a member for the unexpired term.

(e) The governing body of the county may appoint up to three additional members to serve as alternate members of the county board of zoning appeals. The alternate members must meet the same eligibility requirements as set out in subsection (b) or subsection (c) of this section, as applicable. The term for an alternate member is three years. The governing body of the county may appoint alternate members on a staggered term schedule.

(f) An alternate member shall serve on the board when one of the regular members is unable to serve. The alternate member shall serve until a final determination is made in the matter to which the alternate member was initially called on to serve.

(g) The county board of zoning appeals shall establish rules and procedures for designating an alternate member. An alternate member shall have the same powers and duties of a

WV Legislature

regular board member.

(h) The members and alternate members of a county board of zoning appeals shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

WV Legislature

§8A-8-5. Board of zoning appeals meetings.

(a) When there is business to conduct, a board of zoning appeals shall meet at least semiannually, and may meet more frequently at the written request of the chairperson or by two or more members.

(b) Notice for a special meeting must be in writing, include the date, time and place of the special meeting, and be sent to all members at least two days before the special meeting.

(c) Written notice of a special meeting is not required if the date, time and place of the special meeting were set in a regular meeting.

WV Legislature

§8A-8-6. Quorum.

A board of zoning appeals must have quorum to conduct a meeting. A majority of the members of a board of zoning appeals is a quorum. No action of a board is official unless authorized by a majority of the members present at a regular or properly called special meeting.

WV Legislature

§8A-8-7. Officers.

At its first regular meeting each year, a board of zoning appeals shall elect a chairperson and vice chairperson from its membership. The vice chairperson shall have the power and authority to act as chairperson during the absence or disability of the chairperson.

WV Legislature

§8A-8-8. Governing body's duties.

The county commission in the case of a county board of zoning appeals, and the governing body of the municipality in the case of a municipal board of zoning appeals, shall provide the board of zoning appeals with:

(1) Suitable offices for the holding of meetings and the preservation of plans, maps, documents and accounts; and

(2) Appropriate money to defray the reasonable expenses of the board.

WV Legislature

§8A-8-9. Powers and duties of board of zoning appeals.

A board of zoning appeals has the following powers and duties:

(1) Hear, review and determine appeals from an order, requirement, decision or determination made by an administrative official or board charged with the enforcement of a zoning ordinance or rule and regulation adopted pursuant thereto;

(2) Authorize exceptions to the district rules and regulations only in the classes of cases or in particular situations, as specified in the zoning ordinance;

(3) Hear and decide conditional uses of the zoning ordinance upon which the board is required to act under the zoning ordinance;

(4) Authorize, upon appeal in specific cases, a variance to the zoning ordinance;

(5) Reverse, affirm or modify the order, requirement, decision or determination appealed from and have all the powers and authority of the official or board from which the appeal was taken;

(6) Adopt rules and regulations concerning:

(A) The filing of appeals, including the process and forms for the appeal;

(B) Applications for variances and conditional uses;

(C) The giving of notice; and

(D) The conduct of hearings necessary to carry out the board's duties under the terms of this article;

(7) Keep minutes of its proceedings;

(8) Keep an accurate and complete audio record of all the board's proceedings and official actions and keep the audio record in a safe manner, which audio record is accessible within twenty-four hours of demand, for three years;

(9) Record the vote on all actions taken;

(10) Take responsibility for the custody and preservation of all papers and documents of the board. All minutes and records shall be filed in the office of the board and shall be public records;

(11) With consent from the governing body, hire employees necessary to carry out the duties and responsibilities of the board: Provided, That the governing body sets the salaries; and

(12) Supervise the fiscal affairs and responsibilities of the board.

WV Legislature

PART II. APPEAL PROCESS TO BOARD OF ZONING APPEALS.

§8A-8-10. Appeal to board of zoning appeals.

(a) An appeal from any order, requirement, decision or determination made by an administrative official or board charged with the enforcement of a zoning ordinance, or rule and regulation adopted pursuant to a zoning ordinance, shall be filed with the board of zoning appeals.

(b) The appeal shall:

(1) Specify the grounds of the appeal;

(2) Be filed within thirty days of the original order, requirement, decision or determination made by an administrative official or board charged with the enforcement of a zoning ordinance; and

(3) Be on a form prescribed by the board.

(c) Upon request of the board of zoning appeals, the administrative official or board shall transmit all documents, plans and papers constituting the record of the action from which the appeal was taken.

WV Legislature

§8A-8-11. Notice and hearing of appeal.

(a) Within ten days of receipt of the appeal by the board of Zoning Appeals, the board shall set a time for the hearing of the appeal and give notice. The hearing on the appeal must be held within forty-five days of receipt of the appeal by the board.

(b) At least fifteen days prior to the date set for the hearing on the appeal, the board of Zoning Appeals shall publish a notice of the date, time and place of the hearing on the appeal as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and written notice shall be given to the interested parties. The publication area shall be the area covered in the appeal.

(c) The Board of Zoning Appeals may require the party taking the appeal to pay for the cost of public notice and written notice to interested parties.

