

Morgan County Planning Commission
Meeting Minutes
February 17, 2015

I. CALL TO ORDER

Meeting was opened at 7:07 p.m.

Members present: Carl Cowgill, Eric LaRue, Jack Soronen, Susan Parker, George Didawick, Jim Hoyt, Robert White, Wayne Omps, Brad Close, Scott Swaim.

Others present: Alma Gorse, Richard Parks, P.E.

II. MEETING MINUTES

On a Scott Swaim/Jim Hoyt motion, the Planning Commission unanimously approved the minutes from the January 27, 2015 meeting.

III. PRELIMINARY PLAT PUBLIC HEARING – PLANNED UNIT DEVELOPMENT

Oakland Overlook Subdivision

Owned and Developed by: Cacapon Associates & Cross Development LLC

Located: Intersection of Rt. 522 & Oakland Road

Project Description: A re-platting of an existing single-family subdivision, Oakland Overlook (approved in 2007), as a Planned Unit Development to allow for commercial development. The re-plat proposal consists of 9 lots totaling 8.07 acres. The commercial development lot size is 2.50 acres. The 8 remaining single family subdivision lots total 5.56 acres.

Waiver Requests:

1. Requesting approval of the PUD without final State and County permits.

- Morgan County Health Department Well Permit
- WVDEP/WV Dept. Of Health Revised Sewage Permit
- WVDOH Entrance Permit
- WVDEP NPDES Permit
- EPCD Sediment & Erosion Control Review

These permits will be required with the Final Plat submittal.

(Morgan County Subdivision Regulations Article 4 Section 4.4)

2. Waiver of current subdivision minimum lot size. Requesting that the remaining 8 residential lots be approved as originally platted and approved.

(Morgan County Subdivision Regulations Article 11 Section 11.2)

Planning Commission President Jack Soronen opened the hearing by stating that this application before the Planning Commission is for the re-platting of Oakland Overlook to change this approved residential subdivision to a Planned Unit Development (PUD). A PUD is a subdivision that incorporates both residential and commercial lots. Associated with this are some requests to adjust the time period for supporting documents and also a request to permit keeping the residential lots the same size as originally approved in 2007. After that subdivision was originally approved in 2007, the Planning Commission changed the subdivision ordinance so now those lots originally approved for a half acre are called for being one acre. Mr. Soronen also stated that the comments from the January 27, 2015 meeting will be a part of these meeting minutes.

Public Comments:

Jennifer Carpenter-Peak: Comments on record; Against project; Inappropriate location; Several Dollar Stores within the county already; Impact on local stores in area.

Rick Watson: Detracts from image of area; Interested in economic development for county but this project is not an economic development goal.

Ellen Lachewitz: Did receive a response from Cross Development (J. Allen) and Dollar General is not willing to share marketing research due to proprietary; Does not want to meet with the group; Received response from Customer Service Manager and not top executives; Lost a customer due to lack of response.

Ed Fisher: If re-platting approved and Dollar General comes in and fails, what comes in its place; Concerned about local property values.

Paul Stern: Thanked Commission; He sent letter to members listing reasons why this application should not be approved; Constitutes sprawl; Waivers in subdivision ordinance, standards are extreme hardship, application does not mention hardship; No basis for Commission to grant; Must be a showing of no damage to property area; Covenants for Oakland Overlook forbid commercial development and covenants have not been changed; Need to protect property values of other lots in subdivision; Know they would affect property values; Entrance permit requirements and turning lane; Minimum lot size requirements currently are one acre and these lots were approved prior to this, no grandfathering and must follow current rule; Waiver must meet extraordinary hardship as mentioned in Article 6; Does not meet ordinance and not in compliance with ordinance, cannot approve application.

Mike Donadieu: Stands by previous comments in last meeting (1.27.15).

Scott DuBoff: Supports Paul's letter about waivers; Take application for their word and have not alleged hardship requirement; Should deny application.

Jack Soronen: There are required documents for applications such as entrance permits from the WVDOH and the Planning Commission accepts what they propose, any design generated we accept it; Same with well & septic permits, we can't create a lot without access or approval of septic and well; NPDES and EPCD permits, these are sediment & erosion control approvals and it could be that there is no permit needed at this time. We have an arrangement with the EPCD where they are made aware of proposals. None of these we can pass judgment on; they are administrative permits in nature; Things we do have a say in are the things we deal with such as road designs, sediment & erosion control, there is a distinction between both.

Jerry Berman: The main question is PUD application and its relation to extraordinary hardship.

Jack Soronen: We will get to this later; extraordinary hardship would apply to the lot size question.

Jerry Berman: This location has an ambiance of a rural community; Significant change to the community; Applicant should go back to the beginning (with selection of location).

Bob Donadieu: Spoke at last meeting; opposed to project; moved here to get away from sprawl; It's not appropriate for rural area; Truck turning models to guarantee trucks can make turn into store (mentioned at last meeting) did not work well at existing store.

Roger Salen: Lives in Cacapon South; Assisted with development of Cacapon South and it's a lovely neighborhood; Oakland Overlook is for moderate income housing; Opposed to Dollar General; Totally objectionable and disgusting to look at.

Rita Donadieu: Checked with a realtor and confirmed that property values would go down; Waiting for similar research from the Assessor's Office; She is 800 feet from the site and her property values will go down.

Debra Letz: Opposed to project; Written to WVDOH regarding access; Turned into Oakland Road and ran into ditch during recent snow; Semi would have blocked Oakland Road; Has stormwater runoff concerns; Project will affect her water.

Barry Wiess: Opposed to this; Need some avenue to respond to the developer; Moved here due to lack of urban sprawl; Entrance is part of it; Stores already there.

Sandy Gamble: Comments on record.

Mary Dorrer: Former school teacher; Moved from Maryland; Beautiful, quiet neighborhood; Neighborhood will be disrupted; There are two other stores.

James Bruning: Lives in Cacapon South; Opposed to project.

Gil Doward: Can't think of anything dumber.

Jane McCloud: Opposed; All people opposed are not going to shop there.

Beth DuBoff: Placing store in 55 mph zone is treacherous; Creating a slippery slope for remaining properties in development; Can't imagine someone would want to buy residential lot next to store.

Terry Cane: Lives in Cacapon South and is opposed to project.

Paul Stern: Agrees with all the comments being made; If the Planning Commission would only check off the boxes; Wasting our time; No compliance; No reason to change long standing residential property to commercial; Citizens purchase property and built homes in area with expectations that Oakland Overlook would be residential subdivision.

Genesse Bonderant: Opposed to project.

Carl Hakes: Lives in Cacapon South and is opposed to project.

Dave Ellen: Another store does not make sense; How are they going to survive; Traffic will be difficult; Why change residential Subdivision to PUD, just so person can do something with it; opposed.

