



IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA
JEFFERSON COUNTY CITIZENS
FOR ECONOMIC PRESERVATION,
A NON-PROFIT CORPORATION,

RECEIVED
FEB 26 2008
JEFFERSON COUNTY
CIRCUIT COURT

Petitioner,

v.

CIVIL ACTION No. 05-C-143
Honorable Thomas W. Steptoe, Jr.

COUNTY COMMISSION OF
JEFFERSON COUNTY, a public body;
ARCHIBALD M. S. MORGAN, Member
C. DALE MANUEL, Member,
GREGORY A. CORLISS, Member, and
JANE M. TABB, member,

Respondents.

ORDER INVALIDATING THE APRIL 8, 2005 AMENDMENTS

Petitioner, Jefferson County Citizens for Economic Preservation (JCCEP), through the Law Office of Richard G. Gay, L.C. and Peter L. Chakmakian, Esq., filed a Motion for Partial Summary Judgment. After issuing a briefing schedule, the Court held a hearing on this motion. Additionally, Respondents, Jefferson County Commission (Commission) et al., through counsel James Casimiro III, Esq., Assistant Prosecuting Attorney, moved the Court for summary judgment, which the Court considers a cross-motion for summary judgment.

The Court has studied Petitioner's and Respondents' Motions for Summary Judgment, all responses, memoranda, and attached exhibits. The Court has reviewed the record of the case and the pertinent legal authorities. As a result of these deliberations, the Court **ORDERS** Petitioner's Motion for Partial Summary Judgment **GRANTED**, and Respondents' Motion for Summary Judgment **PARTIALLY GRANTED**. Because there

are no remaining issues before the Court, the Court **ORDERS** the clerk to **RETIRE THIS CASE FROM THE DOCKET.**

Standard of Review

“Summary judgment is proper only if, in the context of the motion and any opposition to it, no genuine issue of material fact exists and the movant demonstrates entitlement to judgment as a matter of law.” Syl. pt. 2, *Gentry v. Mangum*, 195 W.Va. 512, 466 S.E.2d 171 (1995).

Factual and Procedural Background

Before the Legislature repealed West Virginia Code Section 8-24-1 et seq. to replace it with 8A-7-1 et seq. in 2004, the Jefferson County Zoning and Land Development Ordinance (Ordinance) contained Section 12.2, which referenced 8-24-1 et seq. Section 12.2 outlined the procedure for amending the Ordinance by mandating that all amendments follow the procedures set forth in 8-24-18 through 8-24-23. The Jefferson County Commission (County Commission) amended Section 12.2 effective April 8, 2005. The amendment removed the to 8-24-1 et seq. amendment requirements and replaced them with those from 8A-7-8. In addition, Section 5.7(d)(1), which allows lots in a Rural District to be subdivided, was reduced from one lot per ten acres to one lot per fifteen acres.

Before making these amendments, the County Commission held two advertised public hearings at which it considered the amendments and took public comment. The Planning Commission met regarding the amendments' consistency with the comprehensive plan.

At the County Commission meeting on January 6, 2005 the Zoning Administrator appeared and handed out the latest proposed amendments to the Ordinance. A citizen also

submitted two proposals, which the County Commission sent to the Planning Commission for review.

The Planning Commission found all three proposals consistent with the Comprehensive Plan at its January 11, 2005 meeting. It asked the County Commission for 30 days to review public comment before reporting back to the County Commission. At their January 20, 2005 meeting, the County Commission voted to schedule public hearings on the three proposed amendments and invited the Planning Commission to attend and participate. However, at their next meeting on January 27, 2005, the Commission rescinded that vote and instead voted to hold the public hearings only on the County Commission's proposed amendment. They rescheduled the original date, but did not reiterate their invite to the Planning Commission.

The County Commission published notice twice and it read as follows:

**NOTICE OF PUBLIC HEARING
JEFFERSON COUNTY COMMISSION PROPOSED
AMENDMENTS JEFFERSON COUNTY ZONING AND
DEVELOPMENT REVIEW ORDINANCE**

Please take notice that the public hearings will be held on Wednesday February 23, 2005 and Thursday February 24, 2005, at 7:00 p.m. in the Jefferson County Meeting Room located on the Ground floor of the Old Charles Town Library, 200 East Washington Street, Charles Town, West Virginia to receive comment on proposed amendments to the Jefferson County Zoning and Development Review Ordinance.

