ARTICLE 24. PLANNING AND ZONING

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ARTICLE 24. PLANNING AND ZONING

PART I. URBAN AND RURAL PLANNING -- PLANNING COMMISSIONS AUTHORIZED; OBJECTIVE; DEFINITIONS.

§8-24-3. Definitions. As used in this article:

(a) "Commission or planning commission" shall mean a municipal planning commission or a county planning commission, as the case may be;

(b) "Comprehensive plan" shall mean a complete comprehensive plan or any of its parts such as a comprehensive plan of land use, and zoning, of thoroughfares, of sanitation, of recreation, and such ordinance or ordinances as may be deemed necessary to implement such complete comprehensive plan or parts thereof by legislative approval and provision for such rules and regulations as are deemed necessary and their enforcement; the adopted official statement of the governing body of a municipality or county that sets forth (in text, maps, illustrations and/or tables) goals, policies and guidelines intended to direct the present and future physical, social and economic development that occurs within its planning jurisdiction. The comprehensive plan may include individual elements such as proposed land use, transportation and infrastructure, community services, housing, historic preservation, economic development, and other related matters which together provide for a unified physical design for public and private development;

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

(d) “Factory-built home” includes modular homes and manufactured homes;

(e) "Historic district" is a geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united historically or aesthetically by plan or physical development;

(f) "Historic landmark" is a site, building, structure or object designated as a "Landmark" either on a national, state or local register;

(g) "Historic site" is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure whether standing, ruined or vanished, where the location itself possesses historical, cultural or archaeological value regardless of the value of any existing structure;
(h) “Land development” includes any of the following activities:

(1) The improvement of one lot or two or more contiguous lots, tracts, parcels of land for any purpose involving:
   (i) a group of two or more buildings, whether proposed initially or cumulatively; or
   (ii) the division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups or other features.

(2) A subdivision of land.

(i) “Local government entity” means agencies, boards, departments, boards, commissions and authorities of county and municipal government, including but not limited to water and sewer boards, public service districts and solid waste authorities.

(j) “Manufactured home” means housing built in a factory according to the Federal Manufactured Home Construction and Safety Standards which went into effect on June 15, 1976.

(k) “Modular home” means housing built in a factory that meets state or local building codes where the homes will be sited;

(l) “Overlay district” means a zoning district that extends on top of a base zoning district and is intended to protect certain critical features and resources. The underlying base zoning district regulates the uses, while the overlay zoning district regulates development standards.

(m) "Public place" includes any tracts owned by the state or its subdivisions;

(n) "Streets" includes streets, avenues, boulevards, highways, roads, lanes, alleys and all public ways;

(o) “Subdivision” means the division of a parcel of land into two or more lots or parcels for the purpose of transfer of ownership or building development whether residential, commercial or industrial in nature.

(p) "Unit of government" means any federal, state, regional, county or municipal government or governmental corporation; and

(q) "Utility" means any facility used in rendering service which the public has a right to demand, providing direct local distribution service to the public in accordance with the provisions of chapter twenty-four of this code. “Utility” does not include interstate natural gas pipelines and related pipeline facilities under the jurisdiction of the Federal Energy
Regulatory Commission.

The changes to the definitions would expand, clarify and update key terms in the section. For “Comprehensive Plan”, additional guidance is provided as to what must be included in the plan for it to be a realistic and valuable document for a community. The definitions of other terms reflect the definitions advocated by the American Planning Association.

PART II. SAME -- EXERCISE OF POWERS AND AUTHORITY; ORGANIZATIONS AND FUNCTION OF COMMISSIONS.

§8-24-5. Municipal planning commission generally. A municipal planning commission shall consist of not less than five nor more than fifteen individuals, the exact number to be specified in the ordinance creating such commission, all of whom shall be freeholders and residents of the municipality, who shall be qualified by knowledge and experience in matters pertaining to the development of the municipality, who shall include representatives of business, industry, labor, real estate, historic preservation, education, health and environmental matters and/or other areas of community development deemed important by the local governing body and who shall be nominated by the administrative authority and confirmed by the governing body of the municipality or appointed by the governing body where the administrative authority and governing body are the same. At least three-fifths of all of the members must have been residents of the municipality for at least one year prior to nomination and confirmation or appointment. One member of the commission shall also be a member of the governing body of the municipality and one member shall also be a member of the administrative department of the municipality, the term of these two members to be coextensive with the term of office to which they have been elected or appointed, unless the governing body and administrative authority of the municipality at the first regular meeting of the commission each year designate others to serve as the municipality's representatives. The remaining members of the commission first selected shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equally as possible between these terms. Thereafter, members shall be selected for terms of three years each. A planning commission shall establish procedures for the removal of any inactive member.
Vacancies shall be filled for the unexpired term only, in the same manner as original selections are made. Members of the commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

**The areas of experience for planning commission members is being broadened. And, a planning commission which has established rules for the removal of inactive members would be able to replace them more effectively than they can now.**

§8-24-6. County planning commission generally. A county planning commission shall consist of not less than five nor more than fifteen individuals, the exact number to be specified in the ordinance creating such commission, all of whom shall be freeholders and residents of the county, who shall be qualified by knowledge and experience in matters pertaining to the development of the county, who shall include representatives of business, industry, labor, real estate, historic preservation, education, health and environmental matters and/or other areas of community development deemed important by the local governing body and who shall be appointed by the county commission. At least three-fifths of all of the members must have been residents of the county for at least one year prior to appointment. One member of the commission shall also be a member of the county commission, the term of such member to be coextensive with the term of office to which he has been elected, unless the county commission at the first regular meeting of the commission each year appoints another member to serve as its representative. The remaining members of the commission first appointed shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equally as possible between these terms. Thereafter, members shall be appointed for terms of three years each. A planning commission shall establish procedures for the removal of any inactive member. Vacancies shall be filled by appointment by the county commission for the unexpired term only. Members of the commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties. An individual may at the same time serve as a member of a municipal planning commission and as a member of a county planning commission.

**The areas of experience for planning commission members is being broadened. And, a**
planning commission which has established rules for the removal of inactive members would be able to replace them more effectively than they can now.

§8-24-7. Advisory members. In the event a municipality which has or shall establish a planning commission is located within or partly within a county which has or shall have a county planning commission, a designated representative of the county planning commission may be an advisory member of the municipal planning commission. A designated representative of a municipal planning commission of a municipality located within or partly within a county which has or shall have a county planning commission may be an advisory member of the county planning commission. A member of a municipal or county historic landmark commission may also serve as an advisory member to a planning commission. All such advisory members shall have all the privileges of membership except the right to vote. Advisory members of any planning commission may be consulted for their opinions and perspectives on related issues and should serve as liaisons to their respective commissions or boards. Advisory members shall not be granted the right to vote.

The appointment of advisory members would become optional. Counties in the eastern panhandle with several municipal planning commissions found the county planning commissions growing by several members once advisory members were appointed. Often, this situation led to municipal advisory members having more power on the county planning commission than the county planning commission members. Additionally, advisory members would not have the right to vote.

§8-24-8. Regular and special meetings. The commission shall fix the time for holding regular meetings, but it shall meet at least once in the months of January, April, July and October. Special meetings of the commission may be called by the president or by at least two members upon written request to the secretary. Whether called by the president or by two or more members, the secretary shall send to all of the members, at least two days in advance of a special meeting, a written notice fixing the date, time and place of the meeting, but written notice of a special meeting is not required if the date, time and place of the special meeting have been fixed in a regular meeting, or if all of the members are present at the special meeting.
§8-24-11. Election of officers. At its first regular meeting in each year the commission shall elect from its members a president and vice president chair and vice-chair. The vice president vice-chair shall have the power and authority to act as president chair of the commission during the absence or disability of the president chair.

§8-24-12. Appointment, duties and compensation of secretary and employees; special and temporary services; legal assistance. Any commission may appoint and prescribe the duties and fix the compensation of a secretary and such employees as are necessary for the discharge of the duties and responsibilities of the commission. All such compensation, however, shall be in conformity to and in compliance with the salaries and compensation theretofore fixed by the governing body or county court of such municipalities or counties. All such appointments shall be approved or rejected by the governing body of the municipality or county. 