Frank Rodgers: Proposed entrance on Oakland Road and they will not be responsible for Rt. 522 changes; Extreme hardship sections A & B of Waivers, developer must prove project is not detrimental to neighboring properties.

Helene Petrushun: Lives in Cacapon South and is opposed; Where's market research.

Rick Petrushin: No reason for placement there and is opposed.

Peggy Oakes: Is in support of Dollar General Store; Tends to elderly people and location will cut down on travel time spent going to town.

Kimberly Johnson: Concerns expressed about pulling out onto Rt. 522; Lots of people pull in and out onto Rt. 522.

Ginger Johnson: Thank the Planning Commission; There are people who do support the PUD; there are benefits; Would like to present petition with 127 signatures in support of the PUD application.

Jennifer Letz: Most of Dollar General Stores have been robbed.

Planning Commission Review:

Staff did an overview of the Planned Unit Development plat with the Planning Commission members.

*Engineer Report – January 23, 2015
Arro Consulting – Richard Parks, P.E.*

We have reviewed the resubmitted PUD plan for Oakland Overlook and find that it meets the minimum technical requirements of the County Subdivision ordinance with the following conditions.

- 1. The owner needs to sign and date.*
- 2. The original recorded date for the subdivision should be 7-5-07 not 1-16-15 as shown.*
- 3. The waivers must be approved by the Planning Commission.*

Planning Commission member Jim Hoyt stated that it is a nicely laid out residential subdivision with a loop road (current layout); Fire trucks can pull in with no problem; Place a store there, who will buy remaining lots; Does not make sense.

Planning member Susan Parker stated that screening/buffering is required and the ordinance does speak to lighting.

J. Hoyt: The Industrial Park is a beautiful location, there are a few lots under \$100,000.00 with commercial entrance off of Rt. 522 and has water and sewer; Applicant could work with MC EDA and wouldn't need all the waivers.

Planning Commission member Eric LaRue stated that the applicant is not asking to not do something, they are requesting an extension of time to get all the permits in place.

Planning Member Wayne Omps rescued himself from further discussion and vote on this application.

E. LaRue: Our decision needs to be based on whether it meets the requirements, not wanting something or not; Need to do what's fair and go by what's in front of us; Infrastructure is in place and that is an expense; To me it meets hardship.

S. Parker: There are significant changes to the property and it is not coming to us fresh (unaltered land).

On a Susan Parker/Eric LaRue motion, the Planning Commission granted approval of the waiver request for a time extension in submitting the Morgan County Health Department

permit and that approval of the Final Plat is contingent upon approval of this permit. Vote: 7-approved, 1-opposed (J. Hoyt), 1-abstention (W. Omps). Motion carried.

President Jack Soronen stated that the Planning Commission was acting under Article 7, Time Extensions.

Justin Cowles, representing the property owner, commented that the WVDEP Sewage permit will need to be modified by reducing the permit allocation by 4 households then adding one retail commercial user. The Utility does not want to modify the existing permit allocation without first receiving preliminary approval from the Planning Commission.

On an Eric LaRue/George Didawick motion, the Planning Commission granted approval of the waiver request in submitting the revised WVDEP Sewage Permit at this time. Vote: 7-approve, 1-opposed (J. Hoyt), 1-abstention (W. Omps). Motion carried.

On a Scott Swaim/Carl Cowgill motion, the Planning Commission granted approval of the waiver request for a time extension in submitting the WC DOH access permit. Vote: 7-approve, 1-opposed (J. Hoyt), 1-abstention (W. Omps). Motion carried.

On a Susan Parker/Scott Swaim motion, the Planning Commission granted approval of the waiver requesting to defer receipt of the WVDEP NPDES Permit until Final Plat stage and Final Plat approval is contingent upon receipt of this review, if applicable. Vote: 7-approved, 1-opposed (J.Hoyt), 1-abstention (W. Omps). Motion carried.

On a Susan Parker/Eric LaRue motion, the Planning Commission granted approval of the waiver requesting to defer receipt of the EPCD review until Final Plat stage and Final Plat approval is contingent upon receipt of review, if applicable. Vote: 7-approved, 1-opposed (J.Hoyt), 1-abstention (W. Omps). Motion carried.

J. Soronen stated that administrative requests are now complete and the group will now consider the waiver requesting to keep the lot sizes the same as when they were originally approved (in 2007).

Under Article 6 of Subdivision Regulations, discussion began as to whether the request meets our requirements of this section.

E. LaRue: Requested to hear some reasoning to justify keeping the lot sizes the same.

Justin Cowles stated that complying with the one acre lot size; it would remove 4 residential lots and would not be easily resolved by merging existing lots due to infrastructure that is already in place. The existing roadway would need to be reconfigured, shifting property lines; dig up sewer lines, electric conduit, phone lines and stormwater management improvements.

This would be a costly project that would double the cost of the lots. The increase would then make these lots unaffordable. The demand for vacant lots is low right now.

J. Hoyt: Easy to make 3 lots over one acre then two left over; lots of subdivisions around the county sitting vacant making it totally unattractive.

Justin Cowles stated that a portion of Cacapon South that fronts Rt. 522 is currently platted as commercial. The concept of mixing commercial with residential is not a unique concept.

G. Didawick: West Virginia Code 8A-1-2 definition of "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. 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.

S. Swaim: Not opposed to the concept and not opposed to the commercial lot; Is not in favor to keep the number of lots the same; They have 12 lots, we changed the lot size minimum to one acre, this is a self-imposed hardship. He hears the concerns but cannot vote in favor of the waiver request.

J. Hoyt: A lot smaller than one acre requires central water and sewer; Can Planning Commission issue a waiver; Stands in agreement with S. Swaim.

Richard Parks, Planning Commission engineer, stated that one of the reasons for the one acre lot size was to allow for a 10,000 square foot reserve area. The developer does not need that for they have public sewer available and certainly thinks they are developable as half acre lots.

E. LaRue: As far as the commercial lot, a zoning ordinance was defeated in 2010 so there is no zoning; Does it meet the requirements of our Ordinance; Is it really a hardship and is asking not to change what already exists.

J. Hoyt: Re-platting of the subdivision needs to come up to the current standards.

Justin Cowles: Property owner is requesting to leave the subdivision lots in its current existing form.

S. Parker: The ordinance prevents us from separating out and requires us to look at the totality of the subdivision thus had to look at full scope of subdivision.

J. Hoyt: Covenants – owners retain full rights to covenants.

W. Omps: Requested that when revision to WVDEP Sewage permit is being done, that the Utility consider availability of public restrooms for commercial building.

Justin Cowles: Permitting for a building is not the issue (being discussed).

