

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

**DOUGLAS S. ROCKWELL and
CAROL ROCKWELL, husband
and wife,**

Petitioners,

vs.

Civil Action No. CC-19-2022-C-141

**JEFFERSON COUNTY BOARD
OF ZONING APPEALS, a public body,**

Respondent.

**ORDER DENYING PETITION FOR WRIT OF CERTIORARI AND COMPLAINT
FOR DECLARATORY JUDGMENT AND AFFIRMING THE DECISION OF THE
BOARD OF ZONING APPEALS**

This matter came on this 19th day of May 2023, for the decision of the Court upon the record of the Jefferson County Board of Zoning Appeals (hereinafter, "BZA"), the pleadings, motions practice and other papers and exhibits of the parties, and the oral arguments of the parties before the Court on February 16, 2023, pursuant to W.Va. Code § 8A-9-6(b).

At issue is the BZA's alleged error in granting a Conditional Use Permit ("CUP") upon the application of Rippon Energy Facility LLC (hereinafter, "Rippon") for development of a solar energy facility upon land zoned in the Rural District as shown on the Jefferson County Zoning Map.

The Petitioners (hereinafter collectively, "Rockwell") are aggrieved persons under W.Va. Code § 8A-9-1(b), as the property on which they reside would be bordered on three sides by the proposed Rippon solar energy facility.

The Court has reviewed the pleadings, the relevant case law, statutory law, Jefferson County's Comprehensive Plan, Jefferson County's Zoning Ordinance, and considered the arguments of counsel and the exhibits cited in their pleadings and other documents of record provided to the Court. As a result of its deliberations, the Court concludes that the BZA did not apply an erroneous principle of law, was not plainly wrong in its factual findings, nor did it act beyond its jurisdiction and therefore, its decision is **AFFIRMED**.

I. STANDARD OF REVIEW

"While on appeal there is a presumption that a board of zoning appeals acted correctly, a reviewing court should reverse the administrative decision where the board has applied an erroneous principle of law, was plainly wrong in its factual findings, or has acted beyond its jurisdiction." Syl. Pt. 5, *Wolfe v. Forbes*, 159 W. Va. 34, 35, 217 S.E.2d 899, 900 (1975).

However, a reviewing court is not confined to the position of a rubber stamp. "While the interpretation of a statute by the agency charged with its administration should ordinarily be afforded deference, when that interpretation is unduly restrictive and in conflict with the legislative intent, the agency's interpretation is inapplicable." Syl. Pt. 4, *Corliss v. Jefferson County Board of Zoning Appeals*, 214 W.Va. 535, 591 S.E.2d 93 (2003), (citations omitted).

Furthermore, "[i]nterpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous." Syl. Pt. 2, *Far Away Farm, LLC v.*

Jefferson County Board of Zoning Appeals, 222 W.Va. 252, 663 S.E.2d 137 (2008), (citations omitted).

It is with these standards in mind that the Court reviews the decision of the BZA at issue in the instant Petition.

II. PROCEDURAL HISTORY AND FINDINGS OF FACT

1. On or about November 26, 2019, a representative of Rippon's parent company contacted the Jefferson County Planning Commission asking for an amendment to the Zoning Ordinance to allow solar farms in the Rural District as a conditional use.

Through the recommendation of the Planning Commission and the decision of the Jefferson County Commission, a text amendment titled Solar Energy Facilities was adopted as a Principle Permitted Use in eight (8) of the zoning districts, including the Rural District.

2. Rockwell, as well as other opposing persons, filed civil actions in Jefferson County to challenge adoption of the amendment on the ground that it did not conform with the "Envision Jefferson 2035 Comprehensive Plan" (hereinafter, "Comprehensive Plan"). Specifically, that the amendment allowed a large-scale solar facility to process as a Principle Permitted Use in the Rural District instead of processing as a conditional use permit ("CUP").¹ The various parties reached an agreement whereby the

¹ "'Conditional use' means a use which because of special requirements or characteristics may be permitted in a particular zoning district only after review by the board of zoning appeals and upon

amendment was returned to the Planning Commission and then to the County Commission for further review and public hearings. Within four (4) months, the County Commission adopted a second solar energy amendment which, according to Rockwell, was the same as its predecessor except that it allowed more lenient setbacks and barriers on the site.

3. In response to the second amendment adopted by the County Commission, Rockwell and others brought suits in Jefferson County on the ground that, like the first, the second amendment was not consistent with the Comprehensive Plan as required by W.Va. Code § 8A-7-8(a). By order entered on August 16, 2021, in Jefferson County Civil Action No. 21-C-33, Circuit Court Judge Debra McLaughlin ruled that the second amendment was invalid and unenforceable because the County Commission failed to make factual findings that would enable the Court to determine if the second amendment was either consistent with the Comprehensive Plan, or if there had been major changes in the target area that allowed alterations to the Plan.²

issuance of a conditional use permit, and **subject to the limitations and conditions specified in the zoning ordinance.**" W.Va. Code §8A-1-2(d) [boldface added to distinguish the "zoning ordinance" from other sources, such as the "comprehensive plan"].

² "Before amending the zoning ordinance, the governing body with the advice of the planning commission, must find that the amendment is consistent with the adopted comprehensive plan. If the amendment is inconsistent, then the governing body with the advice of the planning commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area." W. Va. Code §8A-7-8(a).

4. The Planning Commission convened a special meeting on August 31, 2021, to review the zoning text amendment file for #ZTA19-03, related to solar energy facilities, and Civil Action No. 21-C-33. The Planning Commission only discussed the issues in executive session with its legal counsel. At its regular meeting on September 2, 2021, the County Commission discussed the legal issues regarding a proposed solar text amendment. Thereafter, the Planning Commission instructed its staff to draft a revision of the Comprehensive Plan to permit large scale solar facilities in the rural and residential growth districts. On December 7, 2021, the Planning Commission held a public hearing addressing the text amendment regarding solar facilities in the rural and residential districts. At the December 14, 2021, meeting, the Planning Commission voted to approve the proposed text amendment to the Comprehensive Plan, "to clarify that solar facilities are principle permitted uses in the rural and residential zoning district," and to recommend the same to the County Commission. See, Minutes of the Planning Commission Meeting of December 14, 2021, at Item 9, page 3. The Planning Commission presented the proposed text amendment to the County Commission at the County Commission's January 6, 2022, meeting.