Pursuant to 8A-7-8 of the State Code of West Virginia, the County Commission of Jefferson County, its staff and legal consultants have studied the aforementioned Ordinance and determined that amendments need to be made. The Commission will receive comments on Amendments to the Jefferson County Zoning and Development Review Ordinance, Draft of January 6, 2005, by the County Commission of Jefferson County.

All persons and governmental units having an interest in said proposed Ordinance amendments are invited to attend

this meeting. County Commission files on the proposed amendments may be reviewed at any time during normal business hours at the Office of the Jefferson County Commission, 124 East Washington Street, of Charles Town, West Virginia. Copies of the proposed amendments may also be obtained at the Commission office or on the County website at www.jeffersoncountywv.org. If you have any questions, you may call the County Commission office at (304) 728-3264.

Any party desiring a transcript of these proceedings will be responsible for providing a competent stenographer at their own expense.

By Order of the County Commission of Jefferson County.

Before these public hearings occurred, the County Commission met to discuss additional considerations regarding the changes to the proposed amendments.

The County Commission held its first public hearing on the proposed amendments on February 23, 2005. All Commissioners attended along with five members of the Planning Commission. Many individuals submitted correspondence and made comment.

On March 3, 2005¹, the County Commission held the second of the public hearings on the proposed amendments. All Commissioners were present along with eight members of the Planning Commission. Many individuals submitted correspondence and were there for discussion. At the County Commission's March 10, 2005 meeting it scheduled a work session on March 14, 2005 to discuss the proposed amendments. At its next meeting after the work session, the Commission sent the proposed amendments to the Planning Commission for review and comment on their compatibility with the Comprehensive Plan. At the March 22, 2005 Planning Commission meeting, the Zoning Administrator noted that the Prosecuting Attorney's Office wrote and approved the proposed amendments. The Planning Commission found these proposed amendments to be consistent with the

¹ The February 24, 2005 hearing was rescheduled due to weather.

Comprehensive Plan. At their March 23, 2005 meeting, the County Commission approved the March 17, 2005 draft of the proposed amendments and set an effective date of April 8, 2005.

On May 9, 2005, Petitioner filed for a Writ of Certiorari or Declaratory Judgment alleging that 8-24-1 et seq. applied to the County Commission when it amended the Ordinance, but that the County Commission did not follow those statutes. Therefore, it argued that the County Commission unlawfully adopted the amendments. The Court, on July 8, 2005, declined to grant certiorari, but left intact Petitioner's claim for declaratory judgment. On October 2, 2006, Respondents filed for summary judgment. The Court denied Respondents' motion and interpreted West Virginia Code, Section 8A-7-1 et seq. to require any amendments to the Ordinance to follow the previously repealed West Virginia Code, Sections 8-24-18 through 8-24-23. Both Petitioner and Respondents have since filed additional summary judgment motions. The Court considers these two motions below.

Law and Reasoning

Petitioner argues that the Respondent enacted the Ordinance amendments in contravention of the West Virginia Code and that the Court should order the amendments invalid. Generally, it argues that the Planning and County Commissions did not follow the correct procedure in amending the ordinance. Additionally, Petitioner contends that the amendment that changed subdivisions in the Rural Zoning District from one lot per 10 acres to one lot per 15 acres constituted a taking by the Respondent.

Respondents counter that the rural subdivision change was not a taking because it did not take away all economic use from the land. Moreover, they argue that the County and Planning Commissions did comply with the West Virginia Code because their actions

satisfied the aim of the statutory requirements. The County Commission together with the Planning Commission held public hearings, adopted and recommended the Ordinance amendments, and made a final adoption.

I. Taking

While the change in density from one in 10 acres to one in 15 acres may have resulted in a diminution to the value of property in the Rural Zoning District, it did not constitute a taking.

Land-use regulations will not constitute an impermissible taking of property under the Fifth Amendment to the United States Constitution and Section 9 of Article III of the West Virginia Constitution if such regulations can be reasonably found to promote the health, safety, morals, or general welfare of the public and the regulations do not destroy all economic use of the property.

Syl. Pt. 6, *McFillan v Berkeley County Planning Commission*, 190 W.Va. 458 (1993).

The change in density does not destroy all economic use of property in the Rural Zoning District because an individual owning land there can still subdivide his or her property and sell off parcels, or farm the land and sell the crops. Therefore, the Court **FINDS** that the above land-use regulation does not constitute a taking.