J. Hoyt: Keep existing covenants; Supplement is to modify covenants.

G. Didiwick: Thinks that applicant does have a hardship, there has been a change to topographical features of subdivision.

S. Parker: Our engineer outlined the fact the reason why we went to one acre lots and that really does not apply here.

J. Soronen: Reserve areas and necessary setbacks for well and septic locations are needed for blank sheet (unimproved land), not a situation like this.

S. Parker: The land has changed significantly.

B. Close: Where are wells and septic located on surrounding properties?

Justin Cowles pointed out single family homes with well and septic systems already installed along Oakland Road and Route 522. There are also two flag lots that have residences with wells and septic already installed. To his knowledge there would not be an impact to any of the neighboring properties.

On a George Didawick/Susan Parker motion, the Planning Commission approved to accept the waiver of the minimum lot size for the remaining residential lots. Vote: 6-approve, 2-opposed (J. Hoyt, S. Swaim), 1-abstention (W. Omms). Motion carried.

Planning Commission will now consider approval of the Preliminary Plat for the Planned Unit Development.

Richard Parks stated that with the approval of the waivers, the project meets the minimum requirements of the ordinance.

On a Susan Parker/Eric LaRue motion, the Planning Commission granted approval of the Preliminary Plat for Oakland Overlook Planned Unit Development. Vote: 6-approve, 2-opposed (J. Hoyt, S. Swaim), 1-abstention (W. Omms). Motion carried.

Floor opened for public comments.

Ellen Lachewitz: Re-Platting of subdivision and that there is a hardship doing the re-platting; No numbers were discussed; why no cost mentioned.

J. Soronen: It's an associated concept; Ordinance speaks about topographical changes for hardship.

Jennifer Carpenter –Peak: Paul Stern researched Waivers and Planning Commission did not take this into account; Hardship is not just a hardship, it's also on the community and businesses; I would put forth the hardship to the developer for it's much larger to businesses.

J. Soronen: The administrative waivers were considered under Article 7.0 which does not require hardship explanation; it's an administrative adjustment of time. All these come up at Final Plat as a final requirement. One waiver request was considered under Article 6.0, under hardship.

Scott DuBoff: The reasons for justification have been submitted orally tonight?

Jack Soronen: Mr. Cowles submitted a memorandum and the issues were previously stated orally and in written form.

Jerry Berman: Not a transparent process; Extraordinary hardship-plat design, no way to market economics of why to zone commercial; Not a workable design.

Jack Soronen: The condition of the land and what it would take to meet the requirements; Conditions of the land is what the Planning Commission took into account.

Bob Donadieu: Legal responsibility to the community; Hardship to the developer.

Angela Petry: Ordinance specifies limits as to what you can do.

Jack Soronen: What our role is; Ordinance specifies application follows rules.

Angela Petry: Final waiver of lot size; Why not look at whole plat and apply this to current rules; Didn't follow own rules.

Jack Soronen: We did follow the rules as far as the waiver review.

Paul Stern: Thank Commission for allowing us to speak; Jack, you stated that if application meets the ordinance you have no choice but to approve. Application did not follow ordinance, no covenants provided, commission decided which limits. How is the record being reflected; Will commission state what section and what standard they found hardship: Asked for record, did not receive letter from Mr. Cowles; Will his letter be an official part of the record?

Jack Soronen: Memorandum from Mr. Cowles is a public document and part of the record; Your (P. Stern) letter, once submitted, is part of the record. The letter of agency addresses a question that a developer is acting with the approval of the owner. Both parties signed the application documents therefore this is satisfied by the application. The petition is also a public document.

IV. ADJOURNMENT

Meeting adjourned at 9:30 p.m.

Morgan County Planning Commission

MEETING SIGN-IN SHEET

DATE: FEB 17, 2015		Sheet:	Of:
NO.	NAME	REPRESENTING	PHONE #
1	Sandy Gamble	myself	301 792 4103
2	Jane McCloud	myself	364 258-4689
3	Paula Berta Jones	owner	717 458 2464
4	Debra Weiss	myself	304 255 8531
5	Anne Larsen	myself	304 258 6006
6	Dakota Peak	myself	304 258 7647
7	Rich Petrushun	myself	304-258-0010
8	Ellen Lachewitz	"	304-258-6880
9	RICK WATSON	"	"
10	Gordon Marlow		
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 Harl eb831@aol.com
 Anusefulperson@gmail.com
 ARJAYPT1@CS.COM
 ellenlachewitz@gmail.com
 RICKINWU@GMAIL.COM

Morgan County Planning Commission MEETING SIGN-IN SHEET

DATE: FEB 17 2015				Sheet: _____	Of: _____
NO.	NAME	REPRESENTING	PHONE #	E-MAIL ADDRESS	
1	Jerry Berman	Self	947 7666	jberman@cottong	
2	Kathy Robinson	Self	304-268-8141	SPIRITDESIGNS	
3	Johnny Robinson	Self	304-268-8141	SPIRITDESIGNS	
4	AOL STERN	SELF	304-258-9488	astern@aol.com	
5	Nicholas Makhiber		304-258-4958	nicholasmakhiber@gmail.com	
6	Kimberly Johnson		301-908-4468	kjohnson@ct.com	
7	Dalton Constable		304-888-1228		
8	Genevieve Bondurant	Self	304-255-1643		
9	Michelle Walters	Self	304-258-8760		
10	Kathy Carringer	Self	304-258-5933		
11	Rich Carringer	Self	304-258-5933		
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Morgan County Planning Commission

MEETING SIGN-IN SHEET

DATE: FEB 17 2015				Sheet: _____	Of: _____
NO.	NAME	REPRESENTING	PHONE #	E-MAIL ADDRESS	
1	James Dollarhide	self	304 258 8608	_____	
2	self - " -	"	- " -	_____	
3	Pat + Nelson Sparks	self	304-258-5706		
4	Harry + Debbie Weiss	"	304 258 8831		
5	MIKE DONADIEU	self	304-258-2885		
6	Carol + Tom Daroch	"	304-258-3691	tom-carol35@frontier.com	
7	Pat Kane	"	304.258.6651		
8	TERRY KANE	"	304.995.1274		
9	Justin Cowles	Cabin Assoc	3042586099		
10	John C. Wabstick		304-258-5276		
11	Frank Rodgers	self & wife	x7657	catrodgers@yahoo.com	
12	Pat + Ed Fischer	self & wife	258-5580	PAT_ED_FISCHER@MSN.COM	
13	RUSSELL MOKHTAR	self	2584434	RUSSELL MOKHTAR EMAIL	
14	Jennifer Carpenter-Peak	self	304-258-7647	JENNIFER@ROBERT-PEAK.COM	
15	Art + Mike Gerevski	self	304-258-6098	_____	
16	George Farnham	self	5977		
17	Michael Brooks	"	x7910		
18	Trish Strader	medic			
19	David O'Brien	O'Briens Cabins	304-754-9128	Kobrien@earthlink.net	
20	Michele Smith	Self	304-258-3841		
21	Gerald Smith	SELF	304-258-7281		
22	SCOTT DuBOFF	"	202-945-7381		
23	Beth DuBuff	"	703-307-6616		
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Morgan County Planning Commission
MEETING SIGN-IN SHEET