(d) At the hearing, any party may appear in person, by agent or by an attorney licensed to practice in this state.

(e) Every decision by the board must be in writing and state findings of fact and conclusions of law on which the board based its decision. If the board fails to provide findings of fact and conclusions of law adequate for decision by the circuit court and as a result of the failure, the circuit court returns an appealed matter to the board and dismisses jurisdiction over an applicant's appeal without deciding the matter, whether the court returns the matter with or without restrictions, the board shall pay any additional costs for court filing fees, service of process and reasonable attorneys' fees required to permit the person appealing the board's decision to return the matter to the circuit court for completion of the appeal.

(f) The written decision by the board shall be rendered within thirty days after the hearing. If the board fails to render a written decision within thirty days after the hearing, then any party may pursue additional legal remedies to obtain a decision, including, but not limited to, seeking a writ of mandamus.

WV Legislature

§8A-8-12. Stays; exception.

(a) When an appeal has been filed with the board of Zoning Appeals, all proceedings and work on the premises in question shall be stayed, except as provided in subsection (b) of this section.

(b) A stay may not be had:

(1) If the official or board from where the appeal was taken certifies in writing to the board of Zoning Appeals that a stay would cause imminent peril to life or property;

(2) Upon further administrative proceedings, including, but not limited to, submissions to and reviews by the staff or any administrative body; or

(3) Upon engineering or architectural work that does not disturb the real estate beyond what is necessary to complete engineering, survey work or other tests.

(c) If the written certification is filed pursuant to subdivision (1), subsection (b) of this section, then proceedings or work on the premises shall not be stayed.

(d) Nothing in this section prevents a party from obtaining a restraining order.

WV Legislature

§8A-9-1. Petition for writ of certiorari.

(a) Every decision or order of the planning commission, board of subdivision and land development appeals, or board of zoning appeals is subject to review by certiorari.

(b) Within thirty days after a decision or order by the planning commission, board of subdivision and land development appeals, or board of zoning appeals, any aggrieved person may present to the circuit court of the county in which the affected premises are located, a duly verified petition for a writ of certiorari setting forth:

(1) That the decision or order by the planning commission, board of subdivision and land development appeals, or board of zoning appeals is illegal in whole or in part; and

(2) Specify the grounds of the alleged illegality.

WV Legislature

§8A-9-2. Notice to adverse parties.

(a) Upon filing a petition for a writ of certiorari with the clerk of the circuit court of the county in which the affected premises are located, the petitioner shall cause a notice to be issued and served by the sheriff of the county upon:

(1) The adverse party, as shown by the record of the appeal in the office of the planning commission, board of subdivision and land development appeals, or board of zoning appeals; and

(2) The chairperson or secretary of the planning commission, board of subdivision and land development appeals, or board of zoning appeals, as applicable.

(b) The adverse party is any property owner appearing at the hearing before the planning commission, board of subdivision and land development appeals, or board of zoning appeals in opposition to the petitioner.

(c) If the record shows a written document containing the names of more than three property owners opposing the request of the petitioner, then the petitioner is required to cause notice to be issued and served upon the three property owners whose names first appear upon the written document. Notice to the other parties named in the written document is not required.

(d) The notice shall:

(1) State that a petition for a writ of certiorari has been filed in the circuit court of the county asking for a review of the decision or order of the planning commission, board of subdivision and land development appeals, or board of zoning appeals;

(2) Designate the affected premises; and

(3) Specify the date of the decision or order that is the subject of the petition for a writ of certiorari.

(e) Service of the notice by the sheriff on the chairperson or secretary of the planning commission, board of subdivision and land development appeals, or board of zoning appeals shall constitute notice to the commission or boards. Service of the notice by the sheriff to the governing body and to any official or board thereof charged with the enforcement of the subdivision and land development ordinance, subdivision or land development plan and plat, or zoning ordinance. No further summons or notice with reference to the filing of such petition shall be necessary.

(f) As an alternative to the requirements for notice prescribed in the preceding subsections of this section, notice is sufficient upon a showing that the chairperson or secretary of the planning commission, board of subdivision and land development appeals, or board of zoning appeals and all adjacent landowners to the affected premises have received personal service

WV Legislature

of process of the notice containing information as required in subsection (d) of this section. As to all other interested parties, notice shall be sufficient if notice containing information as required in subsection (d) of this section, is published as a Class III-0 legal advertisement, in the county or counties wherein the affected premises are located.

WV Legislature

§8A-9-3. Court action on petition.

(a) Within twenty days after a petition for a writ of certiorari is presented, the planning commission, board of subdivision and land development appeals, or board of zoning appeals must show the circuit court, or a judge in vacation, of the county in which the affected premises are located, cause why a writ of certiorari should not be issued.

(b) If the planning commission, board of subdivision and land development appeals, or board of zoning appeals fails to show the court or judge that a writ should not be issued, then the court or judge may allow a writ of certiorari directed to the planning commission, board of subdivision and land development appeals, or board of zoning appeals.

(c) The writ shall prescribe the time in which a return shall be made to it. This time shall be not less than ten days from the date of issuance of the writ and may be extended by the court or judge.