II. Validity of the April 8, 2005 Ordinance Amendments

From the facts above, the Court could construe that Respondents did not violate the Code when enacting the Ordinance amendments if it finds that Respondents followed the spirit of the law if not the letter of the law. Therefore, the issue before the Court is whether

a county commission must precisely follow the letter of the law in order for its legislation to be deemed valid. If so, the Court must determine whether Respondents did so.

a. **Local Government Power**

In the United States, local governments receive their power from state legislatures. These legislatures use enabling statutes to transfer power to local governments. 101A C.J.S. Zoning & Land Planning § 11 (2007). Almost always, the enabling statutes strictly limit the local governments' power. "Action taken beyond the authority conferred (by the legislature) or failing to comply with the terms and conditions governing its exercise will be invalid." E.C. Yokley, Zoning Law and Practice § 9.4 (4th ed. 2001). This is especially true for land use and zoning.

That zoning authority must be exercised in compliance with the enabling act is a well-established and well-recognized principle of law, and the local government deviating or departing from it is headed for the same trouble the master of a ship invites were he or she to deliberately run the vessel aground on a rocky reef.

Id.

The consequences are serious when a local government acts outside its zoning authority. "The procedure provided by statute for the exercise of zoning powers must be followed . . . and failure to comply with a mandatory procedural requirement of the enabling statute renders a zoning ordinance invalid." 101A C.J.S. Zoning & Land Planning § 11 (2007).

This limitation applies no less in situations where a local government amends a zoning ordinance. "As in the case of the original comprehensive enactment, the zoning statute must be followed, and any amendment must . . . meet all requirements of the enacting process or it will not become legally effective." E.C. Yokley, Zoning Law and Practice § 11.3 (4th ed. 2001); *see also* Edward H. Siegler, Jr., et al., Rathkopf's The Law

of Zoning and Planning § 39:5 (4th ed. 2007) (stating that a failure to follow those procedures may render the attempted amendment void upon challenge). Moreover, when a local government has created a planning commission, it may not augment its statutorily established duties by a local ordinance. E.C. Yokley, *Zoning Law and Practice* § 11.5 (4th ed. 2001).

b. Local Governmental Power in West Virginia

In West Virginia, local governments are creatures of the state; therefore, they may only perform functions that the Constitution conferred upon them or the Legislature delegated to them. Syl. Pt. 1, *Brackman's, Inc. v. City of Huntington*, 126 W.Va. 21, 27 S.E.2d 71 (1943). "It has no inherent powers, and only such implied powers as are necessary to carry into effect those expressly granted." *Id.*; see also Syl. Pt. 1, *State ex. rel Plymale v. City of Huntington*, 147 W.Va. 728, 131 S.E.2d 160 (1963) (holding that their power depends solely upon the acts of the Legislature). At any time, the Legislature may modify or withdraw the power that it granted to a local government. *Brackman's* 27 S.E.2d at 73. Local government includes county commissions.

The county [commission] is a corporation created by statute, and possessed only of such powers as are expressly conferred by the Constitution and legislature, together with such as are reasonably and necessarily implied in the full and proper exercise of the powers so expressly given. It can do only such things as are authorized by law, and *in the mode prescribed*.

Syl. Pt. 3, *Weston, Inc v. Mineral County*, 219 W.Va. 564, 638 S.E.2d 167 (2006) (emphasis added).

When a local government amends a zoning ordinance it must be done within the limits of the zoning power delegated by the Enabling Act. Syl., *State ex. rel MacQueen v City of Dunbar*, 167 W.Va. 91, 278 S.E.2d 636 (1981). The Legislature has provided a

detailed procedure under the Enabling Act for adopting amendments. *State ex. rel Foster v. City of Morgantown*, 189 W.Va. 433, 435-37, 432 S.E.2d 195, 197-99 (1993).

First, prior to the adoption of an amendment to the zoning ordinance, the planning commission is required to issue notice and conduct a public hearing on the proposed amendment. *W.Va. Code*, 8-14-18 [1969]. Next, after the public hearing has been held, the planning commission may, by resolution, adopt the amendment to the zoning ordinance. *W.Va. Code*, 8-24-19 [1969]. Upon certifying and presenting the proposed zoning ordinance amendment to the municipal governing body, *W.Va. Code*, 8-24-2 [1969] [sic], the governing body must consider the ordinance and either adopt, reject or amend it. *W.Va. Code*, 8-24-21 [1969].²

Id.