DATE: FEB 17, 2015				Sheet: Of:
NO.	NAME	REPRESENTING	PHONE #	E-MAIL ADDRESS
1	Ginger Johnson			
2	Charles Johnson			
3	Mary Dorr	self	314-867-20	self marydorr@gmail.com
4	Peggy Oakes	Self		
5	Donna Tallin	Self	304-258-5217	
6	Rita Donadio	Self	258-3778	
7	Bob Dmoshin	self	258-3778	
8	Beverly Letz	Self	258-7105	
9	Debra Letz	Self	258-7105	
10	Lynne Letz	Self	258-7105	
11	Edward Heath	self	241-2491	
12	Karen Ragan	self	5864	
13	Kelly Salen	self	5864	
14	Helen Petrusky	self	0010	
15	Janet DeCuna Dunning	Self	4460	
16	Kate Lehman	self		
17	David Owens	self	304-258-3267	
18	Bob Peak	Self	304-258-7647	BOB@ROBERT-PEAK.COM
19	Kris O'Brien	self	304-754-9128	Kabrian.pearl@blink.net
20	Tiffany Peace White	Self	304-258-8893	peaceblossomwhite@gmail.com
21	Matthew Hahn	self	0168	
22	Wanda Miller		304-671-5130	
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Morgan County Planning Commission
Meeting Minutes
January 27, 2015

I. CALL TO ORDER

Meeting was opened at 7:02 p.m.

Members present: Jack Soronen, George Didawick, Susan Parker, Scott Swaim, Wayne Omps, Robert White, Jim Hoyt, Eric LaRue.

Members absent: Carl Cowgill, Brad Close.

II. ELECTION OF OFFICERS

Floor was opened for nominations for President:

On a Wayne Omps/Susan Parker motion, Jack Soronen was nominated to serve as President of the Morgan County Planning Commission for 2015. Motion carried.

Floor was opened for nominations for Vice-President:

On a Susan Parker/George Didawick motion, Scott Swaim was nominated to serve as Vice-President of the Morgan County Planning Commission for 2015. Motion carried.

III. MEETING MINUTES

On a Susan Parker/Scott Swaim motion, the minutes from the September 23, 2014 Planning Commission meeting were unanimously approved.

IV. PRELIMINARY PLAT PUBLIC HEARING – PLANNED UNIT DEVELOPMENT

A. Oakland Overlook Subdivision

Owned and Developed by: Cacapon Associates & Cross Development LLC

Located: Intersection of Rt. 522 & Oakland Road

Project Description: A re-platting of an existing single-family subdivision, Oakland Overlook (approved in 2007), as a Planned Unit Development to allow for commercial development. The re-plat proposal consists of 9 lots totaling 8.07 acres. The commercial development lot size is 2.50 acres. The 8 remaining single family subdivision lots total 5.56 acres.

Waiver Requests:

1. Requesting approval of the PUD without final State and County permits.

- Morgan County Health Department Well Permit
- WVDEP/WV Dept. Of Health Revised Sewage Permit
- WVDOH Entrance Permit
- WVDEP NPDES Permit
- EPCD Sediment & Erosion Control Review

These permits will be required with the Final Plat submittal.

2. Waiver of current subdivision minimum lot size. Requesting that the remaining 8 residential lots be approved as originally platted and approved.

Jack Soronen opened the discussion by introducing all the Planning Commission members to the audience. He stated that this application and discussion are about permitting the change in the land and not about the type of business to be placed on the land. He then opened the floor for public comments.

Russell Mokiber – Meeting at church expressing opposition to development; Read letter from Scott DeBueff questioning 2 waiver requests vs. extraordinary hardship as stated in regulations; Read letter from Harry Weiss who is opposed to construction, no value to community, traffic issues, why not in Industrial Park. Mr. Mokiber opposed project, traffic issues.

Tom Darroch – Opposed to development, has same issues as just mentioned.

Mike Donadieu - Lives across the road from development and is opposed, the character of the neighborhood adversely affected.

Ed Kushner – Property values will be affected, traffic, sympathetic to property owners who are close by.

Bob Donadieu – Moved here in 1973 and Oakland Road is the same today, traffic increased significantly, safety to community, waivers just to push project through.

Paul Stern – Question regarding who is developer, land owner and developer listed on application, 7 waiver requests does not see claim where there is extraordinary hardship, property values, hurt local businesses, does not meet the minimum requirements of the ordinance and cannot be approved.

Cathleen Rogers – Question for Josh Allen of Cross Development-why not located in Industrial Park. J. Allen-Not a market for that area and don't typically locate within Industrial Parks, convenience style business.

Frank Rogers – Thank community for having discussion, object to public hearing because of improper public notification, public hearing sign at the site illegible and incorrect.

Rita Donadieu – Contacted Beth Peters representing MCEDA and she confirmed that there are lots available at the Industrial Park; Understands that lots in rear of park not feasible but lots fronting Rt. 522 may be available and more accessible than Oakland Road; Food Lion turning lane not sufficiently wide enough for semi's turning into store; supports Frank's comments regarding violation of advertising requirements; would like to request WVDOH require traffic study, deceleration & turning lanes; Lot sizes are under one acre and law says they need to be one acre. J. Soronen responded by saying there are three classes of lot sizes depending upon infrastructure available. Ms. Donadieu questioned the burden of re-platting the subdivision.

Debra Letz – Has pond on her property on Oakland Road; Against commercial property; There will be runoff from commercial site that will drain into the creek; Traffic concerns; Has had several accidents and near misses on Rt. 522; Potential for increase in robberies; Right now crime level is low in this area.

Gareth Foulds – Lives about 2 miles from site and agrees with everyone's comments; Told by Justin Cowles that existing subdivision was set up for small homes for working class; In favor of keeping existing subdivision plat the way it is today.

Sandy Gamble – Just moved here from Frederick to avoid sprawl.

Jennifer Carpenter-Peak – Opposed to project; Waivers are in place for something "outstanding" from development point of view; Oakland Overlook of the mindset of "let's get rid of it" but how can the community get rid of it; Community does not need it; Traffic is huge issue; To grant waivers is not appropriate; Developer (P. McCuan) does not live here; Business models not appropriate; Developer is greedy and only concerned with making money; There is already a store in Berkeley Springs.