5. On January 13, 2022, Rockwell filed Jefferson County Civil Action No. 22-C-6 against the Planning Commission and the County Commission, challenging the validity of the proposed amendments and to enjoin further action. On March 31, 2022, a previous injunction entered by Judge McLaughlin was dissolved because the County and Rockwell reached an agreement that, "[a]s adopted, the JC Plan would allow Solar Energy Facilities as a Principle Permitted Use in any zoning district within the Urban

Growth Boundary and the Preferred Growth Area and would permit such Solar Energy Facilities outside of the Urban Growth Boundary and the Preferred Growth Area by the Conditional Use Permit process in the Rural District." The parties' agreement was set out in an order, which states:

The parties acknowledge and agree that among the General Standards to be considered in approving or denying a Conditional Use Permit is that "[t]he proposed use is compatible with the goals of the [JC Plan]." The parties further acknowledge and agree that page 77 of the JC Plan, Agriculture and Rural Economy Recommendations (Goal 8), paragraph 5.b. provides as follows: "Amend local land use regulations to permit non-agriculturally related commercial uses by the Conditional Use Permit (CUP) process in the Rural Zone if the use is agriculturally and rurally compatible in scale and intensity, poses no threat to public health, safety and welfare, and if the use helps to preserve farmland and open space and continue agricultural opportunities."

See, "Agreed Order Dissolving Injunction", entered March 31, 2022, pp. 1 – 2.

6. Thereafter, as amended by the Jefferson County Commission on April 5, 2022, and affirmed by the Planning Commission on April 12, 2022, the Comprehensive Plan's Infrastructure and Technology Recommendations (Goal 10 and 11), number 8, was changed to state:

Encourage public entities to utilize alternative and renewable energy sources for a variety energy of needs, specifically Solar Energy Facilities in areas inside of the Urban Growth Boundary and the Preferred Growth Area as a Principle Permitted Use, and outside the Urban Growth Boundary and the Preferred Growth Area, by the Conditional Use Process.

The County Commission substituted some of the language used in the Planning Commission's earlier proposal of the text.³ The County Commission informed the Planning Commission that the reason for the amendment was to conform to the Agreed Order Dissolving Injunction that was entered on March 31, 2022.

7. Also on April 5, 2022, the County Commission placed in the Comprehensive Plan a document titled "Jefferson County Commission's Amendment to the Proposed Amendments to the Jefferson County Comprehensive Plan."⁴ The closing passage of the document states:

Pursuant to W.Va. Code 8A-3-10 and related statutes, the Jefferson County Commission hereby informs the Planning Commission that the reason for the amendment is to conform to the attached agreed settlement Order, styled as an Agreed Order Dissolving Injunction, that was entered by the Circuit Court of Jefferson County on March 31, 2022 as agreed by the parties to Jefferson County Circuit Court case number 2022-C-6.

8. On May 17, 2022, the Planning Commission held a public hearing regarding the proposed text amendment. After public comment, the commissioners discussed the proposed text amendment with a view toward issuing a recommendation, if possible. Ultimately, the Planning Commission concluded that the draft of the Solar Text Amendment was consistent with the Comprehensive Plan and voted to forward the draft to the County Commission for consideration. But, the draft approved by the Planning Commission *did not include the following language that was included in the March 31*

³ The text starting at the word "specifically" is the text that the County Commission substituted for the Planning Commission's proposed text.

⁴ The document is attached as Exhibit 1. Note that the case number includes a typographical error. The correct case number is 22-C-6.

agreed order: “if the use is agriculturally and rurally compatible in scale and intensity, ... and if the use helps to preserve farmland and open space and continue agricultural opportunities.” The excluded passages were two of the three recommendations appearing in the Comprehensive Plan, in the Agriculture and Rural Economy Recommendations (Goal 8), paragraph 5.b.

9. At its regular meeting of May 21, 2022, the Jefferson County Commission discussed the proposed solar text amendment and its related legal issues. After its discussion, the County Commission voted to schedule a public hearing on June 9, 2022, regarding the proposed solar facilities amendment to the Zoning Ordinance. Among the members of the public who commented at the scheduled special session was Rockwell, who advised that his comment was provided in a written document. After public comment, the County Commission considered a motion to accept the draft solar facilities text amendment *as presented by the Planning Commission i.e.*, without the language omitted from the circuit court’s “Agreed Order Dissolving Injunction.” The motion failed, and the Commissioners decided to continue the discussion at the regularly scheduled meeting on June 16, 2022.

10. At its June 16, 2022, meeting the Jefferson County Commission discussed whether to **reconsider** the proposed text amendment and the various revisions to the Zoning Ordinance, including the creation of Section 8.20, Solar Energy Facilities. After further discussion, a motion to accept the *proposed text amendment as presented by the Planning Commission* passed unanimously. *i.e.*, without the language stating “if the

use is agriculturally and rurally compatible in scale and intensity, ... and if the use helps to preserve farmland and open space and continue agricultural opportunities." The amendment to the Zoning Ordinance was to become effective on June 22, 2022. **Thus, Article 8, Section 8.20 is now the operative ordinance governing this Petition.**

11. Rockwell considered the excluded passage to be essential to the proposed text amendment because on July 8, 2022, he filed another suit in Jefferson County, Case No. 22-C-81, against the County, *inter alia*, for injunctive and declaratory relief, due to the County's failure to include in the final solar text amendment a requirement that, when considering an application for a CUP, the BZA had to consider compatibility in scale and density and whether the use helps to preserve farmland, open space, and continue agricultural opportunities as the same were included in the "Agreed Order Dissolving Injunction" entered March 31, 2022, in Case No. 22-C-6.

12. On July 20, 2022, having heard counsels' arguments, Judge McLaughlin denied Rockwell's motion for a preliminary injunction in Jefferson County, Case No. 22-C-81 upon a finding that Rockwell was "not likely to prevail upon the merits of his case." See "Order Denying Preliminary Injunction and TCR 22 on Motions to Dismiss" entered on July 27, 2022, Jefferson County Case No. 22-C-81.⁵ That Order included a finding that

⁵ On August 3, 2022, Rockwell moved to amend the judgment order due to a statement from the bench during the hearing that the injunction was denied because the case was premature – not because Rockwell was unlikely to prevail upon the merits. The court denied the Rule 59 motion that same day. It is black letter law that a written order controls over a conflicting statement from the bench. "As an initial matter, it is clear that where a circuit court's written order conflicts with its oral statement, the written order controls." *Tennant v. Marion Health Care Foundation, Inc.*, 194 W.Va. 97, 107 n. 5, 459 S.E.2d 374, 384 n.5 (1995). "This Court has adhered to the principle that when presented with conflicting signals from a circuit court, the law favors written orders of oral statements." *Ratcliff v. Cyrus*, 209 W.Va. 166, 544

the parties agreed that “when considering an application for a CUP, under 6.3 as to the compatibility with the goals of the Comprehensive Plan, the BZA shall do so in conjunction with the recommendation of the Comprehensive Plan.” *Id.* at pp. 2 – 3. Thereupon, Rockwell dismissed his suit without prejudice. See “Order Dismissing Civil Action” entered August 3, 2022.

13. Subsequently, Rippon applied for a CUP at a site only partially within the Rural District consisting of seven (7) connecting parcels totaling 878 acres. The proposed facility will use 737 acres of the site.