The Legislature has charged the Planning Commission with the duty to make “careful and comprehensive surveys and studies of the existing conditions and probable future changes of such conditions with the territory under its jurisdiction.” *Id.* at n.6 (citing *W.Va. Code* § 8-24-16 [1969] but still intact). That duty gives sense to the detailed procedure to be followed in amending a zoning ordinance. *Foster*, 189 W.Va. at n.6. That Court held that West Virginia Code Sections 8-24-18 through 8-24-23 control the method by which a local government may amend a zoning ordinance. *Id.* Because those sections do not authorize a referendum, none is required or authorized. *Id.* at Syl. Pt. 1. Thus, the Court **FINDS** that local governments only have the specific powers that the Legislature delegates to them and may only exercise those powers according to the letter of the statute for their actions to have effect.

c. **The Applicable Statutes**

² The Court notes that the Court's February 21, 2007 Order Denying Respondents' Motion for Summary Judgment and Interpreting the Ordinance held that the procedure in West Virginia Code, Sections 8-24-18 through 8-24-23 applied rather than the procedure in 8A-7-1 et seq. Respondents continue to present arguments under 8A-7-1 et seq. However, the Court does not consider those arguments in light of its order.

The following sections provide the power and duties of the Planning Commission as well as the procedure by which a zoning ordinance may be amended. A "Commission" or "Planning Commission" shall mean "a municipal planning commission or a county planning commission, as the case may be." W.Va. Code § 8-24-3 (2003). The Legislature's statement of objective of a planning commission is:

the planning commission shall serve in an advisory capacity to the governing body of a municipality or a county court [county commission], that certain regulatory powers be created over developments affecting the public welfare and not now otherwise controlled, and that additional powers and authority be granted to the governing bodies of municipalities and to counties to carry out the objective and overall purposes of this article.

W.Va. Code § 8-24-1.

"Where power and authority are conferred herein, singly or disjunctively, on a county court [county commission], that power may be exercised *only in relation to a county planning commission.*" W.Va. Code § 8-24-4 (emphasis added). The Legislature delegated a variety of powers and duties including the power and duty to "[p]repare, publish and distribute reports, ordinances, and other material relating to the activities authorized under this article" W.Va. Code § 8-24-14(8). These powers belong exclusively to the Planning Commission. 50 Op. Att'y Gen. 285 (1963) (noting that a planning commission's powers may not be transferred to another agency).

The code clearly distinguishes between a planning commission and a county commission. "A planning commission shall make and recommend for adoption to the governing body of the municipality or to the county court [county commission], as the case may be, a comprehensive plan for the physical development of the territory within its jurisdiction." W.Va. Code § 8-24-16. Furthermore, it is a planning commission that "may

prepare, and the county court [that] is empowered and authorized to adopt, a comprehensive plan and zoning ordinance . . .” *Id.*

Ordinance Section 12.2 provides that “[a]fter the adoption of this ordinance, all amendments to it shall be adopted according to the procedures set forth in sections eighteen through twenty-three of Chapter 8.” West Virginia Code, Section 8-24-23 states that “[a]fter the adoption of a comprehensive plan and ordinance, all amendments to it shall be adopted according to the procedures set forth in sections eighteen [§ 8-24-18] through twenty-two [§ 8-24-22] of this article.” W.Va. Code § 8-24-23. A county commission may also, if it desires an amendment, “direct the planning commission to prepare an amendment and submit it to public hearing within sixty days after formal written request by the governing body of the municipality or by the county court.” *Id.* A planning commission or the owners of fifty percent or more of real property may petition for an amendment. W.Va. Code § 8-24-46. If neither a planning commission nor property owners submit a petition a county commission must refer any proposed amendments “to the planning commission for consideration and report before any final action is taken by the governing body of the municipality or the county court [county commission]. W.Va. Code § 8-24-47.

“Prior to submission . . . to the county court [county commission] of a planning commission petition or report . . . the planning commission shall give notice and hold a public hearing in the manner prescribed for adoption of a comprehensive plan in section eighteen [§ 8-24-18] of this article . . .” *Id.* A planning commission must publish notice of the hearing “[a]t least thirty days prior to the date set for hearing . . .” W.Va. Code § 8-24-18. “After a public hearing has been held, the commission may by resolution adopt the

comprehensive plan and recommend the ordinance to the governing body of the municipality or to the county court [county commission]." W.Va. Code § 8-24-19.

