

HARDY COUNTY
SUBDIVISION ORDINANCE



PRESENTED BY:
HARDY COUNTY PLANNING COMMISSION
HARDY COUNTY COMMISSION

FIRST PUBLIC HEARING HELD 06/04/07
SECOND PUBLIC HEARING HELD 10/06/08
THIRD PUBLIC HEARING 05/18/09
FOURTH PUBLIC HEARING HELD 07/20/09
APPROVED AUGUST 5, 2009
EFFECTIVE SEPTEMBER 1, 2009

Article 1: Title and Effective Date

This Ordinance shall be known as the Hardy County Subdivision Ordinance and its effective date shall be September 1, 1994.

Revised and Amended 06/22/09

Article 2: Authority and Purpose

This Ordinance is adopted by the authority granted by West Virginia Code Chapter 8A, Article 4 thru Article 6, and its purposes are as follows:

- a. To protect and provide for the public health, safety, and general welfare of the County.
- b. To secure a community growth that is commensurate with and promotive of the efficient and economical use of public funds.
- c. To promote the harmonious development of the County and to secure safety from fire, flood and other dangers.
- d. To prevent overcrowding of the land and undue congestion of population and traffic.
- e. To protect and conserve the value of land throughout the County and the value of buildings and improvements upon the land, and to minimize the conflicts among the uses of land and buildings.
- f. To guide public and private policy and action in order to provide adequate and efficient transportation, water, sewage, schools, parks, and other public requirements and facilities.
- g. To establish minimum requirements for the design, construction and maintenance of subdivision projects and to assure the development of uniform subdivision platting requirements and procedures that will result in accurate land surveys and clear land titles.
- h. To prevent the pollution of air, streams, soil and ponds; to assure the adequacy of drainage facilities; to safeguard the water table; and to encourage the wise use and management of natural resources throughout the County in order to preserve the integrity, stability, and natural beauty of the community.

Article 3: Interpretations and Definitions

INTERPRETATIONS

- A. For the purpose of this Ordinance the following interpretations shall apply:
1. Words used in the present tense include the future tense.
 2. Words used in the singular include the plural.
 3. The word "shall" or "will" is mandatory.
 4. The word "should" is advisory.
 5. The word "building" or "structure" is construed as if followed by the phrase "or part thereof".
 6. The word "Ordinance" refers to the Hardy County Subdivision Ordinance.
 7. Hardy County or "County" refers to Hardy County, West Virginia.
 8. "Planning Commission" refers to the Hardy County Planning Commission.
 9. "County Commission" refers to the Hardy County Commission.
 10. "County Planner" refers to the Hardy County Planner.

DEFINITIONS

A. For the purpose of this Ordinance, the following definitions shall apply:

Agent - Any person, other than the subdivider, who, acting for the subdivider, submits to the commission plats for the purpose of obtaining approval thereof.

Agricultural activity - The exclusive use of land for a bona fide farming operation. This includes activities such as forestry, dairying, horticulture, floriculture, viticulture, fish culture, animal and poultry husbandry, and other similar activities customarily associated with farming and agriculture. Agricultural activity shall not include commercial slaughtering of livestock, poultry, fish nor meat processing.

Applicant - Any person who submits to the commission subdivision plats for the purpose of obtaining approval thereof.

Application, formal - An application is formal at such time as the Planning Commission is assured that all plats, plans and attendant documents are in proper form, content, and number required in accordance with these regulations. An application shall be considered a formal application unless the applicant is advised in writing within ten (10) days of any submission that such documents are not in proper form, content, or number.

Base Stone - One and half inch crusher run limestone.

Change of Scope: A major change, determined by the Planning Commission or County Planner, in development of a subdivision were the size of lots, design of roads, change of subdivision to phases or sections, or any other drastic change from the original sketch plat approval of the subdivision by the Planning Commission. Such changes as defined shall require reapplication of a subdivision by the developer.

Contiguous - Adjoining tracts or parcels of real estate.

Conveyance - Transfer of real estate by Deed, Installment Sales Contract or the renting or leasing of real estate with the option to purchase.

Covenant - An agreement, restriction, or condition placed on a parcel of land which remains attached to the land and which entitles successive land owners to its benefits or to its obligation, as the case may be.