WV Legislature

§8A-9-4. Stay of work on allowance of writ.

(a) The allowance of the writ of certiorari shall not stay proceedings or work on the premises affected by the decision or order to be brought up for review.

(b) The court or judge may, upon application and on notice to all parties to the decision or order and on due cause shown, grant such relief as the circumstances of the case may require, including an order staying the proceedings or work until final determination of the case by the court or judge.

(c) The staying order may be issued by the court or judge without requiring the petitioner to enter into a written undertaking with the adverse party or parties affected thereby for the payment of damages by reason of such staying order.

WV Legislature

§8A-9-5. Return to writ.

(a) The return to the writ of certiorari by the planning commission, board of subdivision and land development appeals, or board of zoning appeals must concisely set forth the pertinent facts and data and present material to show the grounds of the decision or order appealed. The return must be verified by the secretary of the planning commission, board of subdivision and land development appeals, or board of zoning appeals.

(b) The planning commission, board of subdivision and land development appeals, or board of zoning appeals does not have to return the original papers acted upon by it. It shall be sufficient to return certified copies of all or such portion of the papers as may be called for by the writ.

WV Legislature

§8A-9-6. Action by circuit court or judge.

(a) The court or judge may consider and determine the sufficiency of the allegations of illegality contained in the petition without further pleadings and may make a determination and render a judgment with reference to the legality of the decision or order of the planning commission, board of subdivision and land development appeals, or board of zoning appeals on the facts set out in the petition and return to the writ of certiorari.

(b) If it appears to the court or judge that testimony is necessary for the proper disposition of the matter, the court or judge may take evidence to supplement the evidence and facts disclosed by the petition and return to the writ of certiorari, but no such review shall be by trial de novo.

(c) In passing upon the legality of the decision or order of the planning commission, board of subdivision and land development appeals, or board of zoning appeals, the court or judge may reverse, affirm or modify, in whole or in part, the decision or order.

WV Legislature

§8A-9-7. Appeal from final judgment of circuit court or judge.

An appeal may be taken to the West Virginia Supreme Court of Appeals from the final judgment of the court or judge reversing, affirming or modifying the decision or order of the planning commission, board of subdivision and land development appeals, or board of zoning appeals within the same time, in the same manner, and upon the same terms, conditions and limitations as appeals in other civil cases.

WV Legislature

§8A-10-1. Enforcement.

The governing body of a municipality or county may:

(1) Enforce penalties, set out in section two of this article, for failure to comply with the provisions of any ordinance or rule and regulation adopted pursuant to the provisions of this chapter; and

(2) Declare that any buildings erected, raised or converted, or land or premises used in violation of any provision of any ordinance or rule and regulation adopted under the authority of this chapter shall be a common nuisance and the owner of the building, land or premises shall be liable for maintaining a common nuisance.

WV Legislature

§8A-10-2. Penalty.

A person who violates any provision of this chapter is guilty of a misdemeanor and, upon conviction, shall be fined not less than $50 nor more than $500.

WV Legislature

§8A-10-3. Injunction.

(a) The planning commission, board of subdivision and land development appeals, the board of zoning appeals or any designated enforcement official may seek an injunction in the circuit court of the county where the affected property is located, to restrain a person or unit of government from violating the provisions of this chapter or of any ordinance or rule and regulation adopted pursuant hereto.

(b) The planning commission, board of subdivision and land development appeals, the board of zoning appeals or any designated enforcement official may also seek a mandatory injunction in the circuit court where the affected property is located, directing a person or unit of government to remove a structure erected in violation of the provisions of this chapter or of any ordinance or rule and regulation adopted pursuant hereto.

(c) If the planning commission, board of subdivision and land development appeals, the board of zoning appeals or the designated enforcement official is successful in any such suit, the respondent shall bear the costs of the action.

WV Legislature

§8A-10-4. Special provisions.

(a) The planning and zoning provisions of this chapter are supplemental to and do not abrogate the powers and authority extended to agencies, bureaus, departments, commissions, divisions and officials of the state government by other state statute and those powers and authority shall remain in full force and effect.

(b) The powers of supervision and regulation by the divisions of the state government over municipal, county and other local governmental units and persons are also not abrogated and shall continue in full force and effect.

WV Legislature

§8A-10-5. General repealer.

All acts or parts of acts, including special legislative charters, inconsistent with the provisions of this chapter are hereby repealed to the extent of their inconsistency, except as provided in this chapter.

WV Legislature

§8A-11-1. Standards for factory-built homes.

(a) Notwithstanding any existing provisions of law, municipal or county ordinance or state building code, the standards for factory-built homes, housing prototypes, subsystems, materials and components certified as acceptable by the federal Department of Housing and Urban Development are considered acceptable and are approved for use in housing construction in this state.

(b) Appropriate building code compliance documentation attached to a factory-built home shall constitute prima facie evidence that the products or materials contained therein are acceptable.

(c) A governing body of a municipality or a county, when enacting any ordinance or regulation for the purposes of regulating the subdivision, development and use of land, shall uniformly apply such design standards and associated review and permitting procedures for factory-built and other single-family constructed homes.