*The change clarifies the governing body’s authority to hire employees.*

§8-24-15. Appropriations; expenditures; disposition of gifts; participation in federal public planning assistance programs. After the governing body of a municipality or a county court commission has adopted an ordinance creating a planning commission, the governing body or county court commission shall appropriate funds to carry out the duties of the commission. The planning commission shall have the power and authority to expend, under regular municipal or county procedure as provided by law, all sums appropriated to it for the purposes and activities authorized under this article.

A municipality or county may accept gifts and donations for planning commission purposes. Any moneys so accepted shall be deposited with the municipality or county in a special nonreverting planning commission fund to be available for expenditures by the planning commission for the purpose designated by the donor. The disbursing officer of a municipality or county shall draw warrants against such special nonreverting fund only upon vouchers signed by the president chair and secretary of the planning commission.

A municipal or county planning commission is empowered and authorized to spend funds made available for the purposes of this article, and to accept and use funds provided for the purposes of
this article by the government of the United States and any other agency or group whose interests are in harmony compatible with such purposes, in accordance with federal requirements and subject to such conditions or limitations as the constitution or law of the state may provide. In this connection a municipal or county planning commission is hereby expressly authorized to participate in the federal planning assistance programs as set forth in the "Federal Housing Act of 1954," as amended, and any subsequent acts.

PART IV. SAME -- COMPREHENSIVE PLAN.

§8-24-16. Comprehensive plan for physical development of territory -- Generally. A planning commission shall make and recommend for adoption to the governing body of the municipality or to the county court commission, as the case may be, a comprehensive plan for the physical development of the territory within its jurisdiction. Any county plan may include the planning of towns or villages municipalities to the extent to which, in the commission's judgment, they are related to the planning of the unincorporated territory of the county as a whole: Provided, That the plan shall not be considered as a comprehensive plan for any town or village municipality without the consent of any planning commission and the governing body of such town or village municipality. The county plan shall be coordinated with the plans of the state road commission, insofar as it relates to highways or thoroughfares under the jurisdiction of that commission. A county planning commission may prepare, and the county court commission is empowered and authorized to adopt, a comprehensive plan and zoning ordinance for either the entire county, or for any part or parts thereof which constitute an effective region or regions for planning and zoning purposes without the necessity of adopting a plan and ordinance for any other part. In determining what constitutes an effective region or regions for planning and zoning purposes, due consideration shall be given to such factors as population density, health, general welfare, water and sanitation wastewater requirements, and future potential for residential, commercial, industrial or public use. The procedure for the preparation and adoption of a comprehensive plan and zoning ordinance for a part of such county shall be the same as the procedure for the preparation and adoption of a comprehensive plan and zoning ordinance for the entire county, except that the election provided for in section forty-eight of this article shall be restricted to the qualified.
electors residing within the part or parts affected.

The comprehensive plan, with the accompanying maps, plats, charts and descriptive and explanatory matter, shall show recommendations for the development of the territory covered by the plan and may include, among other things, the general location, character and extent of streets, viaducts, bridges, waterways and waterfront developments, historic districts or sites, parkways, playgrounds, recreational facilities, forests, reservations, parks, open space preservation areas, viewsheds, airports and other public ways, grounds, places and spaces; the general location and extent of publicly owned utilities and terminals, and other purposes; the acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment or change of use of any of the foregoing public ways, grounds, places, spaces, buildings, properties, utilities or terminals; the general character, location and extent of community centers, heritage tourism sites, historic sites or districts, municipal sites or housing developments; the general location and extent of forests, agricultural areas and open-development areas for the purposes of conservation, food and water supply, sanitary drainage, wastewater facilities or the protection of urban development; a land classification and utilization program; the distribution of population, and the uses of land for trade, industry, habitation, residential, commercial, industrial, recreation, historic preservation, agriculture, forestry, soil and water conservation and other purposes.

In the preparation of a comprehensive plan, a planning commission shall make careful and comprehensive surveys and studies of the existing conditions, governmental services and functions, and probable future changes of such conditions, governmental services and functions within the territory under its jurisdiction. The comprehensive plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious compatible development of the area which will, in accordance with present and future needs, governmental services and functions, best promote the health, safety, morals, order, convenience, prosperity or general welfare of the inhabitants, as well as efficiency and economy in the process of development, including, among other things, such distribution of population and of the uses of land for urbanization, trade, industry, habitation, residential, commercial, industrial, recreation, tourism, agriculture, forestry and other purposes as will tend: (1) To create conditions favorable to health, safety, transportation, prosperity, civic activities, and recreational, educational, and
cultural opportunities and historic resources; and (2) To reduce the wastes of physical, financial or human resources which result from either excessive congestion or excessive scattering of population; and
(3) To reduce the destruction or demolition of historic sites and other resources; and (3) Toward the efficient and economic utilization, conservation and production of the supply of food and water and of drainage, sanitary and other facilities and resources.
(4) To promote the efficient and sustainable utilization, conservation and supply of natural resources; and,
(5) To promote cost-effective development of community facilities and services within the jurisdiction’s ability to pay for such.

§8-24-17. Comprehensive plan for physical development of territory Same -- Contents. A comprehensive plan, may include the following or a study of the following should include, but not be limited to, the following related basic elements: (a) Careful and comprehensive surveys and studies of existing conditions and the probable future growth of the municipality and its environs or of the county; A statement of goals and objectives of the county or municipality concerning its present and future development, including but not limited to, the location and character of development; (b) Maps, plats, charts and descriptive material presenting basic information, locations, extent and character of any of the following: (1) History, population and physical site conditions; (2) Land use, including the height, area, bulk, location and use of private and public structures and premises; A land use element which designates the proposed general distribution, location, intensity, extent and timing of such uses of land including residential, commercial, industrial, agricultural, recreational, educational, community facilities, open space, transportation, historic preservation and categories of private and public uses of land as may be appropriate to the community; such element shall include identification and analysis of important natural, cultural and historic preservation resource areas and physical constraints to development, including flood hazard areas, in order to identify prime development areas and environmentally-sensitive areas; (3) Population densities; A housing element consisting of plans and programs to meet the housing needs of all
household types and income levels in the community, including preservation of sound housing, rehabilitation of existing housing, construction of new housing, elimination of blight, and community redevelopment initiatives; (4) Community centers and neighborhood units; (5) Blighted and slum areas; (6) Streets, including bridges, viaducts, subways, parkways and other public ways and places;

(4) A transportation element consisting of the general location and extent of existing and proposed roadways, parking facilities, transit systems, pedestrian and bikeway systems, air travel facilities, port facilities, railroad facilities and all other modes of transportation that may be appropriate, all correlated with the land use element of the plan;

(5) A community facilities and services element consisting of general plans for water, wastewater, solid waste disposal, stormwater management, utilities, police and fire protection, hospitals, emergency medical services, disaster relief and civil defense, libraries and cultural facilities, public and private education, parks and recreation, historic sites, heritage tourism areas and other similar facilities, services and uses;

(6) An economic development element comprised of appropriate studies and an economic development plan consisting of identification of sites and employment sectors appropriate for future development and expansion, as well as areas which should be preserved and nurtured as heritage tourism sites;

(7) Sewers, sanitation and drainage, including handling, treatment and disposal of excess drainage waters, sewage, garbage, refuse, wastes, ashes, trash and other similar matters;

(8) Stream pollution;

(9) Flood control and prevention;

(10) Public and private utilities, including water, light, heat, communication and other services;

(11) Transportation, including rail, bus, truck, air and water transport and their terminal facilities;

(12) Local mass transportation, including motor and trolley busses; street, elevated or underground railways and taxicabs;

(13) Parks and recreation, including parks, playgrounds, reservations, forests, wildlife refuges and other public grounds, spaces and facilities of a recreational nature;

(14) Public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions and other civic and social service buildings;

(15) Education,
including location and extent of schools, colleges and universities; (16) Land utilization, including residence, industry, agriculture, forests and other uses; (17) Conservation of water, soil, agricultural and mineral resources; and (18) Any other factors which are a part of the physical, economic or social situation within the municipality or county;

(c) Reports, maps, charts and recommendations setting forth plans for the development, redevelopment, improvement, extension and revision of the subjects and physical situations of the municipality or county set out in subdivision (b) of this section so as to substantially accomplish the objective set forth in section one of this article; An action plan of short and long range implementation strategies which may include a variety of plans, programs and other appropriate actions; (d) A long-range development capital improvement program of public works projects, based on the recommended plans of the commission, for the purpose of eliminating unplanned, unsightly, untimely and extravagant projects and with a view to stabilizing industry and employment, and the keeping of such program up to date by yearly revisions; and 

(e) A long-range financial program of governmental expenditures in order that such development program may be carried out, and the keeping of such program up to date, for all separate taxing units within the municipality or county, respectively, for the purpose of assuring efficient and economic use of public funds; A statement describing the initiatives to be undertaken to further regional planning with adjacent municipalities and counties, including a review of available planning and related documents for coordination with the plans of surrounding units of government; and 

(f) Any other such elements that the planning commission may deem appropriate for the community.