Cul-de-sac - A circular area at the end of a dead end road where vehicles are able to conveniently turn around without leaving the road. In no case shall the diameter of travel way be less than 70 feet, with two (2) foot shoulders.

Deed - A written instrument, signed and delivered, by which a person transfers title to land.

Department of Health - The West Virginia State Department of Health.

Developer - An individual, partnership, or corporation (or agent therefore) that undertakes the responsibility for any or all of the activities covered by these regulations, particularly the drawing up of a subdivision or land development plat showing the layout of the land and the improvements involved therein. In as much as the subdivision or land development, plat is merely the necessary means to the end of assuring a satisfactory development, the term "developer" includes the term "subdivider", even though the personnel involved in successive stages of the project may vary.

Easement - A lawfully acquired right or privilege to use a parcel of land or a portion thereof for a specified purpose. An easement is retained by a person other than the owner of the land parcel.

Floodplain- That area which would be inundated by storm water run-off equivalent to that which would occur from a rainfall of one hundred year (100) frequency after total development of the watershed, said area defined by an elevation plus one (1) foot.

Flood-prone Area - Any area within the 100-year flood boundary according to the most recent Flood Boundary and Floodway Maps prepared for Hardy County by the Department of Housing and Urban Development, Federal Insurance Administration.

Grade - The slope of a road, street, or other public way expressed as a percentage.

A seven (7) percent slope means a vertical drop of seven (7) feet for every 100 feet of horizontal measurement.

Improvement Location Permit - A permit issued by a municipality or county, in accordance with its subdivision and land development ordinance, for the construction, erection, installation, placement, rehabilitation or renovation of a structure or development of land, and for the purpose of regulating development within flood-prone areas.

Location Map - A drawing at a reduced scale which shows legibly, by dimension and/or other means, enough area beyond the bounds of the proposed subdivision or land development to locate and orient the subdivision or land development in Hardy County and the relationship of the site to the community facilities which serve or influence the property, as required in this Ordinance.

Owner - Any individual, firm, association, syndicate, co-partnership, corporation, trust, or other legal entity having sufficient proprietary interest in the land sought to be subdivided or developed to commence and maintain proceedings to subdivide or develop the same under these regulations.

Planning Commission - The Hardy County, West Virginia, Planning Commission and referred to herein as the Hardy County Planning Commission.

Planning Commission Staff - All employees of the Planning Commission whether part-time, full-time, contractual or other.

Plat - A scaled, graphic drawing of a land subdivision project prepared according to the provisions of this Ordinance. A plat depicts the design and layout of a project as well as the location of existing and proposed property boundaries and easements. A plat also includes all terms, conditions and performance requirements established prior to the approval of a subdivision.

Plat, Final - The final map, drawing, or chart, and supplementary information, based upon the approved sketch plat, in which the developer's plan is submitted to the Planning Commission for approval and which, if approved, shall be recorded in the Office of the Clerk of the County

Court in accordance with Chapter 39, Article 1, Section 13, Code of West Virginia, 1931, as amended.

Plat, Sketch - An informal map, drawing, or chart indicating existing features of a parcel or tract of land and its surroundings and the general layout of the proposed subdivision or land development unit for discussion purposes only and not to be presented for approval.

Public Highway (Road) - Any highway or road in Hardy County which is part of the Federal or West Virginia public highway system and which is so identified and numbered on the most recent General Highway Map published by the West Virginia Department of Highways.

Right-of-Way - A right which grants passage across or through a property. A right-of-way is also the (usually dimensioned) path along which the right of passage is granted.

Road - A prepared surface within a right-of-way which is intended for vehicular use. Road does not include shoulders.

Sewage Facility - Any sewer, sewerage system, sewage treatment works or part thereof, designed, intended, or constructed for the collection, treatment, or disposal of liquid waste including industrial waste.

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

Slope - The rise or fall in elevation as it pertains to any portion of roadway construction (i.e. a 4:1 slope is defined as 4 feet measured horizontally to each foot measured vertically).

Shoulder - A smooth graded, stabilized strip of land along the sides of a road. Shoulders permit vehicles to leave a road during emergencies; contribute to carry water away from a road to prevent erosion; and, assist to provide safe visibility.

Street - A public way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, throughway,

road, avenue, boulevard, lane, place, or however otherwise designated.

Subdivide - To divide a tract of land into lots before developing or improving the tract.