(d) Factory-built homes, like other types of homes, shall be constructed and installed in conformity with the requirements of 44 C.F.R. §60.3(1976) and any applicable statute or rule relating to building in a flood zone.

WV Legislature

§8A-11-2. Permitted use for group residential facility.

(a) A group residential facility as defined in article seventeen, chapter twenty-seven of this code, shall be a permitted residential use of property for the purposes of zoning and is a permitted use in zones or districts where single family dwelling units or multifamily dwelling units are permitted.

(b) A governing body of a municipality or a county, and a planning commission, cannot discriminate in regard to housing and cannot require a group residential facility or its owner or operator, to obtain a conditional use permit, special use permit, special exception or variance to locate a group residential facility in a zone or district where single family dwelling units or multifamily dwelling units are permitted.

(c) The provisions of this section do not exempt any group residential facility from the structural requirements of any bona fide historic preservation district.

WV Legislature

§8A-12-1. Legislative findings and purpose.

(a) The Legislature hereby finds and declares that agriculture is a unique "life support" industry and that a need exists to assist those agricultural areas of the state which are experiencing the irreversible loss of agricultural land.

(b) It is the intent of the Legislature to provide persons and other entities an opportunity to voluntarily protect agricultural land and woodland in order to:

(1) Assist in sustaining the farming community;

(2) Provide sources of agricultural products within the state for the citizens of the state;

(3) Control the urban expansion which is consuming the agricultural land, topsoil and woodland of the state;

(4) Curb the spread of urban blight and deterioration;

(5) Protect agricultural land and woodland as open-space land;

(6) Enhance tourism; and

(7) Protect worthwhile community values, institutions and landscapes which are inseparably associated with traditional farming.

(c) Further, it is the intent of the Legislature to establish a West Virginia agricultural land protection authority, hereinafter "authority", to assist persons, other entities and counties to obtain funding from any source available to accomplish the purposes of the voluntary farmland protection programs.

WV Legislature

§8A-12-2. County farmland protection programs and farmland protection boards authorized; authority of county commission to approve purchase of farmland easements; expense reimbursement of actual expenses for the board members.

(a) The county commission of each county may adopt and implement a farmland protection program within the county. The county commission of each county which decides to adopt and implement a farmland protection program shall appoint a farmland protection board. The farmland protection board shall administer on behalf of the county commission all matters concerning farmland protection. The county commission has final approval authority for any and all purchases of easements for the farmland protection program by the board.

(b) The farmland protection board shall adopt bylaws prescribing the board's officers, meeting dates, record-keeping procedures, meeting attendance requirements and other internal operational procedures. The member of the farmland protection board who is a county commissioner shall serve as temporary chairman of the board until the board's bylaws are adopted and until the board's officers are selected as prescribed by those bylaws. The farmland protection board shall prepare a document proposing a farmland protection program which is consistent with the Legislature's intent.

(c) Each member of the board shall receive expense reimbursement for actual expenses incurred while engaged in the discharge of official duties, the actual expenses not to exceed the amount paid to members of the Legislature.

WV Legislature

§8A-12-3. Content and requirements of farmland protection programs.

(a) An adopted farmland protection program shall include only those qualifying properties which are voluntarily offered into the program by the landowners of the properties.

(b) An adopted farmland protection program shall meet the following minimum requirements:

(1) The program shall be developed by the county farmland protection board and approved by the county commission. The county farmland protection board, in consultation with the local conservation district, shall administer the farmland protection program;

(2) The board shall establish uniform standards and guidelines for the eligibility of properties for the program. The standards and guidelines shall take into consideration the following: Current and past uses of the property; existing property improvements, property tract size and shape; location of the property tract in relation to other potential agricultural property tracts; impending threat of conversion of the property to nonagricultural uses; property ownership and existing deed covenants; and restrictions with respect to the property; and

(3) The guidelines established by the board shall outline the various methods of farmland protection which are available to prospective participating property owners and the procedures to be followed in applying for program consideration.

WV Legislature

§8A-12-4. Farmland protection boards -- appointment, composition, terms.

(a) Composition. -- A farmland protection board shall be composed of seven members, each serving without compensation. Membership on the farmland protection board shall consist of the following: One county commissioner; the executive director of the county development authority; one farmer who is a county resident and a member of the county farm bureau; one farmer who is a county resident and a member of a conservation district; one farmer who is a county resident; and two county residents who are not members of any of the foregoing organizations. All members of the farmland protection board shall be voting members, except the county commissioner who shall serve in an advisory capacity as a nonvoting member.

(b) Terms. –- Each member of a farmland protection board shall be appointed for a term of office of four years except the initial appointment of two voting board members shall be for a term of two years:

(1) No member may serve for more than two consecutive full terms; and

(2) An appointment to fill a vacancy shall be for the remainder of the unexpired term.

WV Legislature

§8A-12-5. Farmland protection boards -- powers.