Ellen Lachewitz – If Planning Commission approves the change to commercial lot then the rest of the lots should be brought up to subdivision standards (1 acre lots); shopped at Dollar General, there are good buys there; Was market research performed for this site and could that be made available for the public. J. Allen – Dollar General is a client of Cross's but will check with them about the availability of the market research.

Rick Watson – Concerned that home values have already been affected.

Dave Griffiths – Dangerous traffic patterns on Rt. 522; Must use berms as exit ramp.

Barb Wolfe – Is a small business owner; Is this an additional store? J. Allen – Yes, this is an additional store; Intent is to reach a different market than the store located in town (10 mile area), commonplace for this. Ms. Wolfe – This will be the 4th store in a community of 17,000 people, will the community support four stores.

Foster Riggs – Rides his horse along Oakland Road and people jog there also; There is enough traffic along the road now; Picks up trash along the road, will be more trash due to commercial store.

Carol Hsu – Has lived along Rt. 522 for 40 years; Concerned about the additional traffic; Will not support or shop there; Light pollution is an issue that has not been discussed, there needs to be light protection for the observatory; This should not be approved, it is not a commercial setting.

Josh Allen – Thanked everyone for their comments; Appears to be a lot of speculation; Has spoken with the WVDOH regarding entrance and they are recommending turning lane going south and will meet all the permit criteria; Truck maneuvering models going in and out of the site (53' 18 wheeler); They will obtain all the required permits once the PUD application is approved; Stormwater management will be compliant with the County's Ordinance and will follow all the guidelines; He hoped that this helps everyone understand more about the project.

Justin Cowles – They are not looking for waivers of permits, only waivers of time limits; Sewer utility not comfortable modifying permit if project falls through; Waiver concept not always a bad thing when looking at time frame.

Robert Donadieu – Need to follow ordinance, Article 4.2 to post sign; Could not read sign.

Frank Rogers – Object to formal meeting; Going to put in a turn lane but can't put up a sign; Requirements not met.

Jennifer Carpenter-Peak – Traffic is not only concern; Most citizens from southern part of the county do not want to shop there; Put all small business owners out of business; Plaster area with stores.

Karen Ragan – Was it the idea to come in with a small unit and the company will expand later?
J. Allen-There is no small unit; Use a prototype store for all locations.

Rita Donadieu – Will not shop there; Requested to put up a sign; Not community oriented.

Catherine Rogers – Will not shop there; Treat employees horribly.

Barb Wolfe – Is sewer system tied into Cacapon South? J. Cowles – Yes, utility is mandated to serve those requesting hookup; Permit needs to be modified to serve retail business; It is better served to remove 4 residential hookups and add one retail; Serving project is well within the capacity of the public utility.

Frank Rogers – Hearing from the developer how easy it will be to obtain the permits; Why the waiver requests?

V. SCHEDULING OF SPECIAL MEETING – PRELIMINARY PLAT PUBLIC HEARING

Planning Commission President Jack Soronen confirmed with staff that public notification of this evening's hearing was deficient and does not meet the advertising requirements of the Subdivision Ordinance therefore the public hearing was not opened or conducted.

The idea of public notice is very important to the Planning commission. Staff had stated that the next possible date for a public hearing would be February 17, 2015.

On a George Didawick/Susan Parker motion, the Planning Commission agreed to schedule a special meeting for February 17, 2015 at 7:00pm to conduct business and review the Oakland Overlook application. This meeting is in lieu of the regularly scheduled meeting which would have been on February 24th. Motion carried.

Paul Stern – What is the status of this meeting, does it exist and will there be notes; Will you be dealing with the same application.

Mr. Soronen stated that it is an official meeting of the Planning Commission and there will be minutes prepared for the meeting. Staff had stated that it will be the same application being reviewed.

VI. ADJOURNMENT

Meeting adjourned at 8:35 p.m.

Morgan County Planning Commission
MEETING SIGN-IN SHEET

DATE: Jan 27 2015

NO.	NAME	REPRESENTING	PHONE #	E-MAIL ADDRESS
1	Frank Rodgers	Self	7657	catrodgers@yahoo.com
2	Frank Rodgers	NO	7647	Robert Peck
3	RUSSELL MOKIMBA		4434	russell.mokimba@jwcc.com
4	Pat Searles		5076	
5	Charles W. Wash	CAWA	2025	
6	Michelle Walters		8760	
7	Mike Walters		8760	
8	J. Carpenter-Peck	Self	7647	JENNIFER@ROBERT-PECK.COM
9	P. KANE		6659	
10	Terry Kane		6659	
11	BARB WOFFE			
12	RICK WHITSON	SELF	#6880	RICKINWVA@GMAIL
13	ELLEN LECHWITZ	"	"	
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Morgan County Planning Commission
MEETING SIGN-IN SHEET

DATE: <u>Apr 27, 2015</u>		Sheet:	Of:
NO.	NAME	REPRESENTING	PHONE #
1	Ginger Johnson	Self	
2	Charles Johnson	Self	
3	Brittany Johnson	self	
4	Janna Ballin	Self	304-258-5217
5	Rita Donohue	Self	258-3778
6	Catherine Rodgers	self	
7	Patricia KCE Fisher	Self	
8	Debra L. Letz	Self	2587105
9	Louise Letz	Self	2587105
10	Carl & Berta Hakes	self	717 458 2464
11	Wanda Peck		304-258-7447
12	Nicholas Mokhiber		304-658-9448
13	Nelson Sparks	self	304-258-5706
14	Dakota Peck	self	304-258-7697
15	Joyce Riggs	Self	304 258 9743
16	Buzz Clark	MM	
17	Foster Riggs	Self	304-258-9743
18	Carol Sarron	self	304-258-3691
19	Tom Darroch	self	304-258-3691
20	Michael Donohue	self	304 258 2885
21	Angela Peery	self	304 258 9454
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**Morgan County Planning Commission
MEETING SIGN-IN SHEET**

DATE: <u>JAN 27 2015</u>		Sheet: Of:	
NO.	NAME	REPRESENTING	PHONE # E-MAIL ADDRESS
1	PAUL SPERN	SELF	304-258-9486 p.g.fern12@gmail.com
2	Sandy Gamble	self	301-792-4803 Gamblewiset@gmail.com
3	Justin Cowles	Citizen Assoc/MDC	304-258-6099 justincowles@comcast.net
4	CYALE FOULDS	SELF	304-258-6155 cyfoulds@aol.com
5	GARETH FOULDS	SELF	304-258-6155 "
6	Bob Donadieu	SELF	304-258-3178 BOBDONADIEU@FRONTIER.COM
7	MCVEY	TRF JOURNAL	
8	Kathy Carrington	self	304-258-5933
9	Richard Carrington	self	304-258-5933 rjcarington_2001@frontier.com
10	Dave Griffith	self	258-9415
11	Roger Salen	self	258-5864
12	Karen Regan	self	258-5864
13	C Hsu	self	1911
14	JP Hsu	self	1911
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To: Morgan County Planning Commission Members