Subdivider - Any person commencing to effect the subdivision of land under the provisions of this Ordinance.

Subdivision - The partition or division of land into two or more lots, tracts, parcels or units for the purpose, whether immediate or future, of conveyance, lease, transfer of ownership, building construction or land use. Subdivision applies to all forms of development, including residential, commercial and industrial.

Surveyor - Any person licensed to practice land surveying in the State of West Virginia.

Travel-way - That area of road surface normally dedicated to vehicular traffic, plus shoulders

Utility - Shall be defined as including the electricity, telephone, cable television, public or central water and/or sewer, gas, etc.

Variance - A departure from the provisions of this Ordinance granted by the Planning Commission.

Working Days - Monday through Friday, not including holidays on which the Office of the Clerk of the County Commission of Hardy County, West Virginia, is closed.

Article 4: Application of Ordinance

The provisions of this Ordinance shall apply to the subdivision of all real estate within unincorporated areas of Hardy County, unless exempted; and, all developers must comply with the terms of this Ordinance prior to conveying any subdivided real estate.

Any real estate subdivided and conveyed is governed by the provisions of this Ordinance. All fees shall be paid before any stamps shall be affixed to applications, deeds, and plats.

Article 5: Exemptions

The following shall be exempt from the provisions of this Ordinance following application, fees paid, and approval or denial by the Planning Commission or County Planner of exempt status. However, the following listed below are not exempt from provisions of any other Hardy County ordinance.

In addition, as a prerequisite to application, as stated in WV Code 39-1-16, "In case a proposed subdivision of any lot or parcel of land is abutting the municipality, it shall be the duty of the owner, or owners, or his or their agent, to submit a plat or plan of such subdivision to the council or commissioners of such municipality, showing the street and alley connections that such subdivision makes with such municipality, and furnishing full information for the purpose of determining whether the proposed subdivision will impede or prevent the further development and extension of such municipality where such subdivision is situate. Before any such subdivision is finally laid out, it shall have the approval of the council or commissioners of the municipality wherein the subdivision is situate, or upon which it abuts, and such approval and the date thereof shall be indicated on the plat or plan of such subdivision before the same is finally filed in the office of the clerk of the county court and the county assessor's office."

The Following shall be deemed as exemptions under this ordinance:

- A. The formation of cemetery lots.
- B. Subdivision or individual lots of which plats or deeds were recorded with the Clerk of the Hardy County Commission prior to the effective date of this Ordinance, provided such plats or deeds are of sufficient survey accuracy to permit the clear conveyance of lots by direct or deed reference without modification or addition.
- C. Real estate transferred by a Trustee under a Deed of Trust when the debt secured by said Deed of Trust is delinquent. This exemption shall also be received by the beneficiary under such a Deed of Trust, if the beneficiary purchases the subject real estate at a Trustee's sale. The exemption will not apply if the trustee subdivides the property prior to the sale.

- D. Conveyance to a governmental entity or to a non-profit or service organization or to a church to be used for church purposes. Living/working quarters associated with religious enclaves, not in the same building as principal place as worship shall be considered a major subdivision under this ordinance and as such shall be subject to all applicable codes and ordinances.
- E. Division of real estate among heirs by court order or by volunteer, provided, grantee must have a new deed drawn up as well as a plat prepared by a West Virginia licensed surveyor and must show the lot and right-of-way center line must be described by use of a plat and metes and bounds description. Such lots must be provided with a right-of-way not less than a width to provide a road of twenty two (22) feet, providing an eighteen (18) foot travel-surface with two (2) foot shoulders. All heir transfers shall contain a statement on the plat and deed as follows: "This property has been subdivided through the heir transfer and shall not be further subdivided or reconveyed unless complying with all applicable Hardy County Ordinances." Prior to recording of said deed and plats, the grantee must make application to the Planning Office for an Heirs exemption and pay all applicable fees. After approval, the plat and deed shall be stamped Exempt by the Planning Office.

Applications for exemption shall be available in the Office of the County Planner and after completion, shall be filed in the Office of the County Planner. A plat prepared by a licensed surveyor showing the subdivision said to be exempted shall accompany the application for exemption when filed. Fees under Article 19 of this ordinance shall be paid in full before any approval or denial of exempt status is determined and the deed or plat is stamped exempt. The Planning Commission or County Planner shall render a decision on said applications within ten (10) working days after same are filed.

