

Morgan County Planning Commission
Report on Land Use Issues to the Morgan County Commission

Part I - Introduction

On June 23, 2009, the Morgan County Commission directed the Planning Commission to take up the matter of local land use and report back to the County Commission by the end of September 2009. The result of the Planning Commission's effort was to be an itemization of the significant land use issues in this jurisdiction, along with a matching list of possible options for addressing them (e.g. state law, policy, programs; local ordinances or actions; zoning). The Planning Commission's role was to gather, review, and synthesize information about land use topics deemed important by the community. The result, which follows, is a table of these issues and options. With some issues, the options exist to address some or all of the problems; in others there is nothing (e.g. zoning) in place that would have the authority to have an effect. The Planning Commission was not asked for and has not devised recommendations for future actions. The determination of whether an issue is of such urgency that it should be pursued, or whether an option adequately deals with an issue is a political decision properly made by the elected officials who requested the survey.

The issues listed here were derived primarily from the following sources: The Morgan County Comprehensive Plan (2007), developed with widespread community involvement; the product of the 2008 Land Use Committee authorized by the County Commission and chaired by the Honorable Glen Stotler; two public meetings conducted by the Planning Commission (August 4, 2009 at Warm Springs Middle School and August 11, 2009 at the Paw Paw Senior Center.); written responses to letters soliciting input from targeted local entities (e.g. the public schools, Economic Development Authority); and other written comments offered by citizens. The text of this input is included as an attachment to this report. A subcommittee of the Planning Commission and the Planning Commission as a whole then reviewed the information to produce the content of the final document.

In the preparation of any report like this, there are certain explicit and implicit assumptions which drive and shape the result. The Planning Commission acknowledges the following ones. In addition to the three choices suggested by the County Commission (cited above), the range of possible options may be viewed as a scale with "do nothing" and "voluntary action" at the level of the least government involvement, and federal and state law, regulation and policies, local ordinances and decisions, and particularly, zoning, demonstrating greater government involvement in land use decisions. "No action" and "voluntary action" are choices that are available in most situations, and may be preferable in some, but they are assumed and not listed for each issue in the list. The fact that this survey was requested indicates the "do nothing" position is at least being debated; and, while the status quo may be a reasonable stance on some issues, this position may not represent the best approach to planning the future of Morgan County.

The Planning Commission chose to treat the concept of growth as the rate and location of growth, that is, matching the creation and expansion of infrastructure with the pace of growth, rather than as a growth / no growth issue. (By definition, growth is dynamic, and the concept of no growth was not seriously considered. The decision to limit growth is clearly a political one, and the options for doing so would appear to be limited and many are largely beyond local control, e.g. court decisions, natural disasters, and economic forces. Others, such as the location of high density housing and industry, and prohibiting water and sewer hookups, would be part of a zoning and infrastructure expansion and water availability discussions.) In the case of the stated options, determining all the specific statutory and regulatory references for each task requires a degree of research beyond the scope of this report. However, a list of major references from the state code, and relevant local ordinances is included in the Part II.

According to current understanding of statutes and court decisions, only zoning can determine where a particular type of development can occur, e.g. where high density housing can be built. How, and to what engineering standards it is constructed are covered in local ordinances. The following list reflects this distinction. Part 3 of this report contains a further discussion on the nature and implications of zoning, developing a capital improvement plan, and impact fees.

There were some issues that the Planning Commission deemed to be extremely important, but were not thought to be primarily land use issues. These items were removed to a separate list to retain their visibility, but avoid diluting the focus on the major land use issues. Also, there were some issues, particularly the matter of individual property rights, for which the process of addressing them was seen as critical, and this is outlined in Note 4 in Part 2 of this report.

The material stated here represents the combined information, opinion, expertise and experience of the members of the community who chose to provide input, and the Planning Commission and its staff. The content has not been subjected to a legal review.

Finally, the Planning Commission would like to thank the County Commissioners for giving the Planning Commission the opportunity to participate in the wider discussion of land use issues. The Planning Commission would also like to thank the many people who gave their time to participate in this effort either by attending a public meeting or providing thoughtful written input. It is a tribute to the citizens of Morgan County that so many are willing to work together for the betterment of this community. And, finally, the Planning Commission would like to extend its appreciation to Alma Gorse, County Planner, for her superb staff support.

What follows is the Planning Commission's synthesis of the issues linked to the options with the authority to address them. For some issues, statutes, regulations, policies, processes and procedures may already be in place, but for others there is clearly a void. Determining the specifics for each is a future task requiring a degree of research beyond the scope of this report.