After this, a planning commission secretary "shall certify a copy of the plan to the governing body of the city or to the county court [county commission]. W.Va. Code § 8-24-20. At the first meeting of the governing body of the municipality or of the county court after adoption of the plan, the secretary or a member of the commission shall present the plan and ordinance to the governing body or to the county court." *Id.* Then "the governing body of the municipality or the county court shall proceed to a consideration of the plan and ordinance and shall either adopt, reject or amend the same." W.Va. Code § 8-24-21. "If the governing body of the municipality or the county court [county commission] rejects the plan and ordinance or amends it, then it shall be returned to the commission for its consideration, with a written statement of the reasons for its rejection or amendment." W.Va. Code § 8-24-22.

d. Application of the Enabling Act

Respondents argue that they followed the spirit of the law during the amendment process. They assert that Section 8-24-18 was followed because the Commission jointly with the Planning Commission held two public hearings after notice. Five of the nine Planning Commissioners were present at one hearing; eight of them at the other. All the County Commissioners were present at both. Therefore, a quorum of the Planning Commission was present at each hearing.

They assert that Sections 8-24-19 and -20 were followed because on March 22, 2005, the Planning Commission considered the proposed amendments, voted that they were consistent with the Jefferson County Comprehensive Plan (Plan), and recommended them for adoption. They contend that because Article 24 does not define "certify" the Planning Commission did "certify it" when it officially forwarded to the County Commission the vote, recommendation, and amendments. Because, in Respondents' view, the entire County Commission was involved from the beginning, there was no need for the Planning Commission to provide the amendments on paper to the County Commission. The Planning Commission's actions thus complied with 8-24-19 and -20, in substance if not in form. Finally, Respondents argue that adoption procedure in Section 8-24-21 was followed because the County Commission, at its March 23, 2005 meeting, considered the proposed amendments and voted to adopt them.

Even though all reasonable presumptions should favor the validity of an enacted ordinance, such ordinance may not be modified, revised, amended, or rewritten under the guise of interpretation. Syl. Pt. 3, *G-M Realty, Inc. v. City of Wheeling*, 146 W.Va. 360, 120 S.E.2d 249 (1961); Syl. Pt. 1, *Consumer Advocate Div. of the Public Service Com'n of West Virginia, on Behalf of Residential and Small Commercial Customers of Hope Gas, Inc. v. Public Service Com'n of West Virginia*, 182 W.Va. 152, 386 S.E.2d 650 (1989). In fact, when an ordinance "is clear and unambiguous and the legislative intent is plain, the statute should not be interpreted by the courts, and in case it is the duty of the courts not to construe but to apply the statute." Syl. Pt. 5, *State v. General Daniel Morgan Post No. 548, V.F.W.*, 144 W.Va. 137, 107 S.E.2d 353 (1959). "Courts should favor the plain and obvious meaning of a statute as opposed to a narrow or strained construction." Thompson

v. Chesapeake & O. Ry. Co., 76 F.Supp. 304, 307-308 (S.D.W.Va. 1948). “And the fact that parties disagree about the meaning of a statute does not itself create ambiguity or obscure meaning.” Deller v. Naymick, 176 W.Va. 108, 112, 342 S.E.2d 73, 77 (1985) (citing Estate of Resseger v. Battle, 152 W.Va. 216, 220, 161 S.E.2d 257, 260 (1968).

After review of the relevant ordinance and code sections, the Court does not find any ambiguity and therefore must apply the statutes as written, without adding its own construction. In Section 8-24-1, the Legislature clearly mandates that the Planning Commission shall serve in an advisory capacity to the County Commission, even going so far as to mandate that the County Commission can only exercise its power in relation to the Planning Commission. In this capacity, the code delegates the power to prepare ordinances to the Planning Commission. Section 8-24-18 clearly states that the *Planning Commission* is to hold and set a date for the hearing regarding ordinances. However, the County Commission set and held the hearing as evidenced by the published notice. The notice advised interested persons and governmental units to contact the County Commission for information or copies of the proposed ordinances.³ The notice ended with the words, “[b]y Order of the County Commission of Jefferson County.”