All approved subdivisions that fall under the aforesaid exemptions shall be stamped as "EXEMPT" by the County Planner.

Article 6: Minor Subdivisions

A. Purpose: The minor subdivision process is established to allow for timely processing of subdivisions which are small and would have little impact on the County.

B. Criteria: In order for a subdivision proposal to be classified as a minor subdivision, the proposal must meet the requirements and standards set forth below. Where, in the opinion of the County Planner; the proposal does not comply with these requirements, the proposed subdivision shall be classified as a major subdivision. The applicant may arbitrarily choose to refer the subdivision proposal to the major subdivision application process.

The following shall be considered minor subdivisions:

(1) Land transfers between immediate family members defined as follows:

The formation of parcels of real estate transferred by a deed to a mother, father, grandmother, grandfather, sister, brother, daughter, son, granddaughter, grandson, half sister, half brother, niece, nephew, son-in-law, or daughter-in-law of the landowner. The Deed shall identify the relationship between the Grantor and Grantee, describing the real estate and right-of-way center line being conveyed by use of a plat and metes and bounds description prepared by a West Virginia licensed surveyor. In no case shall the deeded travel-way be less than twenty two (22) feet, providing an eighteen (18) foot travel-surface with two (2) foot shoulders plus such additional area as may be required for drainage, construction maintenance and emplacement and/or maintenance of public utilities. The grantee may receive any number of such family transfer lots within Hardy County, and if any such lot(s) is reconveyed by the grantee to anyone other than a family member (as described above), then said lot(s) shall comply with the provisions of all Hardy County ordinances. All family transfers shall contain a statement on the plat and deed as follows. "This property has been subdivided through the family transfer and shall not be further subdivided or reconveyed to a non family member unless complying with all applicable Hardy County Ordinances."

(2) Transfer of parcels of real estate to achieve boundary line settlement or adjustment.

(3) The conveyance of real estate to be used solely for agricultural activity as described in Article 3. All agricultural transfers shall contain a statement on the plat and deed as follows. "This property has been subdivided through the agricultural transfer and shall not be changed in use unless complying with all applicable Hardy County Ordinances."

(4) When two or more contiguous parcels of land are merged for the sole purpose of enlarging an existing lot, tract, or parcel.

(5) Conveyance of a right-of-way for purposes of ingress and egress or for the purpose of providing water, electricity, telephone or cable television services.

(6) Subdivisions of one (1) to three (3) new lot(s) from a parent tract within a five (5) year period. Only the residue parcel is entitled to be further subdivided under this article. Any further subdivision of the new parcels, unless as an exemption under Article 5 of this ordinance, shall fall under Article 7: Major Subdivision, of this ordinance. Such subdivisions shall follow the following requirements:

(a) The proposed lots shall either front on an existing State maintained road or be provided with a travel-way of a width not less than twenty-two (22) feet, providing a eighteen (18) foot travel-surface with two (2) foot shoulders plus such additional area as may be required for drainage, construction maintenance and emplacement and/or maintenance of public utilities. The lot and right-of-way center line must be described by use of a plat and metes and bounds description prepared by a West Virginia licensed surveyor. All transfers under this minor subdivision shall have language on the deed and plat that states: "This property has been subdivided under the 1-3 parcel subdivision and may not be further subdivided unless complying with all Hardy County ordinances."

- i. Any proposed subdivision that is not adjacent to a public highway shall be connected to a public highway by a right-of-way and road that meets the standard requirements for rights-of-way and roads within the proposed subdivision.

This provision may require upgrading of rights-of way and roads that are not owned by the subdivider and that were platted and recorded prior to the date the subdivider filed a subdivision application.

A request for a waiver to the up-grade provision may be granted by the County Planner if the developer submits 1)a letter of denial from the property owner of the right-of-way the letter shall also state that the property owner holds harmless the County of any claims of negligence in the event of damages that may result due to lack of county required travel-way improvements,2) letters to all grantee's of said lot(s) that the travel-way do not meet the requirements and that the County shall be held harmless in the event of damages that may result do to lack of county required travel-way improvements.

(b) Will not require the development of new or the extension of existing off-tract infrastructure.

(c) Each lot shall meet the lot design and set back requirements as specified in the Hardy County Zoning Ordinance.