14. At the public meeting on October 27, 2022, upon Rippon’s CUP application, the BZA heard the testimony of the applicant and the property owners, the staff report, the presentation of two witnesses identified as technical experts, and public comment. The BZA, in its quasi-judicial capacity, voted unanimously to go into a deliberative session. Upon emerging from the deliberative session, the BZA reviewed each of the General Standards listed in Section 6.3(A)1-8 of the Zoning Ordinance and concluded that the application for the CUP met the criteria for approval. A motion was made to approve the CUP subject to seventeen additional conditions. The motion passed unanimously.

15. On November 22, 2022, Rockwell filed the instant Petition for Writ of Certiorari, pursuant to W.Va. Code §8A-9-1, and in the alternative a request for

S.E.2d 93, 96 n.14 (2001). “[H]aving held that a court speaks through its orders, we are left to decide this case within the parameters of the circuit court’s order.” *State v. White*, 188 W.Va. 534, 536, n. 2, 425 S.E.2d 210, 212, n. 2 (1992).

Declaratory Judgment, which are now before this Court. Rockwell contends that the BZA's grant of Rippon's CUP is illegal on the grounds that the BZA did not take into *consideration* the directives of Judge McLaughlin's Order of July 27, 2022, and that the BZA generally ignored, misapplied, and misinterpreted the Goals and Recommendations of the Comprehensive Plan.

16. On February 16, 2023, the parties appeared before the Court for oral argument. Among other matters, Rockwell argued that the BZA should be ordered to file the documents from the pre-application meetings, including submissions from Rippon, and all documents and materials submitted to the BZA by the public on or before February 24, 2023, so that the Court would have all relevant documents for review. The Court so ordered, and the materials were timely delivered.

III. CONCLUSIONS OF LAW

A. The Comprehensive Plan

To acquire the authority to enact a zoning ordinance, a municipality or county must first adopt a comprehensive plan. W.Va. Code § 8A-7-1(a)(1). Jefferson County prepared its first comprehensive plan in 1968, which was formally adopted in 1972, and has consistently maintained a comprehensive plan continuously since then. See, *Envision Jefferson 2035, History of Planning in Jefferson County*, at pg. 6.

The West Virginia Supreme Court of Appeals has explained the difference between comprehensive plans and zoning ordinances:

Comprehensive plans and zoning ordinances are two separate tools to be used in the scheme of [county]⁶ land utilization, in that zoning is the means by which the comprehensive plan is effectuated. A land use plan is simply a basic scheme generally outlining planning and zoning objectives in an extensive area and is not conclusive of the use that can be made of the land involved. Although a planning commission may recommend all kinds of desirable approaches to land utilization and development, not all of these may become eventually enforceable in a zoning ordinance. However, a [county] may establish a comprehensive land use plan and effectuate that plan through a scheme of comprehensive zoning regulations.

In zoning and planning, the comprehensive plan is the policy statement, and it is zoning ordinances that have the force and effect of law. A [county]'s zoning ordinance is the law, and its comprehensive development plan is not. A comprehensive plan is not a legally controlling zoning law, **but serves as a guide to local government agencies charged with making zoning decisions.** Nonetheless, zoning ordinances are required to conform to and implement development plans, and where a general plan is in effect when a zoning ordinance is passed, the ordinance may be invalid if it conflicts with the plan.

Largent v. Zoning Board of Appeals for the Town of Paw Paw, 222 W.Va. 789, 671 S.E.2d 794, at 800-801 (2008), *citing*, 101A C.J.S. *Zoning & Land Planning* § 4 (2008) (footnotes omitted) (boldface added).

The Supreme Court has further explained that

"the comprehensive plan is to be used by the Planning Commission to aid them in drawing up their subdivision ordinances. The comprehensive plan was never intended to replace definite, specific guidelines; instead it was to lay the groundwork for the future enactment of zoning laws."

Singer v. Davenport, 164 W.Va. 665, at 668, 264 S.E.2d 637, at 640 (1980).

In accord with the case law is the codified version description of the nature and purpose of a comprehensive plan:

(b) A comprehensive plan is a process through which citizen participation and thorough analysis are used to develop a set of strategies that establish as clearly

⁶ In the original document, the words used were municipality or city.

and practically as possible the best and most appropriate future development of the area under the jurisdiction of the planning commission. A comprehensive plan aids the planning commission in designing and recommending to the governing body ordinances that result in preserving and enhancing the unique quality of life and culture in that community and in adapting to future changes of use of an economic, physical or social nature. A comprehensive plan guides the planning commission in the performance of its duties to help achieve sound planning.

W.Va. Code § 8A-3-1(b).

The above-cited legal authorities are also in unanimity that the planning commission is endowed with the exclusive authority to prepare a comprehensive plan, or an amendment thereto, for the governing body to consider for enactment, even if it is the governing body that has asked for an amendment:

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

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

W.Va. Code § 8A-3-11(b) and (c).

The procedure for amending a comprehensive plan is the same as the procedure for an original plan, which is a rigorous process of comprehensive surveys and studies of existing conditions and expected changes in the future. See, W.Va. Code 8A-3-2. Importantly, public participation is required:

(c) A planning commission shall include public participation *throughout the process of studying and preparing* a comprehensive plan and amending a

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

W.Va. Code § 8A-3-6(c) (emphasis added).

In this case, in response to the “Agreed Order Dissolving Injunction” the Comprehensive Plan was amended, and consequently the Zoning Ordinance was amended with the addition of Section 8.20 effective on June 22, 2022. Indeed, if statutory procedures are followed, the Zoning Ordinance could be amended again by the Jefferson County Commission.

But, the June 22, 2022, Zoning Ordinance amendment ended the operative effect of the “Agreed Order Dissolving Injunction” because thereafter, the BZA was obliged to apply the Zoning Ordinance as written, to wit, with the understanding that Article 8, Section 8.20 preempts any conflicting ordinance governing, *inter alia*, density. As discussed in the next section below, “[a] board of zoning appeals is not a law-making body,” and “has no power to amend the zoning ordinance under which it functions.” *Wolfe v. Forbes*, 159 W.Va. at 45, 217 S.E.2d at 906 (1975). Thus, Rockwell’s argument to the effect that the BZA must forever refer to the “Agreed Order Dissolving Injunction” when considering an application for a solar energy facility is in error. The BZA’s duty is to apply the current version of the Zoning Ordinance enacted by the Jefferson County Commission – the statutory governing body.

B. The Board of Zoning Appeals

Our Supreme Court has explained the nature of a board of zoning appeals:

The Board of Zoning Appeals is a quasi-judicial body created by statute. *Jefferson Utilities, Inc. v. Jefferson County Bd. of Zoning Appeals*, 218 W.Va. 436, 448, 624 S.E.2d 873, 885 (2005). Inasmuch as it is a quasi-judicial body, “it logically follows that any decision reached as a result of such proceedings is by definition an adjudicatory decision.” *Appalachian Power Co. v. Public Service Commission*, 162 W.Va. 839, 851, 253 S.E.2d 377, 385 (1979).