The requirements for what constitutes a comprehensive plan have been significantly broadened and updated to reflect current policies of the American Planning Association. Currently, there is no state standard and very little guidance in state law for communities which undertake the preparation of comprehensive plans.

§8-24-17a. Same – Time frame for preparation, adoption and updating of comprehensive plan.

A planning commission shall, to the greatest extent feasible and affordable, prepare and recommend for adoption to the local governing body a comprehensive plan for the development
of the territory under its jurisdiction that meets the requirements of this article within five years of the date of appointment of the initial commission members for newly created planning commissions or no later than the last day of July, two thousand eight, for existing planning commissions. Failure to comply with the above requirements shall not constitute grounds for dissolution of or withdrawal of funding for a duly constituted planning commission by the local governing body.

A planning commission shall review its comprehensive plan no less frequently than every five years and shall thoroughly revise and update, to the greatest extent feasible and affordable, its comprehensive plan no less frequently than every ten years. Any substantial change or amendment to any comprehensive plan after the first day of July, two thousand three, shall conform to the requirements of this article.

This new section strongly encourages, but does not require, counties and municipalities to prepare comprehensive plans within five years of the approval of these changes and review the plans periodically thereafter.

§8-24-18. Comprehensive plan for physical development of territory -- Notice and public hearing. Same – Public participation in the planning process. Prior to the adoption of a comprehensive plan, a commission shall give notice, as hereinafter in this section specified, and hold a public hearing on the plan and the proposed ordinance for its enforcement. At least thirty days prior to the date set for hearing, the commission shall publish a notice of the date, time and place of the hearing as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality or county, as the case may be.

In undertaking the comprehensive planning process, planning commissions and local governmental units should adopt procedures designed to provide effective process, including identification of development problems, concerns and needs; formulation of goals, objectives, policies and alternatives; and formulation of implementing ordinances and programs. The provisions and procedures required in this article are set out as the minimum requirements.
With respect to a proposed plan or amendments thereto, the governing body of the municipality or the county commission shall adopt procedures for broad dissemination of the proposals and alternatives, opportunity for written comments, public hearings as provided herein, open discussions, communications programs, information services and consideration of and response to public comments.

Prior to considering the adoption of a new comprehensive plan or an amendment to an existing comprehensive plan, a local planning commission shall give notice, as specified in this section, and shall hold a public hearing on the plan and any proposed ordinances for its implementation. At least thirty days prior to the date set for hearing, the local planning commission shall publish notice of the date, time and place of the hearing as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication for such notice shall be the municipality or county, as the case may be.

The public participation requirements for preparing and adopting a comprehensive plan are clarified.

§8-24-27. Cooperation between planning commissions; cooperation between commissions and governing and administrative bodies and officials. Same – Intergovernmental review and coordination of plans. In the exercise of the powers and authority granted by this article, the planning commission of any municipality or county may cooperate with the planning commissions or governing and administrative bodies and officials of other municipalities within or without such county and of other counties, with a view to coordinating and integrating the planning and zoning of such municipality or county with the plans of such other municipalities and of such other counties, and may appoint such committee or committees and may adopt such rules and regulations as may be thought proper to effect such cooperation. Such planning commissions and governing and administrative bodies and officials of other municipalities and counties are hereby authorized to cooperate with such municipal or county planning commissions for the purposes of such coordination and integration. Similarly, such municipal or county planning commissions may
cooperate with the division of environmental protection of this state and make use of advice and information furnished by such division and by other appropriate state and federal officials, departments and agencies, and all state departments and agencies having information, maps and data pertinent to the planning and zoning of such municipality or county may make such available for the use of such planning commissions.

Upon preparation of a proposed comprehensive plan or plan amendment and at least thirty days prior to the public hearing required in section eighteen of this article, the commission shall forward a copy of the proposed plan or amendment to the planning commissions of all contiguous municipalities and counties for their review and comment with respect to coordination with their existing plans. Where no such planning commission exists, a copy of the same shall be forwarded to the governing body of the municipality or the county commission. In addition, a copy of the plan or amendment shall be forwarded to the local county board of education, the appropriate regional planning and development council, the West Virginia Public Service Commission, the West Virginia State Historic Preservation Office, the West Virginia Department of Transportation and to the West Virginia Development Office for review and comment with respect to coordination with their plans and policies.

The comments of these entities shall be considered by the commission prior to the adoption of the comprehensive plan or amendment, but, if these units fail to respond within thirty days, the commission may proceed without their comments.

Upon adoption of the final plan or amendment, a copy shall be forwarded to the above entities for their information and use.

Counts and municipalities which prepare comprehensive plans would be required to forward copies of the plan to regional and state agencies for their review and comment. Counties and municipalities would not be required to comply with a regional or state agency’s recommendations but would have the comments for consideration.

§8-24-27a. Same – Consideration of planned construction; Report of findings.

When the a governing body of a municipality or a county commission has adopted and certified
the comprehensive plan, all local governmental entities operating within the geographic
jurisdiction of the commission who plan to undertake the construction or acquisition of a new
public facility or the expansion or extension of an existing public facility of a type embraced
within the comprehensive plan shall submit a copy of such plans to the commission prior to
initiating construction. Maintenance, repair and renovation of existing public facilities shall be
exempt from this requirement. The commission shall review such plans for consistency with the
comprehensive plan and report its findings in writing as to their consistency, inconsistency and
any other problems pertaining thereto to the applicant jurisdiction and the local governing body
within thirty days of the receipt of such plans. If the commission fails to report its findings within
this time period, this requirement shall be deemed to have been met.

Local government entities proposing the expansion or construction of new public facilities
located within the jurisdiction of counties and municipalities with approved comprehensive
plans would be required to seek certification of compliance from the county or municipality
stating that the proposed expansion or new construction is in compliance with the approved
comprehensive plan.

§8-24-28. Subdivision plats—Approval required prior to recordation.

After a comprehensive plan and an ordinance containing provisions for subdivision control and
the approval of plats and replats have been adopted by the governing body of the municipality or
by the county court and a certified copy of the ordinance has been filed with the clerk of the
county court (being in the case of a municipal plan and ordinance the county court of the county
in which the municipality is located), a plat of a subdivision shall not be recorded by the clerk of the
such county court unless it has first been approved by the planning commission having jurisdiction
over the area. If in the case of a municipal plan and ordinance, the municipality is located in more
than one county, a certified copy of the ordinance shall be filed with the clerk of the county court
of each such

county.

§8-24-29. Subdivision plats—Application for approval; notice and
hearing.
A person desiring the approval of a plat shall submit a written application for approval, together with a copy of the proposed plat, to the planning commission having jurisdiction.

Upon receipt of the application, the commission, if it tentatively approves the application, shall set a date, time and place for a hearing, notify the applicant in writing, and notify by publication in the manner specified in section eighteen of this article or otherwise any person or governmental unit having a probable interest in the proposed plat.

§8-24-30. Subdivision plats—Basis for commission's action upon application for approval.