(d) Health department approval for well and septic system. If the parcels have access to public water and sewer, then accompanying letters from those agencies are required. When public water and sewer utilities are reasonably available they shall be used unless accompanied by letters from agencies reasons for connection refusal. If connection is made then a letter acknowledging permission is also appropriate.

(e) An approved entrance permit from the West Virginia Division of Highways, if applicable.

C. Minor Subdivision Application Process

1) Applicant meets the Planning Office staff to discuss the proposed subdivision and the criteria used to classify the proposal as a minor subdivision.

2) As a prerequisite to application, as stated in WV Code 39-1-16, "In case a proposed subdivision of any lot or parcel of land is abutting the municipality, it shall be the duty of the owner, or owners, or his or their agent, to submit a plat or plan of such subdivision to the council or commissioners of such municipality, showing the street and alley connections that such subdivision makes with such municipality, and furnishing full information for the purpose of determining whether the proposed subdivision will impede or prevent the further development and extension of such municipality where such subdivision is situate."

3) If deemed necessary, a Planning Office representative shall make a site inspection of the proposed minor subdivision.

4) The Planning Office reviews and notifies the applicant within (10) days of the application of the decision of classification of the subdivision. Fees under Article 19 of this ordinance shall be paid in full before any approval or denial of minor subdivision status is determined and the deed or plat is stamped Approved.

5) Within ten (10) days of minor subdivision determination, the Planning Commission or County Planner will approve or disapprove of the minor subdivision application.

6) Applicant submits final plat to Planning Office.

7) All approved minor subdivisions will be stamped "APPROVED" by the County Planner.

8) If the application is denied, the applicant will be notified of the denial and their right to appeal the administrative decision with the Planning Commission within thirty (30) days of receipt of denial by the County Planner. If the Planning Commission upholds the administrative decision of denial, then the applicant will be notified in writing and their right to appeal with the Hardy County Circuit Court within thirty (30) days.

NOTE: Any application that is denied status as a minor subdivision will automatically be classified as a major subdivision.

Article 7: Major Subdivision Application Procedure

A. Informal Conference

Prior to formal application, a developer shall request an informal meeting with the Planning Commission or County Planner for the purpose of the Commission or Planner giving guidance as to how to obtain approval for the subdivision under this Ordinance. The developer shall bring to this meeting a rough sketch plat of the subdivision and information regarding soil types, percolation results, intended method of sewage disposal, approximate number and size of lots, approximate location and size of streets and approximate access roads, land to be held in common, provisions for utilities, existing and proposed drainage of surface water and proposed method of road maintenance.

B. Application

After said informal meeting, the developer shall complete an application for a permit to establish a real estate subdivision in Hardy County, West Virginia. This application shall elicit, but not be limited to, the following information:

1. The name, address and telephone number of the developer, and prior development history.
2. The name of the proposed subdivision;
3. The name of each attorney, land surveyor or agent or professional engineer to be involved in the subdivision;
4. Total area of subdivision.

C. Filing of Application and Accompanied Material

The application shall be filed in the Office of the County Planner and the following material must be filed with the application:

1. A sketch plat as described in Article 8 of this Ordinance;

2. As a prerequisite to application, as stated in WV Code 39-1-16, "In case a proposed subdivision of any lot or parcel of land is situate abutting a municipality, it shall be the duty of the owner, or owners, or his or their agent, to submit a plat or plan of such subdivision to the council or commissioners of such municipality, showing the street and alley connections that such subdivision makes with such municipality, and furnishing full information for the purpose of determining whether the proposed subdivision will impede or prevent the further development and extension of such municipality where such subdivision is situate. Before any such subdivision is finally laid out, it shall have the approval of the council or commissioners of the municipality wherein the subdivision is situate, or upon which it abuts, and such approval and the date thereof shall be indicated on the plat or plan of such subdivision before the same is finally filed in the office of the clerk of the county court and the county assessor's office."
3. A letter from the subdivision owner, if different from the developer, authorizing the developer to act as his agent with full authority;
4. Copies of existing and proposed deed restrictions or protective covenants (see Article 12, A);
5. Written provisions for the property owners association to eventually take over the responsibility for the maintenance and operation of community facilities, especially roads, within the subdivision once seventy-five percent (75%) of the lots are sold. The developer is responsible to pay into the property owners association for unsold lots (see Article 13);
6. A proposed plan for control of erosion and sediment during and after construction based on West Virginia Department of Environmental Protection Standards.
7. The number of copies required of the above materials shall be determined by the County Planner or designated agent.
8. Existing and proposed profiles of the center lines of each road within the subdivision. Elevations shall be taken at 100 foot intervals of the proposed road.