Sayers v. Board of Zoning Appeals of Wardensville, at fn 5 (Memorandum Decision, 2014). See, also, *Wolfe v. Forbes*, 159 W.Va. 34, 45, 217 S.E.2d 899, 906 (1975), (“a

zoning board of appeals is simply 'an administrative agency, acting in a quasi-judicial capacity.'"). Accordingly, a meeting to make an adjudicatory decision in a quasi-judicial proceeding is not required under the Open Governmental Proceedings Act to meet in a public hearing. W.Va. Code § 6-9A-2(4)(A).

Perhaps even more important are the limitations on a board of zoning appeals. "A board of zoning appeals is not a law-making body," and "has no power to amend the zoning ordinance under which it functions." *Wolfe v. Forbes*, 159 W.Va. at 45, 217 S.E.2d at 906 (1975). Issuing a decision that grants a use that is contrary to the ordinance is one way that a board of zoning appeals can try to amend a zoning ordinance. *Id.* A board of zoning appeals cannot legitimately substitute its opinion for that of the planning commission and the governing body. In short, a board of zoning appeals must follow the ordinance, and where required the comprehensive plan, even if it disagrees with the applicable established provisions.

C. Jefferson County's Rural District

The Rural District is commonly perceived as serving to protect and preserve the remaining undeveloped lands and the agricultural enterprises which, in decades past, provided the cohesive source of Jefferson County's economy. See *e.g.*, the definition of the Rural District in the 1988 version of the Zoning and Land Development Ordinance, Section 5.7 (listing many land uses traditionally associated with an agricultural

economy, including fish, game, or poultry hatchery, forestry, and private riding stables, *inter alia*).⁷

That public perception lingers on, but, regardless of perception, due to significant changes to the Zoning Ordinance adopted over time by successive county commissions, development in the Rural District is and has been robust, especially during the last 30 years. Accordingly, the name "Rural District" might be considered as more a title than as a directive for continuing preservation.

For example, the description and purpose of the Rural District that appears in Section 5.7 of the Zoning Ordinance would seem to intend to protect the rural character of the County and its agricultural community:

The purpose of this district is to provide a location for low density single family residential development in conjunction with providing continued farming activities. This district is generally not served with public water or sewer facilities, although certain size developments processed under the cluster provision of Section 5.7D(2) may choose to do so. A primary function of the low density residential development permitted within this section is to preserve the rural character of the County and the agricultural community....

That said, land uses in the Rural District may be developed as follows:

A. Principal Permitted and Conditional Uses

1. Uses that are permitted, conditional, and not permitted in this district shall be as indicated in **Appendix C, Principal Permitted and Conditional Uses Table**.

2. Uses shown as conditional uses (CU) for this district in Appendix C, Principal Permitted and Conditional Uses Table shall be subject to review and

⁷ Ordinances and Regulations | Jefferson County Commission, WV (jeffersoncountywv.org) at the link labeled "Archived Zoning Ordinances".

approval by the Board of Zoning Appeals in accordance with Section 6.3 of this Ordinance.

Appendix C lists a plethora of land uses and indicates whether each listed land use is “P” – Permitted, “CU” – conditional use, or “NP” – not permitted in each of the zoning districts. See, Appendix C: Principle Permitted and Conditional Uses Table, at Exhibit 2, attached.

The myriad conditional uses allowed in the Rural District listed in Appendix C might, understandably, leave a citizen in the Rural District wondering “where are the cows?” Because, *except* for Industrial uses, Industrial Manufacturing and Processing uses, and “adult” activity uses, **almost all listed uses in Appendix C in any zone are allowed in the Rural District**, either as a Principle Permitted use or as a Conditional Use. For example, the Rural District may be developed with the following land uses:

- airports
- convention centers
- recycling drop-off centers
- appliance sales, automobile repair, sales and service
- automobile parts, supplies, and tire stores
- business equipment sales and services
- gas station (large)
- hotel/motel
- movie theater
- nightclub
- parking (commercial offsite accessory)
- pawnshop
- restaurants (including fast food)

- slaughterhouses and stock yards
- mobile home, boat and trailer sales
- commercial storage
- retail stores (large)

and, specific to this case,

- **solar energy facility**

Clearly, the Rural District is no longer a bucolic rural reserve set aside for a mix of agricultural uses and “a location for low density family residential development”. To the contrary, over time, the governing body, *i.e.*, the Jefferson County Commission has, as is its sole right, and assuming it complied with Chapter 8A⁸ of the West Virginia Code, greatly expanded land uses in the Rural District beyond any traditional notions of the word “rural.”

D. The Conditional Use Permit process

As a general matter, a Conditional Use⁹ Permit (“CUP”) may be issued in each zoning district. The BZA, and only the BZA, is authorized to impose any conditions and restrictions directly related to and incidental to the proposed conditional use. Upon application for a CUP, the Board of Zoning Appeals “shall consider each Conditional

⁸ See Article 3 Comprehensive Plan, and Article 7 Zoning Ordinance.

⁹ See W. Va. Code §8A-1-2 (d) “‘Conditional use’ means a use which because of special requirements or characteristics may be permitted in a particular zoning district only after review by the board of zoning appeals and upon issuance of a conditional use permit, and subject to the limitations and conditions specified in the zoning ordinance.”

Use Permit request that is filed in accordance with this Ordinance and the procedural requirements of the Board of Zoning Appeals." Zoning Ordinance, Section 6.3.

To impose the conditions that are appropriate to the development of any particular use processed as a conditional use, the BZA is required to consider eight **General Standards** and, as discussed below, also to apply the **specific standards** located in **Article 8: Supplemental Use Regulations**. First, a review of the General Standards:

The following General Standards shall be considered in approving or denying the CUP:

1. The proposed use is compatible with the goals of the adopted Comprehensive Plan.
2. The proposed use is compatible in intensity and scale with the existing and potential land uses on the adjoining and confronting properties, and poses no threat to public health, safety and welfare.
3. The proposed site development shall be such that the use will not hinder nor discourage the appropriate development and use of adjacent land and buildings.
4. Neighborhood character and surrounding property values shall be safeguarded by requiring implementation of the landscaping buffer requirements found in Appendix B and Section 4.11 of this Ordinance.
5. Commercial and Industrial Uses shall be in conformance with Section 8.9 of this Ordinance.
6. For properties in the Rural zoning district, roadway adequacy shall be assessed by the Comprehensive Plan's Highway Road Classification Map. If a rural parcel is not shown as commercial on the Future Land Use Guide or does not front on a Principal Arterial, Minor Arterial, or Major Collector road (as identified in the Comprehensive Plan), the applicant shall submit trip generation data, including Average Daily and Peak Hour trips, for the BZA to review in conjunction with the Highway Problem Areas Map when determining roadway adequacy for the proposed use.