In determining whether an application for approval shall be granted, the commission shall determine if the plat provides for:

(1) Coordination of subdivision streets with existing and planned streets;

(2) Coordination with and extension of facilities included in the comprehensive plan;

(3) Establishment of minimum width, depth and area of lots within the projected subdivision;

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

(5) Fair allocations of areas for streets, parks, schools, public and semipublic buildings, homes, utilities, business and industry.

As a condition of approval of a plat the commission may specify:

(1) The manner in which streets shall be laid out, graded and improved;

(2) Provisions for water, sewage and other utility services;
(3) Provision for schools;
(4) Provision for essential municipal services;
and
(5) Provision for recreational facilities.

§8-24-31. Subdivision plats—Effect of approval or disapproval.
After hearing and within a reasonable time after the filing of an application for approval of the plat, the commission shall approve or disapprove it. If the commission approves the application, it shall affix the commission's seal upon the plat. If it disapproves the application, it shall set forth its reasons in its own records and provide the applicant with a copy thereof.

§8-24-32. Subdivision plats—Application fees.
The commission may establish a uniform schedule of fees proportioned to the cost of checking and verifying proposed plats. An applicant shall pay the specified fee at the time of filing his application.

§8-24-33. Subdivision plats—Plats filed without approval.
After a comprehensive plan and an ordinance containing provisions for subdivision control and the approval of plats and replats have been adopted and a certified copy of the ordinance has been filed with the clerk of the county court as aforesaid, the filing and recording of a plat involving the subdivision of lands covered by such comprehensive plan and ordinance shall be without legal effect unless approved by the commission: Provided, That failure to comply with this section shall not invalidate or affect the title to any land within the area of such plat: Provided, however, That if such plat shall bear the seal of the commission it shall be presumed to have been approved.
§8-24-34. Subdivision plats -- Conditional approval; bonds.
The commission may approve a plat for a subdivision in which the improvements and installations have not been completed as required by the ordinance for the approval of plats if the applicant provides a bond which shall:

1) Run to the municipality or county which established the commission;
2) Be in an amount determined by the commission to be sufficient to complete the improvements and installations in compliance with the ordinance;
3) Be with surety satisfactory to the commission;
and
4) Specify the time for the completion of the improvements and installations.
Any funds received from any such bonds shall be used by the legally constituted body charged with making public improvements for the municipality or county only for completion of the improvements and installations for which such bonds were provided, and without prior appropriation. The municipality or county is hereby authorized to make these improvements and installations.

§8-24-35. Same -- Jurisdiction and control; inconsistent provisions for platting control repealed.
After a comprehensive plan and an ordinance containing provisions for subdivision control and the approval of plats and replats have been adopted and a certified copy of the ordinance has been filed with the clerk of the county court as aforesaid, the municipal planning commission, in the
case of a municipal plan and ordinance, shall have exclusive control over the approval of all plats involving land covered by such municipal plan and ordinance and located within the corporate limits of such municipality, and the county planning commission, in the case of a county plan and ordinance, shall have exclusive control over the approval of plats involving unincorporated lands covered by such county plan and ordinance and located within its jurisdiction.

All control over plats granted by other statutes, so far as such statutes are in harmony with the provisions of this article, shall be transferred to the commission having jurisdiction over the lands involved. Existing provisions for platting control, so far as they are inconsistent with the provisions of this article, are hereby repealed to the extent of such inconsistency.

The subdivision regulatory provisions have been rewritten entirely to encompass land development regulations. When developed, adopted and administered together, a Subdivision and Land Development Ordinance offers better protection to a community from financial loss due to poor quality development. The land development regulations would permit a county or municipality to regulate how a development is constructed, thereby regulating the quality of the development. But the two basic issues of zoning, the where and what, are not regulated.

PART V. SAME -- SUBDIVISION AND LAND DEVELOPMENT ORDINANCE.

§8-24-28. Subdivision and land development ordinance – Grant of power.

The governing body of a municipality or county may regulate subdivisions and land development within their respective jurisdictions by enacting a subdivision and land development ordinance. The ordinance shall require that all subdivision and land development plats of land situated within the respective jurisdiction of the county or municipality shall be submitted for approval to the respective planning commission prior to recordation of the subdivision or land development plat and prior to the initiation of any land development activity.

Any municipality may adopt by reference the subdivision and land development ordinance of the county in which it is located, and may by separate ordinance designate the county planning...
commission, with the county planning commission’s concurrence, as its municipal planning commission for review and approval of plats.

§8-24-29. Subdivision and land development ordinance – Contents of ordinance.

The subdivision and land development ordinance may include, but need not be limited to:

(1) Provisions for the submittal and processing of plats, including the charging of review fees, and specifications for such plans, including certification as to the accuracy of plats and provisions for preliminary and final approval and for processing of final approval by stages or sections of development.

(2) Provisions for the exclusion of certain land development from the definition of land development as defined in this chapter only when such land development involves:

(i) the conversion of an existing single family dwelling unit into not more than two, attached residential dwelling units; or

(ii) an accessory building, including farm buildings, on a lot or lots subordinate to a principal building.

(3) Provisions for insuring that:

(i) the layout or arrangement of the subdivision or land development shall conform to the comprehensive plan and to any regulations or maps adopted in furtherance thereof;

(ii) streets in and bordering a subdivision or land development shall be coordinated, and be of such widths and grades and in such locations as deemed necessary to accommodate prospective traffic, and facilitate fire protection;

(iii) adequate easements or rights-of-way shall be provided for drainage and utilities;

(iv) reservations, if any, by the developer of any area designed for use as public grounds shall be suitable size and location for their designated uses; and,

(v) land which is subject to flooding or subsidence either shall be made safe for the
purpose for which such land is proposed to be used, or that such land shall be set aside for uses which shall not endanger life or property or further aggravate or increase the existing menace.

(4) Provisions concerning the standards by which streets shall be designed, graded and improved, and walkways, curbs, gutters, street lights, fire hydrants, water and wastewater facilities and other improvements shall be installed. The standards shall insure that the streets be improved to such a condition that the streets are passable for vehicles which are intended to use that street; Provided, however, that no municipality shall be required to accept such streets for public dedication until the streets meet such additional standards and specifications as the municipality may require for public dedication.

(5) Provisions which apply uniformly throughout the county or municipality regulating minimum setback lines and minimum lot sizes which are based upon the availability of water and wastewater, in the event the county or municipality has not enacted a zoning ordinance.

(6) Provisions for encouraging and promoting flexibility, economy and ingenuity in the layout and design of subdivisions and land developments, including provisions authorizing alterations in site requirements and for encouraging other practices which are in accordance with modern and evolving principles of site planning and development.

(7) Provisions for encouraging the use of renewable energy systems and energy-conserving building design.

(8) Provisions for soliciting reviews and reports from adjacent counties and municipalities and other governmental agencies affected by the plans.

(9) Provisions for administering variances to the minimum standards of the ordinance in accordance with this section, when the literal compliance with mandatory provisions is shown to the satisfaction of the planning commission to be unreasonable, to cause undue hardship, or when an alternative standard can be demonstrated to provide equal or better results.

(10) Provisions for the approval of the plat, whether preliminary or final.

(11) Provisions and standards for insuring that new developments incorporate adequate provisions
for a reliable, safe and adequate water supply to support intended uses within the capacity of available resources.


Before a governing body votes on the enactment of a proposed subdivision and land development ordinance, the planning commission shall first hold at least one public hearing thereon pursuant to public notice. The public notice shall be published in a local newspaper of general circulation no less than thirty days prior to the public hearing. A brief summary setting forth the principal provisions of the proposed ordinance and a reference to the place or places in the county or municipality where copies of the proposed ordinance may be secured or examined shall be incorporated in the public notice. In the event substantial amendments are made by the governing body in the proposed ordinance prior to the governing body voting on the ordinance but after the public hearing has been held, the governing body shall at least fifteen days prior to enactment, readvertise in one newspaper of general circulation a brief summary setting forth all the provisions in reasonable detail together with a summary of the amendments.

§8-24-31. Subdivision and land development ordinance – Amendments to the ordinance.

Amendments to the subdivision and land development ordinance shall be made in accordance with section twenty-three of this article.