A farmland protection board has the following general powers:

(a) Power to sue. -- To sue and be sued in contractual matters in its own name;

(b) Power to contract. -- To enter into contracts generally and to execute all instruments necessary or appropriate to carry out its purposes;

(c) Power to restrict use of land. -- To acquire or cohold, by gift, purchase, devise, bequest or grant, easements in gross, fee or other rights to restrict the use of agricultural land and woodland as may be designated to maintain the character of the land as agricultural land or woodland: Provided, That the county commission has final approval authority for any and all purchases of easements for the farmland protection program by the board;

(d) Power to implement rules. -- To implement rules necessary to achieve the purposes of the voluntary farmland protection programs;

(e) Power to disseminate information. -- To promote the dissemination of information throughout the county concerning the activities of the farmland protection board; and

(f) Power to seek funding. -- To pursue and apply for any and all county, state, federal and private funding available, consistent with the purpose of the voluntary farmland protection programs.

WV Legislature

§8A-12-6. Farmland protection board duties.

The duties of each farmland protection board are as follows:

(a) To report to the county commission with respect to the acquisition of easements by the farmland protection board within the county and to obtain final approval authority for any and all purchases of easements for the farmland protection program by the board;

(b) To advise the authority concerning county priorities for agricultural protection;

(c) To promote protection of agriculture within the county by offering information and assistance to landowners with respect to the acquisition of easements;

(d) To seek and apply for all available funds from federal, state, county and private sources to accomplish the purposes of the voluntary farmland protection programs; and

(e) To perform any other duties assigned by the county commission.

WV Legislature

§8A-12-7. West Virginia agricultural land protection authority -- established.

A West Virginia agricultural land protection authority is established within the Department of Agriculture. The authority has the powers and duties provided in this article.

WV Legislature

§8A-12-8. West Virginia agricultural land protection authority -- board of trustees.

(a) Composition; chairman; quorum; qualifications. -- The authority established on July 1, 2002, shall be governed and administered by a board of trustees composed of the state Treasurer, the Auditor and the commissioner of agriculture, who shall serve as ex officio members, and nine members to be appointed by the Governor, by and with the advice and consent of the Senate, at least five of whom shall be representative of farmers from different areas of the state. The State Treasurer, Auditor and the commissioner of agriculture may appoint designees to serve on the board of trustees. One of the appointed members who is not a representative of farmers shall be a representative of the Division of Natural Resources; one of the appointed members who is not a representative of farmers shall be a representative of the conservation district; and one of the appointed members who is not a representative of farmers shall be a representative of an I.R.C. 501(c)(3) qualified land trust. Three of the five representatives of farmers shall be appointed as follows:

(1) Two from a list of five nominees submitted by the West Virginia Department of Agriculture; and

(2) One from a list of three nominees submitted by the West Virginia farm bureau.

The Governor shall appoint the chairman of the board from among the nine appointed members. A majority of the members of the board serving at any one time constitutes a quorum for the transaction of business.

Notwithstanding any provision of law to the contrary, a person may be appointed to and serve on the board as an appointed member even if prior to the appointment the person conveyed an easement on the person's land to the authority.

(b) Terms. -- (1) The Governor, with the advice and consent of the Senate, shall appoint the nine members for the following terms:

(A) Three for a term of four years;

(B) Three for a term of three years; and

(C) Three for a term of two years.

(2) Successors to appointed members whose terms expire shall be appointed for terms of four years. Vacancies shall be filled for the unexpired term. An appointed member may not serve more than two successive terms. Appointment to fill a vacancy may not be considered as one of two terms.

(c) Oath. -- Appointed members shall take the oath of office as prescribed by law.

(d) Compensation and expenses. -- Members shall not receive compensation. Each member of the board shall receive expense reimbursement for actual expenses incurred while

WV Legislature

engaged in the discharge of official duties, the actual expenses not to exceed the amount paid to members of the Legislature.

WV Legislature

§8A-12-9. West Virginia agricultural land protection authority -- powers.

The authority has the following general powers:

(a) Power to sue. -- To sue and be sued in contractual matters in its own name;

(b) Power to contract. -- To enter into contracts generally and to execute all instruments necessary or appropriate to carry out its purposes;

(c) Power to restrict use of land. -- To acquire or cohold, by gift, purchase, devise, bequest or grant, easements in gross, fee or other rights to restrict the use of agricultural land and woodland as may be designated to maintain the character of the land as agricultural land or woodland;

(d) Power to disseminate information. -- To promote the dissemination of information throughout the state concerning the activities of the farmland protection board; and

(e) Power to seek funding. -- To pursue and apply for any and all state, federal and private funding available consistent with the purpose of the voluntary farmland protection programs.

WV Legislature

§8A-12-10. West Virginia agricultural land protection authority -- duties.

The authority shall:

(a) Disseminate information regarding agricultural land protection and promote the protection of agricultural land;

(b) Assist county farmland protection boards in applying for and obtaining all state and federal funding available consistent with the purposes of the farmland protection programs;

(c) Upon request of a farmland protection board, provide technical and legal services necessary to procure, acquire, draft, file and record conservation and preservation easements;

(d) Prepare and file electronically with the Governor's office and with the Legislature by the thirty-first day of August of each year a report including, but not limited to, the following information:

(1) The cost per easement obtained;

(2) The identity of all applicants for conservation and preservation easements; and

(3) The identity of all applicants from whom conservation and preservation easements have been acquired;

(e) Seek and apply for all available funds from federal, state and private sources to accomplish the purposes of the farmland protection programs.