7. For Historic Sites, the Historic Landmarks Commission, with the property owner's consent, may visit the property to review the proposed land development plan and use for sites designated as Category I or II. The Historic Landmarks Commission may make reasonable recommendation to the Board of Zoning Appeals on the suitability of a proposed multi-family dwelling or nonresidential use for the building seeking a Conditional Use Permit. The Historic Landmarks Commission's recommendations may include the following findings:

a. Compatibility of the proposed use with the historic structure;

b. Any modifications to the building's façade is consistent and compatible with the building's architecture, style, and massing; and

c. Proposed parking and other activities are suitably located so as to preserve the historic character. The Board of Zoning Appeals may consider these findings and if determined appropriate, may require compliance with some or all of the Historic Landmarks Commission's recommendations as a condition of approval.

8. Any signs associated with the proposed Conditional Use shall be reviewed by the Board in accordance with Section 10.6.

Id. at 6.3 (a)(1) through (8).

In addition to consideration of the General Standards, the BZA is also required to apply the **Supplemental Use Regulations**, found in **Article 8** of the Zoning Ordinance, to only certain land uses, but among those certain uses are solar energy facilities. See Article 8.20 Solar Energy Facilities. Critically, where there is any conflict amongst the standards in the Supplemental Use Regulations with any other Zoning Ordinance regulations the Supplemental Use Restrictions expressly prevail over any conflicting standard. See Zoning Ordinance, Article 8 ("Should the standards found in this Article

conflict with those found in this Ordinance or the Jefferson County Subdivision and Land Development Regulations, the standards of this Article shall apply.")¹⁰

The priority of the Supplemental Use Regulations over any conflicting regulations within the Zoning Ordinance matters greatly to the resolution of this case because it is Article 8.20 that sets forth the "Process for Solar Energy Facilities as a Conditional Use."¹¹ And, nowhere within Article 8.20 is there any reference made to a permissible "density" of solar panels and supporting infrastructure on lots in the Rural District. To the contrary, density of lots is only an issue in the Rural District when considering the permissible density of residential development. Cf. Zoning Ordinance Section 5.7D(1)(a) (setting forth the specific density metric of one lot for every 15 acres with a

¹⁰ That the County Commission established the primacy of Section 8.20 to solar energy facilities over other, generally applicable sections of the Zoning Ordinance is consistent with general principles of statutory construction applied in the absence of a primacy designation. The West Virginia Supreme Court has long recognized that specific statutes control over general statutes that relate to the same subject. "The general rule of statutory construction requires that a specific statute be given precedence over a general statute relating to the same subject matter[.]" Syllabus Point 1, in part, *UMWA by Trumka v. Kingdon*, 174 W. Va. 330, 325 S.E.2d 120 (1984). *Accord Tillis v. Wright*, 217 W. Va. 722, 728, 619 S.E.2d 235, 241 (2005) ("[S]pecific statutory language generally takes precedence over more general statutory provisions."); *Bowers v. Wurzburg*, 205 W. Va. 450, 462, 519 S.E.2d 148, 160 (1999) ("Typically, when two statutes govern a particular scenario, one being specific and one being general, the specific provision prevails." (Citations omitted)); *Daily Gazette Co., Inc. v. Caryl*, 181 W. Va. 42, 45, 380 S.E.2d 209, 212 (1989) ("The rules of statutory construction require that a specific statute will control over a general statute[.]") (Citations omitted)). *Robinson v. City of Bluefield*, 234 W. Va. 209, 214, 764 S.E.2d 740, 745 (2014).

The rule also applies to the rules or ordinances enacted by the authority delegated to a municipality or county by the State. Syl. Pt. 1, *Town of Burnsville v. Kwik-Pik, Inc.*, 185 W.Va. 696, 408 S.E.2d 646 (1991). Furthermore, "[w]hen a provision of a municipal ordinance is inconsistent or in conflict with a statute enacted by the Legislature the statute prevails and the municipal ordinance is of no force and effect." Syl. Pt. 1, *Davidson v. Shoney's Big Boy Restaurant*, 181 W.Va. 65, 380 S.E.2d 232 (1989), citing, Syl. Pt. 1, *Vector Co. v. Board of Zoning Appeals*, 155 W.Va. 362, 184 S.E.2d 301 (1971).

¹¹ In Section 8.20 the County Commission set forth a two-step process for solar energy facilities in the Rural Zone: First, an applicant must obtain a CUP and only then, if the BZA grants a CUP, must the applicant submit a Concept Plan, pursuant to the Minor Site Development Concept Plan standards established in the Jefferson County Subdivision and Land Development Regulations.

minimum lot size of three acres) versus Section 8.20 wherein there is no metric for density and indeed, the term “density” is not found within Section 8.20.

Instead, Rockwell argues, in effect, that “intensity and scale” is synonymous with “density” because of Section 8.20’s reference back to Article 6 wherein it is stated that the CUP application “shall process a Conditional Use in accordance with Article 6.” See Section 8.20 (A)(1). But the problem with this argument is readily apparent by reading the entirety of Section 6.3 (A)(2) [emphasis added]:

“The proposed use is compatible in intensity and scale with the existing **and potential land uses on the adjoining and confronting properties**, and poses no threat to public health, safety and welfare.”

While opinions likely differ about the scale and intensity of *existing* land uses on adjoining and confronting properties around the circumference of the totality of this project (seven connected parcels spanning two zoning districts and 878 acres), this sub-section also directs the BZA to consider *potential* land uses on adjoining and confronting properties. Those *potential* land uses are those land uses set forth in Appendix C, discussed above.

And thus, regarding Rockwell’s concerns that the BZA failed to properly “consider” the goals and recommendations of the Comprehensive Plan when considering Rippon’s CUP application, the court cannot review such “consideration” as there is simply no standard by which to do so. Instead, the Court must give the BZA’s interpretation of the Zoning Ordinance and its application to the facts presented by the CUP applicant great weight unless it is clearly erroneous.

By statute, the members of the Board of Zoning Appeals are required to be residents of Jefferson County and presumably, through their appointment by the County Commission, serve on the Board with knowledge of Jefferson County's Comprehensive Plan and Zoning Ordinance. Likewise, through the written submissions received and the public hearing held the members of the BZA "considered", *i.e.*, thought carefully about, whether to grant a CUP to Rippon considering the existing and potential land uses of adjoining and confronting properties. There is no metric, and no legal basis upon which this Court can second guess the BZA's consideration of existing and potential land uses, provided that the BZA has received the information an applicant is required to submit when seeking a CUP, the BZA has otherwise adhered to due process of law, and that the members of the BZA have acted without conflict of interest or corrupt purpose. *See e.g., Rissler v. Jefferson County Board of Zoning Appeals*, 225 W. Va. 346, 693 S.E.2d 321(2010) (conflicts of interest implicated due process such that disqualification of members of the BZA was required).