9. The application shall include a list of the property owners' names and addresses located within 250 feet of the proposed subdivision as of record in the office of the Hardy County Assessor. The subject property, also, shall be included in the affected area. The applicant must also submit the tax map and parcel numbers for the list of properties along with a stamped and addressed envelope for each of the names and addresses of property owners in the affected area. If the list includes a lot within an adjacent subdivision, the applicant must submit the name of the president of the homeowners association along with a stamped and addressed envelope for that member. A legal notice shall be mailed to the affected property owners informing them of the upcoming public hearing for the proposed subdivision.

D. Public Hearing

Within ten (10) working days after the application and accompanying material are filed, the County Planner shall review same and consult with the developer about any apparent deficiencies.

At a meeting where the application is determined to be complete, the Planning Commission or County Planner shall then schedule a date, time and place for a public hearing. The hearing must be held within forty-five (45) days after the completed application. The Planning Commission shall then publish a public notice of this hearing twice in a newspaper of general circulation in Hardy County twenty-one (21) days prior to the public hearing. This notice shall describe the proposed subdivision in a way adequate to identify it to the public, shall describe the purpose of the hearing, and shall invite the public to participate in the hearing at a place and time set forth in the notice. The developer and any representatives or witnesses on his behalf may speak at this hearing and members of the public. A majority of the members of the Planning Commission shall constitute a quorum and shall be required for any action.

At a meeting at the conclusion of the public hearing or a meeting held within fourteen (14) days after the public hearing, the Planning Commission shall then vote, a majority of said quorum required for a vote of approval. The decision to conditionally approve or to disapprove an application shall be based on whether or not the proposed subdivision meets the technical requirements or standards set forth in this Ordinance.

The application may be held for up to forty-five (45) days if additional information is necessary to make a determination.

The Planning Commission, in making any decision upon an application shall be guided by the general purposes set forth in Article 2 of this Ordinance.

If the Planning Commission does not approve an application, the developer shall be provided a written notice of the decision which lists the reasons for the decision. The applicant may request, one time, a reconsideration of the decision, which must be in writing and received by the Planning Commission no later than ten (10) days after the decision of the Planning Commission is received by the applicant.

If the Planning Commission does not approve the application a second time, the applicant will be notified in writing of the second denial and of their right to appeal the decision within thirty (30) days with the Hardy County Circuit Court.

E. Final Approval Requirements

After sketch plat approval by the Planning Commission following the aforesaid public hearing, it shall be the responsibility of the developer to provide to the County Planner the following material before or at the final inspection by the County Planner:

1. A final plat as described in Article 8 of this Ordinance;
2. Organizational papers for a Property Owners Association, as more fully described in Article 13 of this Ordinance, and copies of any deed restrictions or protective covenants;
3. Copy of access permit from the Department of Highways;
4. If the subdivision is not serviced by public water and sewage or an approved central system, a copy of a Hardy County Health Department septic site approval for each proposed lot in the subdivision. This permit shall guarantee one suitable area to establish a residence, well, and septic system within the boundaries of the lot. The size of the septic systems shall meet the standards determined by the County Health Department. To be approved all such lots shall contain a minimum on-site disposal area of 10,000 square feet, which shall be set aside for the

installation of septic tank--soil absorption systems, in accordance with State Health Department regulations. If central sewer and or water are available, then a copy of the applicable State permits therefore must be included with the application.

5. A statement attesting that each lot has been identified on the site with a placard bearing the respective section and/or lot number. Said placard shall be of a permanent material and attached to a permanent post.
6. Inspection of subdivision: In addition to the above, the County Planner shall personally inspect the subdivision to determine whether or not all construction of roads, storm water drainage and erosion control has been completed as required hereunder. The planner shall verify in writing whether or not such construction has been performed as required hereunder.
7. As-built profiles of the subdivision roads. The profiles shall be made at each 100 foot stations of the roads.
8. In no case shall the deeded travel-way be less than twenty-two (22) feet providing an eighteen (18) foot travel way with two (2) foot shoulders plus such additional area as may be required for drainage, construction maintenance and emplacement and/or maintenance of public utilities. In the case where access for utilities shall be provided, such access must be outside of the afforded said travel-way and all roads shall comply with Article 14 of this ordinance.