WV Legislature

§8A-12-11. Definitions.

For purposes of the voluntary farmland protection programs, the following terms have the meanings set forth in this section.

(a) Acquisition of easement. -- The holding or coholding of land-use restrictions as defined in this article, whether obtained through purchase, gift, devise, bequest, grant or contract to cohold with another holder.

(b) Conservation easement. –- This article incorporates the definition of a conservation easement found in section three, article twelve, chapter twenty of this code, except that a conservation easement created under this article must be held or coheld by at least one "holder" as defined in that section in perpetuity.

(c) Farm, farmland or agricultural land. -- A tract, or contiguous tracts of land, of any size, used or useable for agriculture, horticulture or grazing and includes all real property designated as wetlands that are part of a property used or useable as farmland.

(d) Preservation easement. -- This article incorporates the definition of a preservation easement found in section three, article twelve, chapter twenty of this code, except that a preservation easement created under this article must be held or coheld by at least one "holder" as defined in that section and must be perpetual in its duration.

(e) Woodland. -- Woodland shall be considered land of a farm only if it is part of or appurtenant to a tract of land which is a farm, or held by common ownership of a person or entity owning a farm, but in no event may woodland include land used primarily in commercial forestry or the growing of timber for commercial purposes or any other use inconsistent with farm use.

(f) Opt-out provision. –- A provision which may be inserted into any conservation or preservation easement agreement entered into pursuant to this article which would act as a mechanism to place the easement selling price into an escrow fund for the purpose of allowing the owner or owners up to five years to rescind the decision to enter into the farmland protection program.

WV Legislature

§8A-12-12. Methods of farmland protection.

(a) The authority or a county farmland protection board may negotiate with and compensate eligible property owners to ensure the protection of farmland within the county or state. Methods of protecting farmland may include, but are not limited to, the following:

(1) Acquisition of conservation easement or preservation easement. -- With the consent of a property owner, the county farmland protection board or the authority may acquire and place on record a conservation or preservation easement. Acquired easements apply only to those properties which qualify for consideration under the terms established by an adopted farmland protection program; and

(2) Acquisition of land and disposition. -- With the consent of a property owner, the county farmland protection board or the authority may acquire any property which qualifies for agricultural protection under terms established by an adopted farmland protection program. The county farmland protection board or the authority may lease, as lessor, acquired property for agricultural uses or may restrict the property to agricultural uses and sell the property at fair market value for use as a farm. Any property acquired by a county farmland protection board or the authority and then sold shall be sold subject to a conservation or preservation easement. If the property is leased, the lessee shall pay to the county commission, in addition to rent, an annual fee set by the county commission. The amount of this annual fee shall be commensurate with the amount of property taxes which would be assessed in accordance with the provisions of this code upon the property if the property were held by a private landowner.

(b) Revenues from the sale of properties restricted to agricultural uses shall be used to recover the original purchase costs of the properties and shall be returned to the applicable funds which were used by the county farmland protection board or the authority to purchase the property. Any profits resulting from the sale of property restricted to agricultural uses shall be deposited in a farmland protection fund.

WV Legislature

§8A-12-13. Offer of conservation or preservation easements.

(a) Owner may offer to sell or donate a conservation or preservation easement. -- An owner of farmland may offer by written application to sell or donate a conservation or preservation easement on all or any portion of the farm to a county farmland board or the authority.

(b) Requirements for application to sell or donate. -- In order to be considered by a county farmland protection board or the authority, an application to sell or donate shall:

(1) Include an asking price, if any, at which the owner is willing to sell a conservation or preservation easement and shall specify the terms under which the offer is made; and

(2) Include a complete description of the land, including, but not limited to, an itemization of all debts secured by the land and the identity and amount of all liens.

WV Legislature

§8A-12-14. Value of conservation or preservation easement.

(a) Maximum value. -- The maximum value of any conservation or preservation easement acquired by the county farmland protection board or the authority is the asking price or the difference between the fair market value of the land and the agricultural value of the land, whichever is lower.

(b) Fair market value. -- The fair market value of the land is the price as of the valuation date for the highest and best use of the property which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property if the property was not subject to any restriction imposed under this article.

(c) Agricultural value. -- The agricultural value of land is the price as of the valuation date which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property subject to the restrictions placed upon it by the conservation or preservation easement.

(d) Determination of values. -- The value of the easement is determined at the time the county farmland protection board or the authority is requested in writing to acquire the easement. The fair market value is determined by the county farmland protection board or the authority based on one or more appraisals obtained by the county farmland protection board or the authority, and appraisals, if any, of the landowner.