Where a subdivision and land development ordinance has been enacted by a municipality or county, no subdivision or land development of any lot, tract or parcel of land shall be made, no street, sanitary sewer, storm sewer, water main or other improvements in connection therewith shall be laid out, constructed, opened or dedicated for public use or travel, or for the common use of occupants of buildings abutting thereon, except in accordance with the provisions of such ordinance.

A subdivision or land development plat, deed description, land lease contract or other legal
document describing a subdivision or land development shall not be recorded by the county clerk unless it has first been approved by the planning commission having jurisdiction over the area. If in the case of a municipal plan and ordinance where the municipality is located in more than one county, a certified copy of the ordinance shall be filed with the county clerk of each county.

§8-24-33. Subdivision and land development ordinance – Approval of applications.

In determining whether an application for approval shall be granted, a planning commission shall determine if the subdivision or land development plat provides for:

(1) A subdivision or land development plan which conforms to the comprehensive plan and to any regulations or maps adopted in furtherance thereof;

(2) The coordination of streets, sidewalks and pedestrian pathways in and bordering a subdivision or land development, including the width, grade and location for the purpose of accommodating prospective traffic and facilitating fire protection;

(3) Adequate easements or rights-of-way for drainage and utilities;

(4) Reservations if any by the developer of any area designed for use as public grounds suitable in size and location for their designated uses;

(5) The appropriate designation and use of land which is subject to flooding or subsidence with plans for making it safe or that such land be set aside for uses which shall not endanger life or property or further aggravate or increase the existing menace;

(6) Standards by which proposed streets shall be designed, graded and improved; walkways, curbs, gutters, street lights, fire hydrants, water and wastewater facilities and other improvements installed; and, drainage, erosion and sediment control measures implemented;

(7) The established minimum setbacks and minimum lot sizes based upon the availability of water and wastewater;

(8) The adequate provision for a reliable, safe and adequate water supply to support intended uses within the capacity of available resources;

(9) Coordination of the anticipated increase in residential population resulting from the new
development with the respective board of education;

(10) Adequate and appropriate recreational and open space facilities; and,

(11) An estimation of the cost of the public works, municipal services and functions to be obligated in any way by or for a local unit of government as a result of the proposed development.

§ 8-24-34. Subdivision and land development ordinance – Effect of approval or denial of application.

After a public hearing and within forty-five days time after the filing of a complete application for approval of the plat, the planning commission shall approve or deny it. If the commission approves the application, it shall affix the commission's seal upon the plat. If it denies the application, it shall set forth its reasons in its own records and provide the applicant with a copy thereof.

§ 8-24-35. Subdivision and land development ordinance – Recording plats and deeds.

After a subdivision and land development ordinance has been adopted and a certified copy of the ordinance has been filed with the clerk of the county court, the filing and recording of a plat, deed description, land lease contract or other legal document describing a subdivision of land or land development and covered by such ordinance shall be without legal effect unless approved by the commission: Provided, That failure to comply with this section shall not invalidate or affect the title to any land within the area of such plat: Provided, however, That if such plat shall bear the seal and signature of the commission it shall be presumed to have been approved thereby.

Upon approval of a plat, the developer shall within ninety days of such final approval record such plat with the office of the county clerk. The recording of the plat shall not constitute grounds for assessment increases until such time as lots are sold or improvements are installed on the land included within the subject plat.

Once a subdivision is approved by the planning commission, the developer would be required...
to record the approved plat within sixty days to eliminate confusion within the offices of the county clerk and tax assessor once the lots are sold and legal descriptions of the newly subdivided lots are needed for legal purposes. Additionally, all legal instruments including plats, deed descriptions, land lease contracts, etc. which have the effect of subdividing land could not be recorded until approved by the planning commission.

§8-24-35a. Subdivision and land development ordinance – Conditional approval; bonds.

The planning commission may approve a subdivision or land development plat for which the improvements and installations have not been completed as required by the ordinance for the approval of such plats if the applicant provides a bond which shall:

(1) Run to the municipality or county which established the commission;
(2) Be in an amount determined by the commission to be sufficient to complete the improvements and installations in compliance with the ordinance;
(3) Be with surety satisfactory to the commission; and
(4) Specify the time for the completion of the improvements and installations.

Any funds received from any such bonds shall be used by the legally constituted body charged with making public improvements for the municipality or county only for completion of the improvements and installations for which such bonds were provided, and without prior appropriation. The municipality or county is hereby authorized to make these improvements and installations.

§8-24-35b. Subdivision and Land Development Ordinance – Maintenance or homeowners’ associations required in subdivisions outside the corporate limits of a municipality; Maintenance of the streets, roads, common areas, water, wastewater and storm sewer
systems of the subdivision by the association.

Every subdivision situated outside the corporate limits of a municipality and comprised of five or more lots and/or requiring capital improvements, the plat of which is submitted for approval on or after the first day of July, two thousand three, shall include plans for the establishment of a maintenance or homeowners’ association, including provisions for the maintenance by the association of all subdivision improvements not dedicated to and accepted by a public body or utility including streets, roads, common areas, water, wastewater and storm sewer systems within the bounds or along the perimeter of the subdivision. The provisions of this section shall also apply to the subdivisions located within corporate limits when the streets or other common facilities are not dedicated to the municipality.

Counties and municipalities which adopt subdivision and land development regulations would be required to include a provision requiring the establishment of homeowners and/or maintenance associations within all new subdivisions. This action would create an entity comprised of property owners within the subdivision who would be legally and financially responsible for maintaining and improving all capital improvements within the subdivision. This requirement would protect the county or municipality from financial loss due to poor development practices.

§8-24-35c. Subdivision and land development ordinance – Enforcement remedies.

Any person violating the provisions of any subdivision and land development ordinance enacted under this article or prior enabling laws is subject to a fine of not more than five hundred dollars or less than one hundred dollars plus court costs and reasonable attorney fees incurred by the governing body as a result thereof. Each day that the violation exists shall constitute a separate violation.

The penalties for violating the subdivision and land development regulations of a local unit of government are specified and the ability of a unit of government to recover legal expenses incurred in the prosecution of violators would be clarified.

PART VI. SAME -- IMPROVEMENT LOCATION PERMITS.

§8-24-36. Improvement location permits -- Conformity of structure to comprehensive plan and ordinance. After a comprehensive plan and an ordinance containing provisions for
subdivision and land development control and the approval of plats and replats have been adopted and a certified copy of the ordinance has been filed with the clerk of the county court commission as aforesaid, within the corporate limits of the municipality, a structure shall not be located and an improvement location permit for a structure on platted or unplatted lands shall not be issued unless the structure and its location conform to are consistent with the community development objectives of the municipality's comprehensive plan and ordinance. A structure shall not be located and an improvement location permit shall not be issued for a structure on unincorporated lands within the jurisdiction of the county planning commission unless the structure and its location conform to are consistent with the community development objectives of the county's comprehensive plan and ordinance.

§8-24-37. Improvement location permits – Authority to issue and control. The ordinance may designate the official or employee of the municipality or county who shall have authority to issue and control improvement location permits within the jurisdiction of the commission and in conformity which are consistent with the community development objectives of the comprehensive plan and ordinance.

§8-24-37a. Improvement location permits – Fee for processing permit.

The governing body of any county or municipality may prescribe and charge a reasonable fee, not to exceed the estimated actual cost of review, for processing an improvement location permit application.

The revisions would require that counties and municipalities with approved comprehensive plans and subdivision and land development ordinances approve building permits if they are in compliance with the approved plan and ordinance. A clarification that units of local government may charge a reasonable fee to review building permit applications has also been added.
PART VIII. URBAN AND RURAL ZONING -- ZONING GENERALLY.