Morgan County Planning Commission
 Land Use Subcommittee
 September, 2009

Part II - List of Issues and Options

DRAFT

<u>Issues</u>	<u>Options</u>
1. Growth = Services (existing and future) infrastructure Ensure availability of services such as fire, rescue, law enforcement, schools, water and sewer infrastructure, road construction and capacity, establishment of public transportation and solid waste.	Capital Improvement Plan Bond Process/Grants/Loans Development of Impact Fee Structure/ State Regulations/Zoning
2. Rural Nature / Farmland Protection / Sprawl vs. Clustering Development / Walkable Communities / Preserving a Sense of Community a. Preservation of open space i. Within individual properties being developed ii. Across county, and beyond individual property boundaries b. Density of development i. Conditions and standards within the boundaries of an individual property or development ii. Determining where high, medium and low density development can occur	2.a.i Ordinances 2. a. ii Zoning 2. b. i. State law, Ordinances 2.b. ii. Zoning
3. Property Owners Rights a. Freedom to determine the use of one's own property b. Freedom from the effects of the use of neighboring properties.	3.a. See Note # 4 "Process," below. 3.b. Ordinances (buffering); Zoning
4. Water Related a. Water availability and quality; long term serviceability of individual wells (Given the uncertain nature of underground water location and flow, each option can attempt to address water availability and quality, but none affords a guarantee.) i. Placement of wells ii. Concentration of wells / density	4.a. i. State (water rights and Health Department [HD]) 4.a. ii. Zoning

<p style="text-align: center;">of development.</p> <ul style="list-style-type: none"> b. Water conservation and recharge practices c. Commercial extraction of water; limiting the potential for commercial extraction d. Designation of recharge areas for springs in town and providing for protection (Recharge areas would need to be located and confirmed, if it is technically possible to do so.) e. Establishment of riparian buffers for stream bank protection f. Reduction of sediment in streams g. Setbacks from streams for well and septic locations to reduce contamination h. Floodplain / wetlands: limit impact of disturbance in floodplain and around wetlands i. Effluent discharge in streams from public and community sewage systems. 	<ul style="list-style-type: none"> 4.b. Ordinances and practices 4.c. State 4.d. State, Zoning 4.e. State, Ordinances, Zoning 4.f. State (DEP), Ordinances 4.g. State (HD), Ordinances 4.h. Federal, State, Ordinances, Zoning 4.i. Federal, State, Local Public Service District policies
<ul style="list-style-type: none"> 5. Regulation of billboard locations <ul style="list-style-type: none"> a. Prohibitions for specific sites b. Prohibitions for broad areas 	<ul style="list-style-type: none"> 5.a. Federal , State, Zoning 5.b. Zoning
<ul style="list-style-type: none"> 6. Protection of view sheds 	<ul style="list-style-type: none"> State (Designating Scenic Byways), Zoning
<ul style="list-style-type: none"> 7. Protection of steep slopes and hillsides 	<ul style="list-style-type: none"> Ordinances, Engineering
<ul style="list-style-type: none"> 8. Preservation of historic sites <ul style="list-style-type: none"> a. Protection and buffering related to creation of subdivision b. Protection of individual properties c. Protection from effects of projects using federal and state money (e.g. roads) 	<ul style="list-style-type: none"> 8.a. Ordinances 8.b. Zoning 8.c. Federal, State statutes
<ul style="list-style-type: none"> 9. Promotion of various types of recreational facilities and activities such as <ul style="list-style-type: none"> a. Countywide hiking and biking trails; countywide parks, obtaining land for future fair site b. Encourage creation of parks, common areas, and trails within developments 	<ul style="list-style-type: none"> 9.a. Capital Improvement Plan 9.b. Ordinances
<ul style="list-style-type: none"> 10. Economic development efforts such as Promoting new businesses; Improving accessibility of high speed internet; and Promoting “green” businesses 	<ul style="list-style-type: none"> Local efforts

10. Incompatible uses <ul style="list-style-type: none"> a. Buffering of certain land uses b. Location of certain types of businesses c. Property owners’ rights d. Light pollution <ul style="list-style-type: none"> i. Special case: Protection of dark skies at Morgan County Observatory 	10.a. Ordinances, Zoning 10.b. Zoning 10.c. See Note # 4, “Process,” below. 10.d. Ordinance (buffering, lighting styles); Zoning
11. Affordable housing	Ordinances, Zoning

Other Issues not related to Land Use:

- Establishment of Capital Improvement Plan
- Building Code Enforcement
- Septic tank maintenance and inspections
- Water Rights
- Air Quality

NOTES:

1. “Do nothing” and “voluntary action” are assumed as options for all land use issues.
2. Capital improvement plan, zoning, and impact fees are discussed in Part III of this report.
3. Federal and State statutes refer to issues under the control of those authorities.
4. “Process” refers to the method by which land use regulation is adopted. It should consist of the *least intrusive* government regulation required to accomplish the goal; where applicable, appropriate, and legal, *compensation* to citizens whose property is affected; and *citizen review* of changes to statutes and ordinances; through referendum in the case of significant changes to a zoning ordinance.
5. Local ordinances are those established by our County Commission as authorized by State Code and currently include:
 - Building Permit (Improvement Location Permit) requirements
Requires permits for structures and improvements to property
Enacted in 1983
 - Subdivision Regulations
Requirements for division of land
Enacted September 1983
 - Stormwater Management Regulations
Regulate impact of stormwater runoff due to the change in land use
(Requirement for Subdivision and Commercial Ordinances)

- Enacted December 2001
- Commercial and Industrial Improvement Location Permit Ordinance
Regulations for commercial site construction
Enacted September 1996
- Exotic Entertainment Ordinance
Requirements for locating this type of business
Enacted August 2004 and July 2009
- Floodplain Regulations
Requirements for activities located within flood prone areas
(disturbance of land and construction)
Enacted January 1986
- Salvage Yard Ordinance
Regulates construction of salvage yards and salvage activities
Enacted February 1985
- George Washington Heritage Trail Outdoor Advertising Regulations
Regulations for off site advertising
Enacted August 2007
- Ordinance to Abate Excessive Residential Noise
Regulates noise thru decibel limits, types of noise and time of day noise is occurring
Enacted April 2007

Definitions:

Billboard:

A panel for the display of advertisements in public places such as along side highways or on the side of buildings. Generally includes off site signs (i.e. those placed off the property of the business being advertised.)

Capital Improvement Plan:

A Capital Improvement Plan, or CIP, is a short-range plan, usually four to six years, which identifies capital projects and equipment purchases, provides a planning and implementation schedule and identifies options for financing the plan (through bonds, taxes, grants, regular fees, impact fees, or a combination of sources). Essentially, the plan provides a link between the county, school district, parks and recreation department and/or other local government entities, a comprehensive or strategic plan and the county's annual budget.

Although a CIP is a prerequisite to pursuing enactment of the Local Powers Act, the process of creating and maintaining a CIP (which is the responsibility of the County Commission), may be undertaken independent of Act requirements. In and of itself, the CIP benefits a county by:

- Allowing for a systematic evaluation of all potential projects at the same time;
- Stabilizing debt and consolidating projects to reduce borrowing costs;
- Serving as a public information and economic development tool;

Providing a focus on preserving a governmental entity's infrastructure while ensuring the efficient use of public funds;
Fostering cooperation among departments and informing other units of government of the entity's priorities. For example, it is not uncommon for a large city or county to incorporate into its CIP the capital needs of a school district, parks and recreation department and/or some other public service structure.

Sprawl:

Poorly planned or uncontrolled growth, usually of a low density nature, within previously rural areas, that is land consumptive, designed without respect to its surroundings, and some distance from existing development and infrastructure.

View sheds:

An area of greater community interest beyond parameters of personal space or private property. An area of land, water, or other environmental element that is visible to the human eye from a fixed vantage point.

Zoning:

The division of a municipality or county into districts or zones which specify permitted and conditional uses and development standards for real property within the districts or zones.

Part III

ZONING (Designating land uses within certain areas)

West Virginia State Code authorizes counties with Comprehensive Plans to adopt a zoning ordinance. There are several aspects to the development and adoption of a zoning ordinance, but the following are presented as the most relevant for consideration by the Morgan County Commission.

The Code lists the mandatory components of a zoning ordinance as:

1. creating a board of zoning appeals;
2. specifying certification requirements for zoning district maps that are consistent with the jurisdiction's comprehensive plan; and
3. adopting procedures and requirements for
 - a. nonconforming land uses;
 - b. variances; and
 - c. conditional use permits.

There are additional components of an ordinance cited in Code, but they are classified as discretionary or are not of immediate relevance.

When considering developing and adopting a zoning ordinance, the Code requires that the County Commission conduct a study of the land within its jurisdiction. This study may include evaluating the existing conditions, the character of the buildings, the most desirable use for the land, and the conservation of property values in relation to the adopted Comprehensive Plan. The study may also include public hearings and meetings.

The Planning Commission is then required to use the study and the Comprehensive Plan to prepare a report on zoning. This report must include the proposed zoning ordinance with maps showing recommended boundaries, rules, regulations and restrictions for each zone. The proposed zoning ordinance must be completed in draft form to be a part of the Planning Commission's report. The study by the governing body and the report by the Planning Commission are prerequisites to enactment of a zoning ordinance. After conducting two mandatory public hearings, the County Commission may enact the zoning ordinance or it may choose to hold an election by the qualified voters residing in the affected area(s). If the County Commission enacts the Ordinance without an election, a petition by 10% of the voters will force an election.