(e) Arbitration. -- If the landowner and the county farmland protection board or the authority do not agree on the value of the easement as determined by the state, the landowner, the county farmland protection board or the authority may request that the matter be referred to a mutually agreed upon mediator for arbitration as to the value of the easement. The arbitration shall be conducted in accordance with the rules promulgated by the American arbitration association. The value determined at arbitration is binding upon the owner and the county farmland protection board or the authority in a purchase of the easement made subsequent to the arbitration for a period of two years, unless the landowner and the county farmland protection board or the authority agree upon a lesser value or the landowner, the county farmland protection board or the authority appeals the results of the arbitration to the circuit court.

WV Legislature

§8A-12-15. Criteria for acquisition of conservation and preservation easements by county farmland protection boards and the authority.

The authority and county farmland protection boards, in ranking applications for conservation and preservation easements, shall consider the following factors as priorities:

(a) The imminence of residential, commercial or industrial development;

(b) The total acreage offered for conservation or preservation easement;

(c) The presence of prime farmland, unique farmland, farmland of statewide importance, other locally significant farmlands and the productive capacity of the acreage;

(d) Whether the property offered is contiguous or appurtenant to working farms;

(e) The ratio of the asking price, if any, of the easement to the fair market value of the easement;

(f) The historical, architectural, archaeological, cultural, recreational, natural, scenic, source water protection or unique value of the easement: Provided, That determinations of the authority or a county farmland protection board are not a substitute for and do not have the effect of other procedures under state or federal law for granting protected status to land, including, but not limited to, procedures under the National Historic Preservation Act of 1966, as amended, or rules of the director of the historic preservation section of the Division of Culture and History authorized in section eight, article one, chapter twenty-nine of this code, or procedures under the authority of the tourism commissioner or the parks and recreation section of the Division of Natural Resources;

(g) The existence and amount of secured debt upon the property, as determined by a title search, and whether the total exceeds the agricultural value of the land as determined by the appraisal as required in subsection (d), section fourteen of this article; and

(h) The length of the protective easement.

WV Legislature

§8A-12-16. Use of land for which conservation or preservation easement acquired.

(a) Provisions to be included in conservation or preservation easement and county farmland protection board rules, or the authority rules. -- Farmland upon which a conservation or preservation easement has been recorded may be used for the following:

(1) Farm use;

(2) Businesses directly related to the retail sale of farm products;

(3) Any activity performed for religious, charitable or educational purposes or to foster tourism; and

(4) Any home-based business that does not require a Division of Environmental Protection permit to operate.

Notwithstanding any of the exceptions in this subsection, any use of land under preservation or conservation easement must be consistent with the purpose of the farmland protection programs.

(b) Use for commercial, industrial or residential purposes. -- Excepting existing and future uses described in subsections (c), (d) and (e) of this section, a landowner whose land is subject to a conservation or preservation easement may not develop the land for any commercial, industrial, residential or other nonfarm purpose. Nonresidential, noncommercial, nonindustrial farm support buildings or structures are permitted.

(c) Exclusion for single residential dwelling. -- On request to a county farmland protection board or the authority, an owner may exclude two acres per each single residential dwelling, which existed at the time of the sale of the easement, from the easement prohibitions on residential development. A land survey and recordation identifying each single residential dwelling shall be provided at the expense of the owner. However, before any exclusion is granted, an owner shall agree with the county farmland protection board or the authority not to subdivide further for residential purposes any acreage allowed to be excluded. This agreement shall be recorded among the land records where the land is located and shall bind all future owners.

(d) Exclusion for certain existing and future uses. -- This article neither abrogates nor creates any preexisting rights in the land owned by any person not joining as a grantor of a conservation or preservation easement. Neither the creation nor the existence of a conservation or preservation easement shall prevent existing or future use of the land based on a preexisting right, or prevent any existing or future use consistent with state law with respect to transmission and telecommunications facilities' rights-of-way, easements and licenses.

(e) Condemnation of private property for public use. -- This article neither abrogates nor creates any rights inconsistent with state or federal law respecting the power of

WV Legislature

condemnation of private property for public use. Any person or entity exercising the power of eminent domain must pay compensation at not less than the fair market value of the land to the court having jurisdiction of the proceeding or as directed by the court. The term "fair market value" as used in this subsection shall be determined without regard to the existence of the conservation or preservation easement. Neither the creation nor the existence of a conservation or preservation easement shall prevent acquisition of real property, or any right or interest in the property, for public use.

WV Legislature

§8A-12-17. Funding of farmland protection programs.

(a) County funds. --

(1) Creation of county funds. -- Once having created a county farmland protection program, a county commission may authorize the county farmland protection board to create and maintain a farmland protection fund and hire staff as it considers appropriate.

(2) Sources. -- A county farmland protection fund is comprised of:

(A) Any moneys not specifically limited to other uses and dedicated to the fund by a county commission;

(B) Any moneys collected pursuant to section twenty-one of this article;

(C) Any money made available to the fund by grants or transfers from governmental or private sources; and

(D) Any money realized by investments, interest, dividends or distributions.

(b) State fund. --

(1) Created and continued. -- The West Virginia farmland protection fund is created for the purposes specified in this article.

(2) Sources. -- The West Virginia farmland protection fund is comprised of:

(A) Any money made available to the fund by general or special fund appropriations;

(B) Any money made available to the fund by grants or transfers from governmental or private sources;

(C) Any money realized by investments, interest, dividends or distributions; and

(D) Any money appropriated by the Legislature for the West Virginia farmland protection fund.