§8-24-39. Zoning authority generally. After a comprehensive plan has been adopted by the governing body of a municipality or county commission, a zoning ordinance may be prepared and adopted pursuant to this article. As an integral part of the planning of areas so that adequate light, air, convenience of access, and safety from fire, flood and other danger may be secured; that congestion in the public streets may be lessened or avoided; that the public health, safety, comfort, morals, convenience and general public welfare may be promoted; that the preservation of historic landmarks, sites, districts and buildings be promoted; and that the objective set forth in section one of this article may be further accomplished, the governing body of a municipality or a county commission shall have the following powers:

(a) To classify, regulate and limit the height, area, bulk and use of buildings hereafter to be erected;

(b) To regulate the height, area, bulk, exterior architectural features and use of buildings hereafter to be erected within designated historic districts, and within corridor overlay districts established to achieve urban design goals for said corridors as set forth in the comprehensive plan;

(c) To regulate the alteration of exterior architectural features of buildings within historic districts and to regulate the alteration of historic landmarks and sites, and within corridor overlay districts established to achieve urban design goals for said corridors as set forth in the comprehensive plan;

(d) To regulate and determine the area of front, rear and side yards, courts and other open spaces about such buildings;

(e) To regulate and determine the use and intensity of use of land and lot areas;

(f) To classify, regulate and restrict the location of trades, callings, industries, commercial enterprises, commercial and industrial land uses and the location of buildings designed for specified uses;

(g) To regulate and control, or prohibit in certain areas, junk yards, salvage yards, used parts yards, dumps or automobile or appliance graveyards, or the maintenance and operation of secondhand stores or outlets in residential areas;

(h) To classify and designate the rural lands among agricultural, industrial, commercial, residential and other uses and purposes; and

(i) To divide the municipality or county into districts of such kind, character, number, shape and area as may be deemed necessary to carry out the purposes of this section recommended in the adopted comprehensive plan of the municipality or county; and,

(j) To establish design standards relating to architectural form, massing, scale, material construction, and aesthetic appearance for non-residential and non-industrial buildings located in
any zoning district.

The requirement for preparing and adopting a comprehensive plan prior to preparing and adopting a zoning ordinance is clarified. Additional zoning elements have been added to allow counties and municipalities to utilize more creative mechanisms for managing, protecting and regulating land use within their jurisdiction. And, the regulation of design elements on structures located outside of historic districts would be permitted.

§8-24-39a. Same – Additional powers.

Any governing body of a municipality or a county commission may adopt zoning regulations which may include any of the following provisions:

(1) Conditional uses. – In any district, certain uses may be permitted only by approval of the planning commission if general and specific standards to which each permitted use must conform are prescribed in the zoning regulations and if the planning commission after public notice and public hearing determines that the proposed use will conform to such standards. Such general standards shall require that the proposed conditional use may not adversely affect:

   (a) The capacity of existing or planned community facilities;
   (b) The character of the area affected; or
   (c) Traffic on roads and highways in the vicinity.

Such specific standards may include requirements with respect to:

   (a) Minimum lot size;
   (b) Distance from adjacent or nearby uses;
   (c) Minimum off-street parking and loading facilities;
   (d) Landscaping and screening; and,
   (e) Any other factors the zoning regulations may include.

In granting such conditional use, the commission may attach such additional reasonable conditions and safeguards as it may deem necessary to implement the purpose of this chapter and the zoning regulations.
(2) Parking and loading facilities. – Provisions setting forth standards for permitted and required facilities for off-street parking and loading which may vary by district and by uses within each district. The regulations may also include provisions covering the location, size, and design, access, landscaping and screening of the facilities.

(3) Site plan approval. – As prerequisite to the approval of any use other than one and two-family dwellings, the approval of site plans by the commission may be required. Upon recommendation by the commission, any governing body of a municipality or a county commission may adopt zoning regulations setting forth objective standards for the adequacy of traffic access, vehicle circulation and parking, drainage, landscaping and screening, the preservation of adequate natural light, and other zoning elements described within the community development objectives of the adopted comprehensive plan. The commission may deny a site plan for any use other than one and two-family dwellings if the site plan fails to meet the zoning standards established by the governing body of a municipality or county commission.

(4) Design control districts. – Zoning regulations may contain provisions for the establishment of design control districts. Prior to the establishment of such district, the commission shall prepare a report describing the particular planning and design issues of the proposed district and setting forth a design plan for the areas which shall include recommended planning and design criteria to guide future development. The commission shall hold a public hearing, after public notice, on such report. After the hearing, the commission may recommend to the governing body such design control district. A design control district can be created for any area containing sites or structures of historical, architectural or cultural merit and other areas in which there is a concentration of community interest and participation such as a central business district, civic center or similar grouping or focus of activities. No structure may be erected, reconstructed, substantially altered, restored, moved, demolished or changed in use or type of occupancy within a designated design control district without approval of the plans by the planning commission. A design review board may be appointed by the governing body of the municipality or county to advise the commission, which board shall have such term of office and procedural rules, as the governing body determines.

(5) Flood plain areas, special control. – Within any area designated by the U.S. Army Corps of Engineers as subject to periodic flooding, the permitted uses, type of construction, and height of
floor levels above base flood elevation may be regulated in order to lessen or avoid the hazards to persons and damage to property resulting from the accumulation of storm or flood waters.

(6) Airport hazard area. – Any governing body may adopt special zoning regulations governing the use of land, location and size of buildings and density of population within the distance of two miles from the boundaries of an airport under an approach zone and for a distance of one mile from the boundaries of such airport elsewhere. The designation of such area and the zoning regulations therein shall be approved by the West Virginia Aeronautics Commission.

(7) Planned unit developments. – Any governing body may adopt zoning regulations providing for planned unit developments to encourage new and/or mixed use communities, innovation in design and layout, and more efficient use of land. The modification of zoning regulations by the commission may be permitted simultaneously with the approval of a subdivision plat subject to the conditions set forth in this subsection. Any local zoning regulations containing provisions for planned unit developments shall describe the standards and conditions by which a proposed planned development may be evaluated. The commission may prescribe from time to time, rules to supplement the standards and conditions set forth in the zoning regulations, provided the rules are not inconsistent with the zoning regulations. The commission shall hold a public hearing after public notice, prior to the establishment of any supplementary rules. The zoning regulations may authorize the commission to allow for a greater density or intensity of land use within some sections of the development. The zoning regulations may require that the approval by the commission of greater density or intensity of land use for any section to be developed be offset by a lesser concentration in other sections or by an appropriate reservation of common open space on the remaining land by means of grant of easement or by covenant to the governmental unit.

(8) Exterior architectural features. – A governing body of a municipality or a county commission may establish, by ordinance, reasonable exterior architectural features applicable to residential and commercial structures within its jurisdiction.

A governing body of a municipality or a county commission may not subject an applicant to locate or install a factory-built housing unit on a lot or parcel zoned or regulated for single-family residential dwelling, to any administrative permit, planning or development process, regulation or requirement, which is not identical to the administrative permit, planning, or development
process, regulation or requirement which would be imposed on a site-built single family residential
dwelling on the same lot or parcel. Factory-built housing shall be considered a permitted use in all
residential districts and shall be accepted at the permitted density for the district. A governing
body of a municipality or a county may establish reasonable aesthetic standards for factory-built
housing within its jurisdiction, including foundation requirements, building setbacks, subdivision
control, architectural landscaping, square footage and other local site requirements applicable to
single-family dwellings. However, these standards and the process for applying them shall be no
more restrictive for factory-built housing than for housing units constructed on site. A governing
body of a municipality or a county may also establish reasonable standards for manufactured
housing for unique public safety requirements such as wind, snow and roof loads in accordance
with 24 CFR Ch. XX §3280.305. Nothing in this section shall be construed to pre-empt or
supersede valid restrictive covenants running with the land.

In accordance with generally accepted planning principles, the elements which a county or
municipality may incorporate in a zoning ordinance would be significantly expanded,
providing the jurisdictions with greatly enhanced abilities to create, redevelop, re-use,
protect, and enhance the desired physical qualities of their individual communities.

PART IX. SAME -- ZONING DISTRICTS.

§8-24-40. Zoning districts -- Generally. The various kinds of districts created and designated as
use, height, area, volume or bulk districts, as well as districts created for any other purpose
necessary to carry out the purposes of section thirty-nine of this article, need not necessarily cover
or include the same territory, and may overlap or coincide. The districts created shall also be
subject to the following:(1) Rules and regulations as to height, area, bulk and use of buildings and
as to the area of all yards, courts and open spaces shall be uniform for each class of buildings
throughout each district;(2) For each district designated for the location of trades, callings,
industries, commercial enterprises commercial and industrial land uses or buildings designated for
specified uses, rules and regulations may be enforced specifying uses that shall be excluded or
subjected to reasonable requirements of a special nature and designating the use for which
buildings may not be erected, altered or used;(3) The rules and regulations in one or more districts
of the same kind or character may differ from those in other like districts but shall be uniform for
each district; and (4) Several parts of the municipality or county may be classified within a single district although not contiguous; and

(5) The boundaries of such zoning districts and the classifications designated therein shall be expressed in map form, copies of which shall be filed with the clerk of the applicable government unit and the planning commission.