A zoning district may cover a county's entire jurisdiction or parts of its jurisdiction. Each district must be subject to the same rules, regulations, standards and designations throughout the zone, unless there are specific provisions allowing exceptions. Overlay districts and special design districts may have specific additional development standards for each permitted or conditional use. The boundaries of each zone and the designated classifications must be shown on a zoning district map. Zoning districts may overlap. The boundaries may only be changed after the appropriate public hearing and adoption by the County Commission.

Changes to the zoning map are amendments to the zoning ordinance. The County Commission must certify the original zoning district map, as well as subsequent maps.

LOCAL POWERS ACT (IMPACT FEES) *

State Code authorizes counties affected by new development to require the payment of fees for any new capital improvements or the provision of other services attributable to such development. It must be demonstrated that some reasonable benefit from any such capital improvements will be realized by any such development project. Impact fees assessed against a development project to fund capital improvements and public services may not exceed the actual proportionate share of any benefit realized by such project relative to the benefit to the resident taxpayers.

“Impact fees” means any charge, fee, or assessment levied as a condition of the:

1. issuance of a subdivision or site plan approval;
2. issuance of a building permit; and
3. approval of a certificate of occupancy, or other development or construction approval when any portion of the revenues collected is intended to fund any portion of the costs of capital improvements or any public facilities or county services not otherwise permitted by law.

“Capital improvements” as used in Code is limited to those improvements that are treated as capitalized expenses and that have an expected useful life of no less than three years. This does not include costs associated with the operation, repair, maintenance, or full replacement of capital improvements.

“Capital improvements” means the following public facilities or assets that are owned, supported or established by county government:

1. water treatment and distribution facilities;
2. wastewater treatment and disposal facilities;
3. sanitary sewers;
4. storm water, drainage, and flood control facilities;
5. public primary and secondary school facilities;
6. public road systems and rights-of-way;
7. parks and recreational facilities; and
8. police, emergency medical, rescue, and fire protection facilities.

* Information for this description taken from State Code and from a hand-out provided by Mr. Mark Schiavone, Director of Jefferson County Capital Planning and Management.

Requirements to enable the Local Powers Act:

1. demonstration of growth rate of 1% or more over a five year period. Once growth county status has been established, this label is permanent.
2. adoption of a countywide comprehensive plan.
3. adoption of a comprehensive zoning ordinance.
4. maintenance of a building review program (adoption of International Building Code and implementation of a building inspection program).
5. maintenance of a Capital Improvement Plan (CIP) with:
 - a. list of capital projects;
 - b. list of sites with building potential; and
 - c. standards of service for capital improvements funded in whole or in part by impact fees.

Using the structure employed by Jefferson County to calculate their impact fees, a theoretical example of how this might work for Morgan County would be (note that numbers are for illustration purposes and are not actual):

1. calculate the capitalization for a category of county service. For this example, let's say that the monetary value of the Sheriff's department buildings and vehicles is \$1,000,000.
2. determine the applicable cost per citizen by dividing the population into \$1,000,000. If we say that the population of Morgan County is 16,000, then the cost per citizen for the capital investment in the Sheriff's Dept. is \$62.
3. multiply the cost per citizen (\$62.) by the expected number of citizens projected for each type of housing in a proposed subdivision or home.

single family detached	2.63	x \$62	=	\$ 163.
town home/duplex	2.01			\$ 124.
multifamily apartment	1.98			\$ 122.

In this example, the last column shows the amount of the fee for each residence for the Sheriff's Dept. if there were improvements to the Sheriff's Dept. needed as a result of the construction of that residence. If there were other capital improvements needed in other categories of county services, such as fire protection, those fees would be calculated in the same way and added together.

All applicable fees would be applied to all housing permits – new subdivisions and individual home-builders alike.

Fees must be expended within a 6-year period. They may only be expended on projects listed on the county's Capital Improvement Plan. The county may create fee collection / fee expenditure districts (Jefferson does not).

Jefferson has established an office to manage their impact fees. Their Coordinator analyzes each proposed CIP project to determine eligibility for fee funding. A project:

1. must be needed in whole or in part due to growth; and
2. must not increase the standard or level of service, i.e. only expand capacity required for the additional population.

Jefferson Co. has extensive record-keeping procedures to track and account for fees collected and the expenditure to which those individual homeowner's fees are applied. Periodically, they employ consultants to calculate or recalculate their fee structure.

Attachments

Copies of the public comments are available for review at the Morgan County Planning Office.