The Code does not state that the County Commission may hold the hearing, and the code and case law is clear: local governments do not have powers that the Legislature does not delegate to them. It is irrelevant that a “quorum” of Planning Commissioners attended both hearings. They were invited in the same capacity as the general public, not as the advisors the code requires them to be. The Legislature’s intent was to designate specific powers and duties to planning commissions separate from county commissions. To allow

³ “Governmental Units” must have included the Planning Commission because the County Commission rescinded its official invitation to the Planning Commission at its January 27, 2005 meeting.

county commissions to usurp those powers in this instance would be tantamount to the Court amending the code, which it simply cannot do. Because this section does not authorize the County Commission (rather than the Planning Commission) to have the hearing, the Court **FINDS** that Respondents did not follow Section 8-24-18.

Section 8-24-19 requires the Planning Commission to recommend the ordinance to the County Commission as the next step after it holds the Section 8-42-18 hearing. This step is as crucial as the first in amending an ordinance as envisioned by the Enabling Act. Petitioners convincingly point out that the Planning Commission could not perform this step when it had not performed the prerequisite step – holding the hearing. In any event, the March 22, 2005 Planning Commission minutes only reflect that the Planning Commission agreed that the proposed amendments were consistent with the Comprehensive Plan, not that they recommended them to the County Commission. In order to strictly follow the Enabling Act, the Planning Commission must have actually voted to recommend the proposed amendments to the County Commission. This step manifests the advisory role that the Legislature delegated to the Planning Commission. Therefore, the Court, strictly applying this section, cannot find that the Planning Commission recommended the proposed ordinances to the County Commission. Thus, the Court **FINDS** that Respondents did not follow Section 8-24-19.

The same issue arises with regard to Section 8-24-20's requirement to certify the amendment. First, as above the prerequisite hearing and recommendation did not occur. Secondly, Court finds it hard to see how the Planning Commission actually certified a copy of the proposed amendment to the County Commission. The Respondents' arguments are without merit. "Certify" has a very specific meaning and that meaning does not

contemplate an oral method. Black's defines it as, "[t]o authenticate or verify in writing." *Black's Law Dictionary* 220 (7th ed. 1999). Here, there is no evidence that the Planning Commission sent an authenticated copy of the proposed amendments to the County Commission. Therefore, the Court **FINDS** that Respondents did not follow Section 8-24-20.

Although the County Commission did adopt the proposed amendments according to Section 8-24-21 when it approved them at its March 23, 2005, the Planning Commission did not hold the hearing, provide a recommendation, or certify. As a result, the Court cannot see how the County Commission was capable of adopting the proposed amendments when the Planning Commission did not follow the previous mandated steps. Regardless, it is clear to the Court that the Respondents did not follow most if not all of the Legislative requirements in the Enabling Act for the amendment of zoning ordinances.

Conclusion

Zoning enabling acts must be followed strictly, if not, the consequence is that the enactments are invalid. West Virginia's Supreme Court of Appeals and Legislature have confirmed that local governments only have the powers and duties that the Legislature delegates to them. In this case, the Legislature delegated certain powers to the County Commission and different ones to the Planning Commission. It is not the Court's role to alter a clear mandate from the Legislature. The statute outlining the amendment process is clear and Respondents clearly did not follow it. It is not enough that they followed it in spirit. Even so there is still economic value in Petitioner's members' land so no taking occurred. Therefore, the Court **FINDS** that Respondents did not take Petitioner's land, but

that Respondents violated the Enabling Act when it enacted the April 8, 2005 Ordinance amendments.

ACCORDINGLY, the Court **ORDERS** Petitioner's Partial Summary Judgment Motion **GRANTED**, and Respondents' Motion for Summary Judgment **PARTIALLY GRANTED**, with regards to the takings issue. It is further **ADJUDICATED** and **ORDERED** that the April 8, 2005 Amendments to the Jefferson County Zoning and Land Development Ordinance are invalid

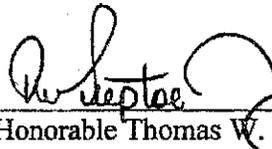
The Clerk shall **ENTER** this **ORDER**, and shall forward an attested copy to counsel and pro se parties of record.

As there are no additional issues to be resolved, the Clerk shall retire this case from the docket.

ENTERED this 26th day of February, 2008.

The Clerk is directed to retire this action from the active docket and place it among causes ended.

3cc
R. Bay
P. Chakmakian
C. Casimiro II, Asst P/A
2/27/2008



Honorable Thomas W. Steptoe, Jr.
Judge, 23rd Circuit

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

RECEIVED
FEB 26 2008

JEFFERSON COUNTY
CIRCUIT COURT

**JEFFERSON COUNTY CITIZENS
FOR ECONOMIC PRESERVATION,
A NON-PROFIT CORPORATION,**

Petitioner,

v.