The new language clarifies that a zoning map is an integral and required part of an adopted zoning ordinance.

§8-24-41. Zoning districts -- Preliminary study. In establishing such districts and rules and regulations the governing body of a municipality or the county court commission shall give reasonable regard to existing conditions, the character of buildings erected in each district, the most desirable use for which the land in each district may be adapted and the conservation of property values throughout the municipality or county as described within the comprehensive plan adopted by the municipality or county.

The revision requires counties and municipalities to create zoning districts that are compatible with their approved comprehensive plan.

PART XI. SAME -- AMENDING, SUPPLEMENTING OR CHANGING ZONING ORDINANCE RULES AND REGULATIONS.

§8-24-45a. Findings necessary for proposed map amendment.

Before any zoning map amendment is granted, the planning commission or the governing body must find that the map amendment is consistent with the community development objectives of the adopted comprehensive plan, or in the absence of such a finding, that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated in the adopted comprehensive plan and which have substantially altered the basic character of such area.

The revision requires that changes to the zoning ordinance be consistent with the adopted comprehensive plan.
§8-24-46. Changes of zoning rules and regulations -- Petition for change. Petitions, duly signed, may be presented to the planning commission, the recorder of the municipality or to the clerk of the county court requesting an amendment, supplement or change of the rules and regulations of the zoning ordinance by:(1) The planning commission; or(2) The owners of fifty percent or more of the real property area to which the petition relates.

PART XIII. SAME -- EXISTING ORDINANCES AND USES.

§8-24-50. Existing uses safeguarded. Such zoning ordinance or ordinances shall not prohibit the continuance of the use of any land, building or structure for the purpose for which such land, building or structure is used at the time such ordinance or ordinances take effect, but any alteration or addition to any land or any alteration, addition or replacement of or to any existing building or structure for the purpose of carrying on any use prohibited under the zoning rules and regulations applicable to the district may be prohibited. : Provided, That no such prohibition shall apply to alterations or additions to or replacement of buildings or structures by any farm, industry or manufacturer, or to the use of land presently owned by any farm, industry or manufacturer but not used for agricultural, industrial or manufacturing purposes, or to the use or acquisition of additional land which may be required for the protection, continuing development or expansion of any agricultural, industrial or manufacturing operation or any present or future satellite agricultural, industrial or manufacturing use. If a nonconforming use has been abandoned, any future use of such land, building or structure shall be in conformity with the provisions of the ordinance regulating the use in the district in which such land, building or structure may be located. : Provided, however, That abandonment of any particular agricultural, industrial or manufacturing process shall not be construed as abandonment of agricultural, industrial or manufacturing use.

The revisions would eliminate the exemption of industrial land uses from the nonconforming provisions. Once abandoned for a period of time specified in a community’s zoning ordinance, these land uses would be subjected to the same regulatory requirements as all others.

PART XIII-A. SAME -- ADOPTION OF STANDARDS OF FEDERAL DEPARTMENT OF
§8-24-50b. Permitted use for group residential facility.

(a) A group residential facility as defined in article seventeen, chapter twenty-seven of this code, shall be a permitted residential use of property for the purposes of zoning and shall be permitted use in all zones or districts where single family dwelling units or multi-family dwelling units are permitted. No county commission, governing board of a municipality or planning commission, shall require a group residential facility, its owner or operator, to obtain a conditional use permit, special use permit, special exception or variance for location of such facility in any zone or district where single family dwelling units or multi-family dwelling units are permitted or discriminate in regard to housing in any other regard:

Provided, That a county commission, governing board of a municipality or planning commission may require a group residential facility, its owner or operator, to obtain a conditional use permit, special use permit, special exception or variance if the home is to be in a zone or district restricted to single-family residences and is to be occupied by more than six individuals who are developmentally disabled and three supervisors, or is to be occupied by the behaviorally disabled within a zoning district or zone restricted solely to single-family residences with no allowance for duplexes, apartments or other multi-family use of a single parcel of property.

(b) When an application to operate such a group residential facility in a district or zone limited to single-family residences is submitted to the department of health or the department of human services for the issuance of a license, as required by the provisions of said article seventeen, chapter twenty-seven, upon receipt of said application, the director of the department of health or the commissioner of the department of human services shall give written notice of such application to the county commission, governing board of a municipality or planning commission within whose jurisdiction the proposed facility lies. The county commission, governing board of a municipality or planning commission shall have thirty days in which to file objections or request a hearing with the department of health or the department of human services. Upon the filing of such objections or hearing request, the director of the department of health or the commissioner of the department of human services shall hold a hearing. The state board of health shall promulgate regulations governing the conduct of such hearings and applicable standards pursuant to chapter twenty-nine-a of this code:

Provided, That the owner or operator of such group residential facility shall, in all cases of such facilities located within zoning districts or zones, submit an application for any required zoning or occupancy permit allowed
under provisions of this section to the appropriate zoning permit agency on or before the date of submission of the application to the department of health or the department of human services. (e) The provisions of this section shall not exempt any such residence from the structural requirements of any bona fide historic preservation district.

The revisions would permit the establishment of group homes in any residential district, which would prevent a community from permitting them only in commercial or industrial districts. The revisions would also eliminate the requirements for group homes to obtain special permits from a local unit of government. Both of these changes would bring the state law into compliance with federal fair housing statutes.

PART XIV. SAME – BOARD OF ZONING APPEALS – ORGANIZATION AND FUNCTION.

§8-24-51. Board of zoning appeals -- Creation; membership; terms; vacancies. As a part of the zoning ordinance, the governing body of the municipality or the county court commission shall create a board of zoning appeals consisting of five members to be appointed by the governing body of the municipality or by the county court commission, as the case may be. The members of the board of zoning appeals shall be individuals who are freeholders and residents of the municipality or county, as the case may be; or, in the case of a county where only a part or region within the county is zoned, are freeholders or residents of the zoned area. and at least three fifths of such members must have been residents of the municipality, or county, as the case may be, for at least ten years preceding the time of their appointment. No member of the board of zoning appeals shall be a member of the planning commission nor shall any member hold other elective or appointive office in the municipal or county government. Members of the board shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

Upon the creation of a board of zoning appeals, the members shall be appointed for the following terms: One for a term of one year; two for a term of two years; and two for a term of three years. The terms shall expire on the first day of January of the first, second and third year, respectively, following their appointment. Thereafter, as their terms expire, each new appointment shall be for a
term of three years. A board of zoning appeals shall establish procedures for removal of any inactive member.

If a vacancy occurs, by resignation or otherwise, among the members of the board of zoning appeals, the governing body of the municipality or the county court commission, as the case may be, shall appoint a member for the unexpired term.

The governing body of a municipality or a county commission may appoint at least one but no more than three residents of the municipality or county, or, in the case of a county where only a part or region within the county is zoned, residents of the zoned area, to serve as alternate members of the board. The term of office of an alternate member shall be three years. When seated pursuant to the provisions of this article, an alternate shall be entitled to participate in all proceedings and discussions of the board to the same and full extent as provided by law for board members, including specifically the right to cast a vote as a voting member during the proceedings, and shall have all the powers and duties set forth in this article and as otherwise provided by law. Alternates shall hold no other appointed or elective office in the municipality or county, including membership on the planning commission. Any alternate may participate in any proceeding or discussion of the board but shall not be entitled to vote as a member of the board nor be compensated unless as a voting alternate member pursuant to this article.

A board which has established rules for the removal of inactive members would be able to replace them more effectively than they can now. New provisions for the appointment of alternate members to a board of zoning appeals would enable a full board to be seated when illness, conflict, etc. prevent a quorum from being reached. This action would benefit applicants by eliminating the delay caused by postponed meetings and final decisions simply because a board quorum was not available to hear the case.