When the BZA considered the Respondent's CUP application, the record shows the application was complete. The record further shows that a public hearing was held and that the BZA deliberated upon the CUP application and voted for its approval. The BZA is a quasi-judicial body and has the sole jurisdiction to rule on a CUP application which inherently presents issues of mixed fact and law. Hence, the BZA acts in a quasi-judicial capacity and this Court thus holds that the BZA is entitled to a presumption of regularity in its considerations. The burden of proving irregularity rests upon a challenger to show such irregularity affirmatively. *Cf. Syl. Pt. 2, State ex rel. Scott v.*

Boles, 150 W. Va. 453, 147 S.E.2d 902 (1966) (applying the presumption of regularity to civil proceedings wherein a post-conviction writ of habeas corpus was sought).

Here, Rockwell has failed to prove irregularity. Moreover, a full review by this Court does not reveal that the BZA applied an erroneous principle of law, was plainly wrong in its factual findings, or acted beyond its jurisdiction.

IV. CONCLUSION

WHEREFORE, in consideration of all the foregoing, the Court concludes the following:

1. West Virginia Code § 8A-3-1, *et seq*, sets forth the only means for a governing body to enact a lawful amendment to the Comprehensive Plan.
2. Statutorily, an amendment to the Comprehensive Plan can only be prepared by the planning commission, and not by a court or the parties to a settlement in a civil action.
3. The Jefferson County Commission amended the Zoning Ordinance effective June 22, 202, to allow solar energy facilities in the Rural District, such as is proposed by Rippon, subject to, specifically, compliance with Article 8, Section 8.20 of the Zoning Ordinance.
4. By its terms, the provisions of Article 8 apply whenever there is any conflict with another provision of the Zoning Ordinance. Thus, Section 8.20 has primacy over conflicting sections of the Zoning Ordinance. To equate Section 6.3's General Standards for the issuance of a CUP requiring consideration of "intensity and scale" (Section 6.3(A)(2)) with the term "density", as the term "density" is applied to residential

subdivision development in the Rural District, would create a conflict with Section 8.20. This is because, unlike residential *housing* density in the Rural District (defined in Section 5.7D), Section 8.20 does not contain a metric for *solar energy facility* density. Thus, by virtue of the absence of a metric for scale and intensity in Section 8.20, no density metric from another section of the Zoning Ordinance may be imputed to a CUP application for a solar energy facility without violating Article 8's primacy.¹³

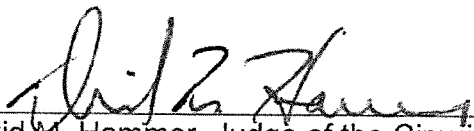
5. This Court's review of the actions of the Board of Zoning Appeals establish that it did not apply an erroneous principle of law, was not plainly wrong in its factual findings, nor did it act beyond its jurisdiction.

ACCORDINGLY, it is the **ORDER** of the Court that the instant Petition is **DENIED WITH PREJUDICE** and the Conditional Use Permit granted to Rippon Energy Facility LLC should be and hereby is **AFFIRMED**.

The Clerk is directed to send a true copy of the foregoing to all counsel and self-represented parties of record. The Clerk shall place this action amongst causes ended.

This is a final appealable order.

Entered: May 19, 2023



David M. Hammer, Judge of the Circuit Court
of Jefferson County, West Virginia

¹³ The Jefferson County Commission is, of course, statutorily empowered to revise the Zoning Ordinance to create such a metric. This Court is not similarly empowered but instead, is bound to review the Jefferson County Board of Zoning Appeals decision under the applicable legal standard discussed.

APPENDIX C: PRINCIPAL PERMITTED AND CONDITIONAL USES TABLE

Land Use	NC	GC	HC	LI	MI	PND ¹	OC	R	RG	RLIC	IC	V	Additional Standards
Residential Uses													
Accessory Agricultural Dwelling Unit	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.15
Dwelling, Single Family	CU	NP	NP	NP	NP	P	NP	P	P	P	NP	P	
Dwelling, Single Family, Small Lot	CU	NP	NP	NP	NP	P	NP	NP	P	P	NP	P	
Dwelling, Two Family	CU	NP	NP	NP	NP	P	NP	P	P	P	NP	P	
Dwelling, Duplex	CU	NP	NP	NP	NP	P	NP	NP	P	P	NP	P	
Dwelling, Townhouse	CU	NP	NP	NP	NP	P	P	NP	P	P	NP	CU	
Dwelling, Multi-Family	CU	NP	NP	NP	NP	P	P	NP	P	P	NP	CU	
Day Care Center, Small	P	NP	NP	NP	NP	P	NP	P	P	P	P	P	
In-Law Suite	NP	NP	NP	NP	NP	P	NP	P	P	P	NP	P	Sec. 8.15
Mixed Use Building	P	NP	NP	NP	NP	P	P	NP	CU	P	NP	P	
Mobile Home Park	NP	NP	NP	NP	NP	NP	NP	NP	P	P	NP	NP	
Model Homes/Sales Office	P	CU	NP	NP	NP	P	NP	P	P	P	NP	NP	Sec. 8.10
Home Uses													
Home Occupation, Level 1	P	NP	NP	NP	NP	P	P	P	P	P	P	P	Art. 4A
Home Occupation, Level 2	P	NP	NP	NP	NP	P	P	P	P	P	P	P	Art. 4A
Cottage Industry	P	NP	NP	NP	NP	P	NP	P	P	P	P	P	Art. 4A
Institutional Uses													
Airport	NP	NP	NP	P	P	NP	NP	CU	NP	CU	CU	NP	
Airfield, Private/Helipad	NP	NP	NP	NP	NP	NP	NP	CU	NP	CU	CU	NP	
Church ³⁸	P	P	P	P	CU	P	P	P	P	P	CU	P	
Convention Center	NP	P	P	P	CU	P	P	CU	CU	P	CU	NP	
Cultural Facility	P	P	P	P	CU	P	P	P	P	P	P	P	
Day Care Center, Large	P	P	P	P	CU	P	P	CU	P	P	P	CU	
Electric Vehicle Charging Station	P	P	P	P	P	P	P	CU	CU	P	P	CU	
Elementary or Secondary School	P	P	CU	CU	NP	P	P	P	P	P	NP	CU	
Essential Utility Equipment	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 4.7
Group Residential Facility	P	P	P	NP	NP	P	CU	P	P	P	NP	P	
Group Residential Home	P	P	P	NP	NP	P	CU	P	P	P	NP	P	
Heliport	NP	CU	CU	P	P	CU	CU	NP	NP	CU	CU	NP	
Hospital	NP	P	P	P	CU	P	P	P	P	P	NP	NP	
Nature Center and Preserve	NP	NP	NP	NP	NP	P	NP	P	CU	P	NP	P	
Nursing or Retirement Home	CU	P	P	P	NP	P	P	CU	P	P	NP	CU	
Park	P	P	P	P	NP	P	P	P	P	P	NP	P	
Performing Arts Theater	P	P	P	P	P	P	P	CU	CU	P	P	CU	
Preschool	P	P	CU	CU	CU	P	P	P	P	P	NP	CU	
Public Safety Facility	P	P	P	P	P	P	P	P	P	P	P	P	
Publicly Owned Facility	P	P	P	P	P	P	P	P	P	P	P	CU	
Recycling Drop-Off Center	CU	P	P	P	P	P	P	NP	NP	P	P	NP	
Residential Care Home	P	P	P	NP	NP	P	CU	P	P	P	NP	P	
School, College or University	NP	P	P	P	NP	P	P	CU	CU	P	NP	NP	
School, Vocational or Professional	NP	P	P	P	NP	P	P	CU	CU	P	P	NP	
Vocational and Training Facility for Adults	P	P	P	P	P	P	P	P	P	P	NP	NP	