CIVIL ACTION NO.: 05-C-143

**JEFFERSON COUNTY
COMMISSION, a public body,
ARCHIBALD M. S. MORGAN, President and Member,
DALE MANUEL, Member,
JAMES SURKAMP, Member,
GREGORY CORLISS, Member, and
JANE TABB, Member,**

Respondents.

ORDER FROM HEARING OF JANUARY 23, 2008

On the 23rd of January, 2008, came the parties, Petitioner, Jefferson County Citizens for Economic Preservation, by counsel Nathan P. Cochran, Esquire, and Respondents, Jefferson County Commission, by counsel, James Casimiro, Esquire, pursuant to this Court's Rule 22 Scheduling Order, for oral argument regarding the issue of standing, pursuant to this Court's Order dated December 10, 2007.

WHEREUPON, the Court requested that Mr. Casimiro open the oral argument regarding the issue of standing and further, the Court addressed the issue of whether additional parties should be allowed to join the case, pursuant to Plaintiff's Motion of January 17, 2008.

WHEREUPON, Mr. Casimiro objected to the introduction of additional parties to the case based on the lack of sufficient time between the filing of the Motion to Join Additional Parties and today's hearing.

WHEREUPON, the Court proceeded to hear argument regarding the issue of standing that was raised by Mr. Casimiro. Mr. Casimiro opened the oral argument. After Mr. Casimiro concluded his argument, counsel for JCCEP made argument regarding the same issues, and produced a witness, Fred Blackmer, who was identified as the Executive Director for JCCEP. Mr. Blackmer testified that various JCCEP members are landowners in Jefferson County, and are affected by Jefferson County land use regulations, including the Zoning Ordinance. Further, Mr. Blackmer testified that JCCEP is a corporation.

WHEREUPON, Mr. Casimiro closed the argument.

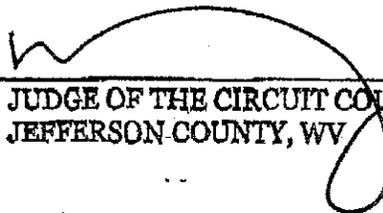
WHEREUPON, the Court, after having considered the arguments that the parties made in their respective briefs regarding standing, the argument of counsel, the testimony of Fred Blackmer, and case law, the Court ORDERED that JCCEP has standing to proceed in the case. Further, in view of the Court's ruling regarding the standing issue, Mr. Casimiro withdrew his objection regarding the timing of Plaintiff's motion regarding adding additional parties. The Court thereupon ORDERED that the two additional parties Plaintiff named in their motion could be joined as additional parties and authorized the Plaintiff to file an amended complaint containing those additional parties. Plaintiff's counsel informed the Court that the additional parties would not seek to file additional causes of action or briefs in this matter and requested that the Court proceed to decide the Summary Judgment Motion.

The Court now concludes that the Motion for Summary Judgment is ripe for consideration.

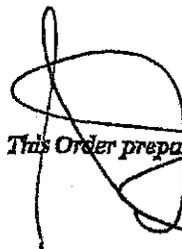
WHEREUPON, the hearing was concluded. The Court notes the objection of all counsel regarding any adverse ruling and ORDERS the Clerk to send copies to all counsel of record.

ENTERED this 25th day of February, 2008.

3cc
R. Gay/M. Cochran
P. Chakemakian
J. Casimiro II,
Asst. P/A
2/27/08
AP

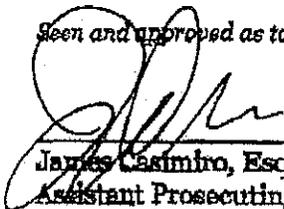


JUDGE OF THE CIRCUIT COURT OF
JEFFERSON COUNTY, WV


This Order prepared by:

Richard G. Gay, Esquire
WV State Bar No. 1358
Nathan P. Cochran, Esquire
WV State Bar No. 6142
Law Office of Richard G. Gay, L.C.
31 Congress Street
Berkeley Springs, WV 25411
(304) 258-1966

Seen and approved as to form:



James Casimiro, Esquire
Assistant Prosecuting Attorney
P.O. Box 729
Charles Town, WV 25414
(304) 728-3243