From: Justin Cowles – representing Owner/Seller: Cacapon Associates, LP
– representing the CSUA public sewer utility

RE: Preliminary proposal: PUD Re-plat to merge 4 small parcels into 1 larger parcel

Date: January 27, 2015 Public Meeting

Revised for: February 17, 2015 Public Meeting (Additions in Courier font)

The subject property is an 8-acre tract located along the US 522 corridor in the unincorporated area of Omps: generally defined as the ½ mile +/- section of US highway between the area of Alemond Road and Oakland Road. Within that ½ mile stretch, there are approximately fifteen (15) current or recent commercial establishments including 3 lodging establishment, 2 convenience stores, 3 restaurants, 2 antique/consignment stores, seasonal flea market, and 2 undeveloped tracts of land platted for future commercial. The subject property itself has a history of commercial use. Moreover, the Morgan County Comprehensive Plans references Omps Unincorporated in the chapter detailing Preferred Development Areas, and recent zoning proposals have mapped the subject property location as suitable for mixed-use commercial development.

When Cacapon Associates, LP first acquired the property at the corner of Oakland Road and US 522, the initial notion was commercial development. However, when Cacapon Associates saw a booming residential market pricing the average working family of Morgan County out of the American Dream of home ownership, they decided to attempt a work-force housing project. With Planning Commission approval (including all well permits, sewer permits, entry permits, WVDEP permits, SWM requirements, etc.), Cacapon Associates, LP divided the land into 12 small parcels for that endeavor. However, no regional builders were interested in constructing entry-level homes for Morgan County's working families when they were profiting greatly by building upscale vacation destinations and luxury retirement homes for transplants. Then the recession hit and the real estate market collapsed. The need for work-force housing is no longer as urgent, but will remain a focus for the subject property. At this time, no portion of the property has been sold, no buildings constructed, and the Owner retains all rights to the entire 8-acre parcel.

The preliminary PUD Re-plat proposal before you is to merge four (4) of the small parcels into one (1) larger parcel for future development as retail. It is NOT a Commercial Improvement Application. The merits and technical specification of any future retail development should be addressed if and when such application is submitted and schedule for public meeting. Whether the future retail development is an upscale boutique retailing arts and crafts to tourist and wealthy transplants or a discount retailer serving the working families of southern Morgan County, the specifics and technical requirements of a retail development are NOT the subject of this PUD Re-plat proposal which merely aims to merge four (4) small parcels into one (1) larger parcel.

Red
2.11.15

The Morgan County Comprehensive Plan envisions commercial development patterns congruent with water and sewer capacity, and encourages the placement of mixed-use and higher density development in areas where public utilities are available. The subject property is in the service territory of the CSUA – a West Virginia Public Service Commission regulated sewer utility. As a publicly-regulated sewer provider, the Utility is under a WVPSC mandate to provide service to any applicant in the service territory so long as capacity exists. In conversation with the WVBuPH and the Utility operators, it is clear that providing sewer service to a single retail establishment will be far *less* demanding on the Utility than serving four (4) single-family homes. The design flow calculations for a single retail establishment are significantly *less* than the volumes from four (4) residential dwellings. A retail establishment does not generate wastewater flow from bathing, laundry, cooking, dish washing, etc. In the event preliminary approval for the PUD Re-plat is granted, the WVBuPH has assured the Utility that modifying the permit will be minor and will not require extensive documentation or public hearing, but rather be handled by staff as the proposal will *reduce* flow and demand on the Utility's treatment facilities.

Several persons have indicated that they are concerned with the number of waivers requested. While a new turn-around is proposed under the PUD re-plat, that earthwork will impact such a small area that it should not require a NPDES Erosion Control permit as the disturbance is far below the minimum. Moreover, please bear in mind that this is a re-development proposal with the *current permits still in effect*. It is NOT in the best interest of the community, the property owner, the public utility, or this Commission to cancel or modify the existing permits previously mandated by this very Commission without, at minimum, preliminary approval for the project to move forward. While the required permits modifications will be minor and technical in nature, and certainly be required prior to any Final Plat approval, they may have a tremendous impact on the existing property if modified in advance and the preliminary proposal is denied. Here are a few examples:

Entry Permit: There is a currently a DOH permitted entrance to serve the 12 small parcels already of record. The entrance already exists. The PUD-Re-plat on the table proposes to *lessen* the amount of traffic at the current entrance by *reducing* the number of parcels served from twelve (12) to eight (8). If the Owner allowed the Developer to *downgrade* this permit prior to preliminary application as stated in the Ordinance, the Planning Commission would be between a rock and hard place: either grant preliminary approval for the project to move forward or there will be four (4) parcels, of record and fully transferrable, that no longer have permitted access to a public roadway. It is far better that any permit modification to the existing entry occur only if the re-plat proposal is preliminarily approved.

Sewer and Well Permit: There is a current WVDEP/WVBuPH sewer permit to serve the twelve (12) small parcels of record. If the CSUA public utility allowed its sewer permit to be modified in advance to remove from the permit the four (4) parcels proposed to be merged, the Planning Commission would again be between a rock and hard place: either approve the preliminary proposal or, by default, there will be four (4) small parcels, of record and fully transferrable, no longer permitted for sewer service

and ineligible for septic. It should be preferred by all that this permit only be modified if the project proposal can move forward. This concept also impacts the issuance of well permits. Well permits were issued for each of the existing 12 parcels after the current sewer permit was finalized. The Morgan County Health Department will not issue a well permit without documentation that the parcel has permitted sewer or septic. At this time, a well permit cannot be issued for the proposed merged lot until the sewer permit is modified to cancel service to the existing lots and transfer service to the proposed merged parcel. Again, the Utility is not comfortable modifying or cancelling service to the existing parcels without at least a preliminary indication from the Planning Commission that the merger may move forward. Therefore, the Applicant simply cannot obtain a new well permit for the proposed merged parcel without the Utility first modifying the sewer permit. A waiver of the timetable for these permits is the best way to protect public health by insuring no existing lot is severed of service prematurely yet requiring all necessary permits prior to final plat or recordation of the PUD.

Parcel Size: There is some resistance in Morgan County to smaller, more affordable parcels. The subject property is already of record as twelve (12) small parcels of approximately ½ -acre each. A waiver requests that the existing parcels not merged be grandfathered to remain as currently of record. The PUD Re-plat on the table intends to *reduce* the number of small parcels. Granting the waiver will not result in more small parcels, but rather result in *fewer* small parcels by merging four (4) into one (1). Denying the waiver and disallowing the re-plat to move forward will, by default, result in twelve (12) small, work-force parcels rather than the proposed eight (8) remaining.