(3) Disbursements. -- The treasurer may not disburse any money from the fund other than:

(A) For costs associated with the staffing, administration, and technical and legal duties of the authority;

(B) For reasonable expenses incurred by the members of the board of trustees of the authority in the performance of official duties; and

(C) For consideration in the purchase of farmland conservation and preservation easements.

WV Legislature

(4) Money remaining at end of fiscal year. -- Any money remaining in the fund at the end of a fiscal year shall not revert to the General Revenue Fund of the state, but shall remain in the West Virginia farmland protection fund to be used for the purposes specified in this article.

(5) Budget. -- The estimated budget of the authority for the next fiscal year shall be included with the budget of the West Virginia Department of Agriculture.

(6) Audit. -- The fund shall be audited annually.

WV Legislature

§8A-12-18. Disbursements by the authority to county farmland protection boards.

(a) Applications; amount. -- If a county has established a county farmland protection program, the authority shall distribute within sixty days after the end of its fiscal year at least eighty percent of that fiscal year's remaining funds to county farmland protection boards who have certified to the authority that there is then pending an application for one or more conservation or preservation easements. Each certification shall include:

(1) The name of each applicant for an easement and the date of each application for an easement during the fiscal year;

(2) A description of the property upon which an easement is offered; and

(3) An appraisal of the value of the conservation or preservation easement as provided in section fourteen of this article.

(b) Disbursement formula. -- Disbursement of authority funds to qualifying counties shall be based on the ratio of each county farmland protection board's appraisal value of conservation and preservation easement applications, including those applications to donate easements, received during the fiscal year to the total of the appraisal value of all applications for conservation and preservation easements for the fiscal year received by the authority from county farmland protection boards. Applications for easement donations may only be counted if the county farmland protection board holds or coholds the easement.

WV Legislature

§8A-12-19. Classification of land subject to conservation or preservation easement.

Notwithstanding any statute or rule to the contrary, any property held or coheld by a holder under a conservation or preservation easement as defined in this article, regardless of ownership, shall be taxed as "agricultural lands" for ad valorem property tax purposes without further requirement, restriction or disqualification. For ad valorem property tax purposes, any property held or coheld by a holder under a perpetual conservation or preservation easement as defined by this article, regardless of ownership, shall be taxed as "agricultural lands" without further requirement, restriction or disqualification.

WV Legislature

§8A-12-20. Authorization for commissioner of agriculture to promulgate proposed rules.

The commissioner of agriculture may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article.

WV Legislature

§8A-12-21. Tax on privilege of transferring real property.

(a) Notwithstanding the provisions of section two, article twenty-two, chapter eleven, and effective January 1, 2003, and thereafter, in addition to the tax imposed pursuant to article twenty-two, chapter eleven of this code, any county commission that has created a farmland protection program may impose an additional county excise tax for the privilege of transferring title to real estate at the rate of no more than $1.10¢ for each $500' value or fraction thereof, as represented by any document as defined in section one, article twenty-two, chapter eleven of this code, payable at the time of delivery, acceptance or presentation for recording of the document.

(b) The tax imposed pursuant to this section is to be administered and collected as the tax on the privilege of transferring title to real estate imposed pursuant to the provisions of article twenty-two, chapter eleven of this code.

(c) The tax imposed pursuant to this section is to be used exclusively for the purpose of funding farmland preservation.

WV Legislature

§8A-13-1. Definition.

For purposes of this article, "request" means an application for a permit, license, variance, or any other type of prior approval from a governing body or planning commission of a municipality or county for an action related to the development or improvement of property.

WV Legislature

§8A-13-2. Deadline.

(a) If an applicant submits a request to a governing body or planning commission of a municipality or county, then the governing body or planning commission of the municipality or county must approve or deny the applicant's request within 60 days. The following applies if:

(1) The governing body or planning commission fails to approve or deny the applicant's request within 60 days, then the request is approved.

(2) The time limit in this section begins upon the governing body or planning commission's receipt of a request from an applicant.

(3) The governing body or planning commission approves the request, then the governing body or planning commission may not impose on the applicant additional requirements related to the request.

(4) The governing body or planning commission denies the request, then the governing body or planning commission must provide the applicant a statement in writing of the reasons for the denial.

(5) A governing body or planning commission denies a request for being incomplete, then the governing body or planning commission must provide the applicant a statement in writing of the reasons the request is incomplete. The request is incomplete if the request fails to contain all information required by law or by a previously adopted rule, ordinance, or policy.

WV Legislature

§8A-13-3. Extension.

The time limit in §8A-13-2 of this code may be extended. The following applies:

The time limit in §8A-13-2 of this code is extended if a request requires prior approval of a state or federal agency. The time limit is extended to 60 days after the required prior approval is granted. The extension may not exceed 60 days, unless approved by the applicant.

An applicant may request an extension in writing.

WV Legislature

§8A-13-4. Applicability.

The time limit in §8A-13-2 of this code does not apply to state agencies.

WV Legislature