§8-24-52. Board of zoning appeals Same -- Officers; quorum; compensation of secretary and employees. At its first meeting of each year, the board of zoning appeals shall elect a chairman and vice chairman from its membership. The vice chairman shall have the power and authority to act as chairman during the absence or disability of the chairman.

A majority of the members of a board of zoning appeals shall constitute a quorum. No action of a
board shall be official, however, unless authorized by a majority of all of the members of the board. The board of zoning appeals may appoint and fix the compensation of a secretary and such employees as are necessary for the discharge of its duties, all in conformity to and in compliance with the salaries and compensation theretofore fixed by the municipality or county court commission.

If, by reason of disqualification or recusal of a board member, a quorum is not reached, the chair of the board shall designate as many alternate members to sit on the board as may be needed to provide a quorum. Any alternate member of the board shall continue to serve on the board in all proceedings involving the matter or case for which the alternate was initially appointed until the board has made a final determination of the matter or case. A board shall establish rules and procedures for designation of an alternate member to serve on the board when it becomes necessary.

Once alternates are appointed to a board of zoning appeals and if they are seated for a public hearing, they would remain involved in the case until a final decision is reached by the board. This provision would promote continuity and consistency during the deliberation and decision-making processes and would prevent applicants from unnecessarily withdrawing petitions or requesting continuances until a full board of their liking is seated.

§8-24-54. Board of zoning appeals Same – Rules and regulations and procedures; minutes and records. The board of zoning appeals shall adopt such rules and regulations concerning the filing of appeals, applications for variances and exceptions, the giving of notice and the conduct of hearings as shall be necessary to carry out its duties under the terms of this article. The board shall keep minutes of its proceedings, keep records of all official actions and shall record the vote on all actions taken. Parties involved in the hearings shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues. Formal rules of evidence shall not apply, but irrelevant, immaterial or unduly repetitious evidence may be excluded. All minutes and records shall be filed in the office of the board and shall be public records.

The board shall render written findings on the application, including a written decision, within forty-five days after making a decision at the hearing. Each decision shall be accompanied by
findings of fact and conclusions based thereon together with the reasons therefor. A copy of the final findings, including the board’s decision, shall be provided to the applicant within a timely manner after the issuance of the board’s decision.

The revisions enhance the formality of a public hearing conducted by the board of zoning appeals. The revisions also specify that a board must provide a final, written decision within 45 days of the hearing and it must include findings of fact.

PART XV. SAME -- SAME -- POWERS, AUTHORITY AND DUTIES.

§8-24-55. Board of zoning appeals Same – Powers, authority and duties. The board of zoning appeals shall: (1) Hear and determine appeals from and review any order, requirement, decision or determination made by an administrative official or board charged with the enforcement of any ordinance or rule and regulation adopted pursuant to sections thirty-nine through forty-nine fifty of this article; (2) Permit and authorize exceptions to the district rules and regulations only in the classes of cases or in particular situations, as specified in the ordinance; (3) Hear and decide special exceptions to the terms of the ordinance upon which the board is required to act under the ordinance; and (4) Authorize upon appeal in specific cases such minimum variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

In exercising its powers and authority, the board of zoning appeals may reverse or affirm, in whole or in part, or may modify the order, requirement, decision or determination appealed from, as in its opinion ought to be done in the premises, and to this end shall have all the powers and authority of the official or board from whom or which the appeal is taken.

§8-24-55a. Same – Granting of variances.

The board, when it shall deem the same necessary, may grant variances from the zoning regulations on the basis and in the manner hereinafter provided: To authorize in specific cases a variance from the specific terms of the regulations which will not be contrary to the public interest.
and where, due to special conditions, a literal enforcement of the provision of the regulations, in an individual case, results in unnecessary hardship, excluding financial hardship, and provided that the spirit of the regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the zoning regulations in such district.

The board of zoning appeals shall fix a reasonable time for the hearing of a variance. Public notice of the hearing shall be given in the manner specified in section eighteen of this article, with the exception that only fifteen or more days notice shall be provided prior to the date set for such hearing, and due notice shall be given additionally to the interested parties. The board of zoning appeals may require the party requesting the variance to assume the cost of public notice and due notice to interested parties. At the hearing, any party may appear in person, by agent or by an attorney at law admitted to practice in this state.

A request for a variance may be granted in such case, upon a finding by the board that all of the following conditions have been met: (1) That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district, and is not created by an action or actions of the property owner or the applicant; (2) that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents; (3) that the strict application of the provision of the zoning regulations from which the variance is requested will constitute unnecessary hardship, excluding financial hardship, upon the property owner represented in the application; (4) that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare; and (5) that granting the variance desired will not be contrary to the general spirit and intent of the zoning regulations; and (6) that the requested variance represents the minimal variance necessary to afford relief to the owner or applicant.

The revisions clearly spell out the conditions under which a variance request may be approved. The revisions also clarify the public notification process for a public hearing conducted for a variance request, and decrease the publication time from 30 to 15 days prior to a public hearing.
PART XVI. SAME -- SAME -- PERFECTING APPEAL AND HEARING THEREON.

§8-24-57. Hearing of appeal. The board of zoning appeals shall fix a reasonable time for the hearing of an appeal. Public notice of the hearing shall be given in the manner specified in section eighteen of this article, with the exception that only fifteen or more days notice shall be provided prior to the date set for such hearing, and due notice shall be given additionally to the interested parties. The board of zoning appeals may require the party taking the appeal to assume the cost of public notice and due notice to interested parties. At the hearing, any party may appear in person, by agent or by an attorney at law admitted to practice in this state.

The revision would decrease the publication time from 30 to 15 days prior to a public hearing.

§8-24-58. Staying of work on premises when appeal taken; exception. When an appeal has been taken and filed with the board of zoning appeals, all proceedings and work on the premises in question shall be stayed unless the official or board from whom or which the appeal was taken shall certify to the board of zoning appeals that by reason of facts stated in the certificate a stay would cause imminent peril to life or property permitted to continue at the developer’s or owner’s own risk. If such certificate be filed, proceedings or work on the premises shall not be stayed except by a restraining order which may be granted by the circuit court of the county in which the premises affected are located, upon application therefor, on notice to the official or board from whom or which the appeal is taken and the owner of the premises affected and on due cause shown.

The revision would enable a developer to continue working when a appeal has been filed for a public hearing; however, all work conducted would be at the developer’s own risk should the board uphold the appeal. Some communities have found that residents opposed to a development are abusing the zoning appeal process and forcing the developer to experience unnecessary and costly delays.
PART XVII. SAME -- SAME -- JUDICIAL REVIEW.

§8-24-59. Petition for writ of certiorari from decision or order. Every decision or order of the board of zoning appeals shall be subject to review by certiorari. Any person or persons jointly or severally aggrieved by any decision or order of the board of zoning appeals may present to the circuit court of the county in which the premises affected are located a petition duly verified, setting forth that such decision or order is illegal in whole or in part, and specifying the grounds of the alleged illegality. The petition must be presented to the court within thirty days after the date of the decision or the order of the board of zoning appeals complained of on which the board issued its written findings and decision in the matter.

PART XVIII. ENFORCEMENT PROVISIONS.

§8-24-67. Injunction. The planning commission, the board of zoning appeals or any designated enforcement official may seek an injunction in the circuit court of the county to restrain a person or unit of government from violating the provisions of this article or of any ordinance or rule and regulation adopted pursuant hereto. The planning commission, the board of zoning appeals or any designated enforcement official may also seek a mandatory injunction in the circuit court directing a person or unit of government to remove a structure erected in violation of the provisions of this article or of any ordinance or rule and regulation adopted pursuant hereto. If the planning commission, the board of zoning appeals or the designated enforcement official is successful in any such suit, the respondent shall bear the costs of the action, including court costs and reasonable attorney fees.

§8-24-68. Penalty. Any person who violates any provision of this article shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than ten one hundred dollars nor more than three five hundred dollars plus court costs and reasonable attorney fees incurred by the governing body as a result thereof. Each day that the violation exists shall constitute a separate violation.