Land Use	NC	GC	HC	LI	MI	PND ¹	OC	R	RG	RLIC	IC	V	Additional Standards
Industrial													Sec. 8.9
Heavy Equipment Repair	NP	NP	CU	CU	P	NP	NP	NP	NP	NP	P	NP	
Heavy Industrial Uses	NP	NP	NP	NP	P	NP	NP	NP	NP	NP	P	NP	Sec. 8.9
Light Industrial Uses	NP	NP	NP	P	P	NP	NP	NP	** NP	P	P	NP	Sec. 8.9
Manufacturing, Heavy	NP	NP	NP	CU	P	NP	NP	NP	NP	NP	P	NP	
Manufacturing, Limited	NP	P	P	P	P	CU	NP	NP	NP	P	P	NP	
Printing and Publishing	NP	P	P	P	P	P	P	NP	NP	P	P	NP	
Salvage Yards	NP	NP	NP	NP	CU ²	NP	NP	NP	NP	NP	CU ²	NP	Sec. 4.4L
Shooting Range, Indoor	NP	CU	CU	P	P	NP	NP	CU	NP	CU	P	NP	
Shooting Range, Outdoor	NP	NP	NP	CU	CU	NP	NP	CU	NP	NP	CU	NP	
Slaughterhouses, Stockyards	NP	NP	NP	NP	CU	NP	NP	CU	NP	NP	CU	NP	
Transportation Terminal	NP	P	P	P	P	P	P	NP	NP	CU	P	NP	
Vehicle Storage	NP	NP	NP	P	P	NP	NP	NP	NP	NP	P	NP	
Warehousing and Distribution, General	NP	NP	NP	CU	P	NP	NP	NP	NP	CU	P	NP	
Warehousing and Distribution, Limited	NP	P	P	P	P	CU	P	NP	NP	P	P	NP	
Industrial Manufacturing & Processing													Sec. 8.9
Acid or heavy chemical manufacturer, processing or storage	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	NP	
Bituminous concrete mixing and recycling plants	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	NP	
Cement or Lime Manufacture	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	NP	
Commercial Sawmills	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	NP	
Concrete and ceramic products manufacture, including ready mixed concrete plants	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	NP	
Explosive manufacture or storage	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	NP	
Foundries and/or casting facilities	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	NP	
Jails and Prisons	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	NP	Sec. 8.7
Mineral extraction, mineral processing	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	NP	
Petroleum products refining or storage	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	NP	Sec. 8.11
Adult Uses													
Adult Uses	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	P	NP	Sec. 4.4K, Sec. 8.1
Recreational Uses													
Hunting, Shooting, Archery and Fishing Clubs, public or private	NP	NP	NP	CU	CU	NP	NP	P	NP	NP	NP	NP	Sec. 8.8
Commercial Uses													Sec. 8.9
Antique Shop	P	P	P	P	NP	P	NP	CU	CU	P	P	P	
Appliance Sales	NP	P	P	P	CU	P	NP	CU	CU	P	P	NP	
Art Gallery or Artist Studio	P	P	P	P	NP	P	P	CU	CU	P	P	P	
ATM	P	P	P	P	NP	P	P	CU	CU	P	P	CU	
Automobile repair, sales and service	NP	P	P	P	P	P	NP	CU	CU	P	P	CU	
Automobile parts, supplies and tire stores	NP	P	P	P	P	P	NP	CU	CU	P	P	CU	
Automobile, light truck and light trailer rentals, indoor	P	P	P	P	P	P	NP	CU	CU	P	P	CU	
Automobile, light truck and light trailer rentals, outdoor	NP	P	P	P	P	P	NP	CU	CU	P	P	CU	
Bail Bond Services	NP	P	P	P	CU	NP	NP	CU	CU	CU	P	CU	
Bank	P	P	P	P	CU	P	P	CU	CU	P	P	P	
Bank with Drive-Through Facility	CU	P	P	P	CU	P	P	CU	CU	P	P	CU	

Land Use	NC	GC	HC	LI	MI	PND ¹	OC	R	RG	RLIC	IC	V	Additional Standards
Commercial Uses continued													Sec. 8.9
Bar	P	P	P	P	NP	P	P	NP	NP	P	P	CU	
Barber/Beauty Shop, Limited	P	P	P	P	NP	P	P	CU	CU	P	P	P	
Bed and Breakfast	P	NP	NP	NP	NP	P	NP	P	CU	P	NP	P	Sec. 8.3
Brewpub	P	P	P	P	NP	P	P	CU	CU	P	P	CU	Sec. 8.5
Business Equipment Sales and Service	CU	P	P	P	CU	P	P	CU	CU	P	P	CU	
Building Maintenance Services	CU	P	P	P	P	P	P	CU	CU	P	P	CU	
Building Materials and Supplies	NP	P	P	P	P	P	NP	CU	CU	P	P	CU	
Campground ³¹	CU	P	NP	NP	NP	P	NP	P	CU	P	P	CU	Sec. 8.17
Car Wash	NP	P	P	P	CU	P	P	CU	CU	P	P	CU	
Commercial Blood Plasma Center	NP	P	P	P	NP	CU	CU	CU	CU	CU	P	CU	
Commercial Uses	NP	NP	NP	NP	NP	NP	NP	NP	**	P	P	CU	Sec. 8.9
Contractor with No Outdoor Storage	P	P	P	P	P	P	P	CU	CU	P	P	CU	
Contractor with Outdoor Storage	NP	P	P	P	P	P	NP	CU	CU	P	P	CU	
Convenience Store	CU	P	P	P	CU	P	NP	CU	CU	CU	P	CU	Sec. 5.8C (RLIC only)
Convenience Store, Limited	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Country Inn	P	P	P	P	NP	P	P	CU	CU	P	P	P	
Crematorium, Pet ³⁷	NP	P	NP	P	NP	NP	NP	P	NP	P	P	CU	Sec. 8.19
Custom Manufacturing	P	P	P	P	P	P	P	CU	CU	P	P	CU	
Dry cleaning and Laundry Services	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Dry cleaning and Laundry Facility	NP	P	P	P	P	P	P	CU	CU	P	P	CU	
Equipment Rental, Sales, or Service	NP	P	P	P	P	P	NP	CU	CU	P	P	CU	
Exterminating Services	NP	P	P	P	P	P	P	CU	CU	P	P	CU	
Florist	P	P	P	P	CU	P	P	CU	CU	P	P	P	
Food Preparation	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Gambling Facilities	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	CU	Sec. 4.4G
Gas Station	NP	P	P	P	CU	P	P	CU	CU	P	P	CU	
Gas Station, Large	NP	CU	P	P	CU	CU	CU	CU	CU	P	P	CU	
Gas Station, Limited	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Golf Course	NP	P	P	P	NP	P	P	CU	CU	P	P	CU	
Grocery Store	P	P	P	P	CU	P	NP	CU	CU	P	P	CU	
Horse Racing Facility	NP	NP	NP	P	NP	NP	NP	CU	CU	P	P	CU	
Hotel/Motel	NP	P	P	P	NP	P	P	CU	CU	P	P	CU	
Kennel	NP	P	P	P	CU	P	P	P	CU	P	P	CU	Sec. 8.4
Medical/Dental/Optical Office, Small	P	P	P	P	CU	P	P	CU	CU	P	P	P	
Medical/Dental/Optical Office	NP	P	P	P	CU	P	P	CU	CU	P	P	CU	
Mobile Home, Boat and Trailer Sales	NP	P	P	P	CU	P	NP	CU	CU	CU	P	CU	
Movie Theater	NP	P	P	P	NP	P	NP	CU	CU	P	P	CU	
Nightclub	NP	P	P	P	NP	P	NP	CU	CU	P	P	CU	
Non Profit Commercial Uses	P	P	P	P	NP	P	P	CU	CU	P	P	CU	
Non-Profit Community Centers	P	P	P	P	CU	P	CU	P	CU	P	P	CU	
Parking, Commercial Offsite Accessory	NP	P	P	P	P	P	P	CU	CU	P	P	CU	
Pawn Shop Services	NP	P	P	P	NP	P	NP	CU	CU	P	P	CU	
Personal Services	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Professional Office	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Professional Office, Small	P	P	P	P	CU	P	P	CU	CU	P	P	P	
Restaurant	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Restaurant, Fast Food	CU	P	P	P	CU	P	P	CU	CU	CU	P	CU	