Some have indicated that all the remaining lands should also be reconfigured rather than grandfathered to remain in their current form of record. Changing the remaining lands so that each measures a minimum of one-acre would be a huge hardship. The initial development of the land was extensive and expensive. The conditions for NPDES permit for sediment and erosions control, in conjunction with storm water management requirements, were particularly elaborate. Erosion and runoff control was implemented to accommodate construction of the primary roadway as well as the future residential development of each of the 12 parcels. Calculations for storm water management included the impervious area associated not only with the roadway, but also for twelve (12) single-family homes. As a result, there currently exists at the site two (2) separate SWM facilities: 1) a surface SWM pond that includes a sediment catch for the entrapment of potential erosion from homebuilding, and 2) an elaborate, underground storm water management chamber system. While the property is only 8-acres, the installation of two storm water and erosion mitigation facilities

was extensive given it was designed to accommodate all runoff from 12 single-family homes plus all community infrastructure.

Additionally, great cost was incurred to install sewer lines, force mains, and service laterals to accommodate the total number of lots. The sewer lift station hydraulic volume and pumping capacity also accounted for the total number of homes. Requiring changes to reconfigure all remaining lands would not only result in the existing infrastructure to be twice that which is necessary, it would create a huge financial hardship to the owner by immediately doubling the per parcel development costs for the changes already made to the land.

Moreover, such changes to the remaining lands could result in a tremendous engineering and construction undertaking. No longer would permits (such as the sewer permit) be minor modifications; they would likely require complete re-engineering and re-issuance as new. Every parcel boundary would change thereby resulting in a change of sewer collection layout and service lateral locations. Underground phone lines, electric conduits, and transformer pads would all have to be modified and moved. Current utility easements on the land would have to be abandoned and new easements recorded. Shifting boundaries also means shifting house locations impacting planned driveway culvert and catch basin locations. No longer would earthwork be minimal.

Modifying sewer lines, electric/phone lines, transformer pads, and storm water collection points would require significant excavation thereby creating the potential for sediment runoff into watersheds as existing infrastructure is dug up and replaced to accommodate new boundaries and locations. In addition to the hardship of lost value for the cost of infrastructure already installed and ready to serve the existing remainder, the list of additional changes to the land to modify easements, move infrastructure, amend surveys, merge parcels, secure permits, and re-plat the entire remainder would be extensive.

February 12, 2015

Alma E. Gorse
Morgan County Planning Commission
77 Fairfax Street, Room 105
Berkeley Springs, WV 25411

Dear Ms. Gorse:

I am one of many residents of Morgan County who believe that the construction of the proposed Dollar General store in the Oakland Overlook subdivision is not in the best interests of our community. Our objections to the application for Dollar General in this subdivision are described in detail in the attached document. We request that copies of this letter and the attached document be distributed to all Commission members prior the February 17th public hearing.

These objections are summarized as follows:

- The proposed Dollar General construction would constitute undesirable "sprawl" under the West Virginia Code and the Morgan County Comprehensive Plan.
- The application is deficient because it does not include all the information required by the Morgan County Subdivision Ordinance.
- Although the developer is requesting seven separate waivers, in no case has it even alleged (let alone demonstrated) "Extraordinary Hardship" as required by the Subdivision Ordinance; therefore, the Commission has no basis upon which to grant the waivers.
- The granting of the requested waivers would reduce the property values of lots owned by nearby residents and therefore is not compliant with the requirements of the Subdivision Ordinance.
- The waiver of the entrance permit requirement would be particularly egregious given the level of community concern and the obvious dangers of entering and exiting Route 522. The Commission must remain involved in this issue in order to fulfill its responsibilities to protect the Community's welfare.
- The minimum lot size requirements were adopted by the Commission for sound reasons and should be maintained.
- The developer has consistently demonstrated a cavalier attitude toward the community and the rules of the Planning Commission and must be required to strictly comply with the Subdivision Ordinance.

Thank you for your attention to this matter.

Sincerely,


Paul A. Stern

REC'D 2.12.15
Approx 3:45 pm
HSG

Reasons Why Subdivision Application For Dollar General Should Be Denied

- I. The proposed construction of a Dollar General in the Oakland Overlook subdivision would constitute unwanted “sprawl” under Chapter 8A of the West Virginia Code and the stated objectives of the Morgan County Comprehensive Plan; it should therefore be rejected.
- A. Sprawl is defined in the West Virginia Code as “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.” [8A1-2 (aa)]
 - B. The proposed development fits each element of this definition.
 - C. Sprawl is not advantageous to a community. [8A-1-1 (a)(4)]
 - D. A goal of a governing body (in this case the Morgan County Commission) should be to reduce sprawl. [8A-1-1(b)(4)]
 - E. The Morgan County Commission has stated in the Comprehensive Plan for Morgan County that one of the objectives of the Plan is “[d]iscouraging the proliferation of strip mall style commercial centers that create congestion and sprawl.” [Morgan County Comp. Plan, Chapter 9, Community Development, Objectives, page 4]
 - F. The Comprehensive Plan also expresses its desire to eliminate sprawl by stating that *[u]nplanned growth, loss of farmland and open space, and subdivision of rural land, are among the top concerns for Morgan County residents. Since preventive measures to protect the environment are preferable to corrective measures, this Plan should accentuate goals and objectives which will prevent scattered sprawl in the rural areas, loss of open space, and degradation of the environment.* [Morgan County Comprehensive Plan (2007), Introduction, Comprehensive Policies, Page 8]
- II. The subdivision application for the re-plat of Oakland Overlook does not meet the requirements of the Morgan County Subdivision Ordinance and therefore should not be considered by the Commission.
- A. The developer is responsible for submitting the application to re-plat the Oakland Overlook subdivision. [Morgan County Ordinance Section 4.3] In this case it is unclear whether the re-plat application was submitted by the developer (Cross Development) or the land owner (Cacapon Associates). The application request appears to be from both. One of the waiver requests is from the land owner and the other from the developer. This has led to confusion as to the purpose of the application, e.g. who will be marketing and selling the single family lots, who will be

responsible for drafting the appropriate covenants and restrictions for Oakland Overlook, who will be responsible for road maintenance, and who will be suffering the “extraordinary hardships” required for waivers under Article VI of the Subdivision Regulations.

- B. If the owner is different from the developer, as appears to be the case here, then the application must include a letter from the owner authorizing the developer to “act as his agent with full authority.” [Ord. Section 4.4 (c)] No such letter has been provided.
- C. The application must include a letter of transmission setting forth the purpose of the application. [Ord. Section 4.3 (f)] No such letter has been provided. This is more than a formality; the failure of the developer to provide this letter has contributed to the confusion referenced above.
- D. The application must include a copy of the existing and proposed deed restrictions or protective covenants. [Ord. Section 4.4 (d)] These Covenants have not been provided. Again, this is more than a formality. The current Covenants for Oakland Overlook prohibit commercial development. [See Oakland Overlook Covenants, Conditions and Restrictions, Article VII Sections 1 and 3 as recorded in Morgan County Deed Book 228-34 on January 14, 2008.] This restriction (and others contained in the Covenants) was included in order to protect property values because the developer knew that such commercial development would devalue nearby lots. [See third “Whereas” clause of Covenants.]

III. The waiver requests were not properly submitted by Cross Development and do not meet the requirements of Article VI of the Morgan County Subdivision Ordinance.

- A. The application submitted by Cross Development includes seven separate waiver requests. (In the Agendas for the December 9 and January 27 meetings only six are identified—no mention of Fire Marshall Review (CILP Apps.)) In support of these waiver requests two separate waiver request forms have been submitted. The one submitted by Cross Development appears to cover all the permit related requests. The applicant is stating that while it will ultimately obtain the required permits it should be allowed to proceed without them. The other waiver request (the date and timing of which is unclear) was submitted by Cacapon Associates. This request is for a permanent waiver of the minimum lot size requirement for single family homes.
- B. The standard for a waiver required in Article VI is “Extraordinary Hardship.” [Ord. Section 6.0] Neither of the two waiver requests even claims to meet this standard let alone demonstrates that it is satisfied.

- a. The Cross request covering the permit waiver states that “substantial” hardship will result “without knowing if a PUD request will be granted by the County.” “Extraordinary” hardship implies that there is something unique about this particular parcel of land or circumstance that is different from the norm. It is not the same as “substantial” hardship. The inconvenience of obtaining permits prior to Planning Commission approval is one that falls equally on all developers and is clearly anticipated in the Ordinance and thus is not sufficient to justify a waiver. Further, if the PUD re-plat request were to be granted by the Planning Commission then the status of the PUD request would be known, eliminating the justification provided by Cross for the permit waivers.
 - b. But the waiver request submitted by Cacapon Associates is even more deficient. Among other things, the request ignores the requirement in Section 6 of the Subdivision Ordinance that “[a] request for a waiver must be in writing” - this waiver request was submitted orally (apparently on January 27, 2015). More importantly, the waiver request makes no reference to any hardship whatsoever. It simply requests that the minimum lot size requirements for single family homes (which currently require a one acre minimum lot size for single family homes connected to a central sewer system) [Ord. Section 11.2.1.b)] be permanently waived.
 - c. According to Cacapon Associates the lots were approved for sale with a minimum lot size of less than one acre prior to adoption of the current rules. Although the waiver request states that the previous lot size exception should be “grandfathered” there is no provision in the Ordinance or elsewhere that allows for such “grandfathering,” nor has there been any prior continuous use of the land as half-acre housing which would allow for such “grandfathering” under West Virginia law. In stark contrast to the non-existent “grandfathering” standard on which the waiver request attempts to rely, the real standard for this waiver request is whether requiring a one acre minimum lot size would result in “Extraordinary Hardship” under Article VI of the Ordinance. But no hardship whatsoever - not to mention the “Extraordinary Hardship” required by Section 6.0 - is alleged or could be alleged by either Cross or Cacapon Associates. Cross, for its part, has no plans to construct any housing at the Oakland Overlook site or to market the lots. [See Cross’s responses to questions 1 and 2 of the Additional Information section Consideration Checklist.]
- C. The Commission can determine that “Extraordinary Hardship” exists only if it finds “that the granting of the waiver shall not be detrimental to the public welfare or injurious to other property in the vicinity of the subject property.” [Ord. Section 6.0]

- a. As expressed to the Commission at the January 27th meeting, the community is particularly concerned that waiving the entrance requirement permit will increase the danger of entering and exiting Route 522. Merely meeting the DOH requirement for a left turn lane at the proposed Dollar General, without knowing the details of what DOH will require, is not adequate to alleviate these concerns nor can it stand as a substitute for the Planning Commission's obligation to protect the public welfare. In order to fulfill this obligation the Commission must be involved in approving the details of the turning lane, e.g. should north and south turning lanes be required, what will be the length and width of the turning lanes, etc. even beyond what DOH will require. This is a key part of the Commission's responsibility and merely letting the developer "work it out" with the DOH is insufficient to meet this responsibility. Further, the Planning Commission's ability to approve or disapprove the details of the proposed turning lane can only be exercised at the Preliminary Plat Public Hearing. Once it gives its approval or waives the requirement for such approval it cannot then weigh in if it doesn't like the terms of the DOH permit. [Ord. Section 4.8]
- b. The construction of the proposed Dollar General will clearly be injurious to the property values of other parcels in the area. There is no question that already existing residential lots in immediate vicinity of the proposed Dollar General will suffer devaluation if the store is constructed. This is evidenced by the fact that the current Covenants for Oakland Overlook, in order to maintain property values, specifically prohibit any commercial development and contain other restrictive covenants designed to provide a homogeneous and consistent look for Oakland Overlook.

IV. The proposed Dollar General Subdivision design does not comply with the requirements of the Morgan County Ordinance for a Planned Unit Development.

- A. Each particular area of housing within the PUD must meet the requirements for that area. [Ord. Section 11.5.4] As noted above, in this case the minimum lot size requirements for single family housing are not being met.
- B. The PUD regulations require that mixed-use subdivisions be constructed so that there is a "harmonious blend between the various areas within the PUD. [Ord. Section 11.5.3] The plans presented by Cross provide for a stark juxtaposition of the Dollar General with the adjoining housing. There is no proposed buffering or blend between the various areas.

- V. Throughout this entire application process the developer and the owner of the property have displayed a cavalier attitude toward the residents of Morgan County, the Subdivision Ordinance and the Planning Commission.
- A. Beginning with the failure to comply with either the letter or the spirit of requirement to post a sign at Oakland Overlook providing notice to the community of the Public Hearing, the applicants have failed to take the Subdivision Ordinance seriously. Even now their handwritten sign on Oakland Road, rather than construction of a more prominent sign on 522, reflects their desire to minimize community involvement. Their incomplete and otherwise deficient application and waiver requests show that they have failed to take seriously what is required to submit a full and complete application to the Planning Commission as well as the Commission's responsibility to protect the public welfare in Morgan County.
 - B. Under these circumstances, and for the reasons stated above, the Commission should deny the application and waiver requests.