Land Use	NC	GC	HC	LI	MI	PND ¹	OC	R	RG	RLIC	IC	V	Additional Standards
Commercial Uses continued													Sec. 8.9
Restaurant, Fast Food, Drive-Through ⁴⁰	NP	P	P	P	CU	CU	P	CU	CU	P	P	CU	
Restaurant, Fast Food, Limited	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Retail Sales and Services, General	NP	P	P	P	NP	P	NP	CU	CU	P	P	CU	
Retail Sales Limited	P	P	P	P	NP	P	P	CU	CU	P	P	CU	
Retail Store, Large	NP	CU	P	CU	NP	CU	NP	CU	CU	CU	CU	CU	
Shipping and Mailing Services	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Short Term Rental ⁴¹	CU	NP	NP	NP	NP	P	NP	P	P	P	NP	P	Sec. 8.16
Solar Energy Facility ⁴³	NP	See Section 8.20				NP	NP	See Section 8.20				NP	Sec. 8.20
Special Event Facility	P	P	P	P	NP	P	P	CU	CU	P	P	CU	Sec. 8.14
Storage, Commercial	NP	P	P	P	CU	P	NP	CU	CU	P	P	CU	
Veterinary Services	P	P	P	P	CU	P	P	P	CU	P	P	CU	
Wireless Telecommunications Facilities	P	P	P	P	P	P	P	P	P	P	P	P	Art. 4B
Agricultural Uses*													
Agricultural Uses, as defined in Article 2	P	P	P	P	P	P	P	P	P	P	P	P	
Agricultural Repair Center	NP	P	P	P	P	P	P	P	CU	P	P	NP	
Agricultural Tourism	P	P	P	P	P	P	P	P	P	P	P	P	
Crematorium, Livestock ³⁷	CU	CU	CU	CU	CU	CU	CU	P	CU	CU	CU	CU	Sec. 8.19
Farm Brewery	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.5
Farm Winery or Distillery	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.5
Farm Market	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.6
Farmer's Market	P	P	P	NP	NP	P	NP	P	CU	P	NP	CU	Sec. 8.6
Farm Vacation Enterprise	P	P	P	P	P	P	P	P	P	P	P	P	
Feed and/or Farm Supply Center	CU	P	P	P	P	P	P	P	CU	P	P	NP	
Horticultural Nurseries and Commercial Greenhouses	P	P	P	P	P	P	P	P	CU	P	P	NP	
Landscaping Business	P	P	P	P	P	P	P	P	CU	P	P	NP	
Rental of Existing Farm Building for Commercial Storage	NP	P	P	P	P	P	P	P	CU	P	P	NP	
Structure must have existed for 5 years													
Special Event Facility, Agricultural	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.14
Accessory Uses													
Accessory Uses	P	P	P	P	P	P	P	P	P	P	P	P	

NC Neighborhood Commercial

GC General Commercial

HC Highway Commercial

LI Light Industrial

MI Major Industrial

PND Planned Neighborhood Development

P Permitted Uses

NP Not Permitted Uses

CU Conditional Uses (subject to requirements of district and/or other requirements of this Ordinance)

** Accessory Use to a planned residential community, if permitted pursuant to Section 5.4 and processed as a CU

¹ The Planning Commission may amend the permitted uses for a development in the PND District per Article 5.

² Approval process is per the Salvage Yard Ordinance.

OC Office / Commercial Mixed-Use

R Rural

RG Residential Growth District

RLIC Residential-Light Industrial-Commercial District

IC Industrial-Commercial District

V Village District

**JEFFERSON COUNTY COMMISSION'S AMENDMENT TO THE PROPOSED
AMENDMENTS TO THE JEFFERSON COUNTY COMPREHENSIVE PLAN**

The proposed amendments to the Jefferson County Comprehensive Plan that were submitted to the Jefferson County Commission by the Jefferson County Planning Commission on January Sixth, 2022, shall be amended by the County Commission, pursuant to W.Va. Code 8A-3-10 and related statutes, as follows:

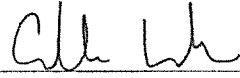
The County Commission hereby substitutes in place of all such proposed language the following language which shall be added to the end of paragraph 8(a) on page 93 of the current Comprehensive Plan:

“, specifically Solar Energy Facilities in areas inside of the Urban Growth Boundary and the Preferred Growth Area as a Principal Permitted Use and outside of the Urban Growth Boundary and the Preferred Growth Area by the Conditional Use Permit process,”.

Pursuant to W.Va. Code 8A-3-10 and related statutes, the Jefferson County Commission hereby informs the Planning Commission that the reason for the amendment is to conform to the attached agreed settlement Order, styled as an Agreed Order Dissolving Injunction, that was entered by the Circuit Court of Jefferson County on March 31, 2022 as agreed by the parties to Jefferson County Circuit Court case number 2022-C-9.

By a majority vote at a duly called meeting of the Jefferson County Commission this Fifth day of April, 2022.

JEFFERSON COUNTY COMMISSION

BY 
Caleb Hudson, President