The approval or disapproval of the development was determined at the sketch plat public hearing. The purpose of the final plat review is to determine if the development work has been done properly, that adequate provisions have been made to insure completion of remaining development work and that there is no reason to delay the sale of lots.

If all conditions hereunder have been met and all preliminary development has been properly performed at the final inspection, final approval will be granted and the final plat stamped and signed by the President of the Planning Commission.

F. Approval of Subdivision

If approved, the Planning Commission shall place a stamp upon the final plat of the subdivision and this stamp shall contain the following information:

1. Title of subdivision;
2. Permit to establish a real estate subdivision in Hardy County, West Virginia;
3. Date of issuance;
4. Signature of the President of the Hardy County Planning Commission.

If the County Planner does not approve the subdivision at the final inspection, the developer shall be provided within ten (10) working days of such decision, a written notice of the decision which lists the reasons therefore. Upon denial of the subdivision after the final inspection by the County Planner, the developer may request a hearing before the Planning Commission, which request shall be in writing and filed with the County Planner. This hearing shall be held within ten (10) working days of the receipt of such written request.

Article 8: Plat Requirements

A. The Sketch Plat

1) The Sketch Plat can be submitted for review at the pre-application conference; it shall be on white paper and shall show in simple form the proposed layout of lots, parking areas, roads, building areas, drainage facilities and other features in relation to each other and to the tract boundary. The Sketch Plat may be drawn free handed and shall be at a scale acceptable to the Planning Commission. Contour lines as shown on the appropriate U.S.G.S. Topographic Quadrangle map should be transferred to the Sketch Plat by having the topographical map blown up and the plat sketched on the topographical map at a specific scale.

2) The Sketch Plat shall be accompanied by a tract location map and a tentative list of restrictive covenants and conditions or a tentative statement of project rules and regulations.

3) If the developer desires to amend a sketch plat after approval by the Planning Commission and the amendment is determined by the Planning Commission or the County Planner not to be a *change of scope*, then a written request of approval for the sketch plat amendment shall be filed with the office of the County Planner by the developer. The Planning Commission shall review and approve or deny the request at the next regularly scheduled meeting. No construction shall commence until written approval of the sketch plat amendment is granted by the Planning Commission. However, if the Planning Commission or County Planner determines that the amendment to the sketch plat is a change of scope, as defined in Article 3 of this ordinance, then the developer shall be required to reapply for the subdivision following the procedures of Article 7 of this ordinance.

B. Final Plat

1. The final plat must be prepared by a West Virginia licensed land surveyor using metes and bounds descriptions and at the Planner's discretion, the final plat may be adjusted in size and specifications.
2. Three (3) copies of the final plat shall be submitted and the final plat shall be on durable paper and the size of same shall be 24 x 36 inches. When more than one sheet is required, an index sheet of the same size shall be submitted showing the entire subdivision drawn to an appropriate scale. The scale shall be 50 feet to the inch for lots averaging 2.0 acres or less; 100 feet to the inch for lots averaging 2.0 to 5.0 acres; 200 feet to the inch for lots averaging 5.0 to 15.0 acres; and 300 feet to the inch for lots averaging 15.0 acres or larger.
3. The final plat shall contain the following information:
 - a. An insert vicinity map showing the location of the property in relation to state roads, geographical features, county districts, and other land held by the applicant in the area;
 - b. The name of the subdivision;
 - c. The names and addresses of the owners and developers of the subdivision;

- d. A re-plat of an existing subdivision shall include the name of the existing subdivision and the place where it is recorded in the County Deed Books or Map Books. In the case of a re-plat of a subdivision of record, the Planning Commission may require that dotted or dashed lines be used to show features or locations to be abandoned and solid lines to show the currently proposed features or locations;
- e. The exact layout for the subdivision, including:
 - (i) Roads, street and alley lines; their names, bearings, angles, of intersections and widths, including widths along the line of any intersecting streets;
 - (ii) All easements or rights-of-way, when provided for or to be owned by public utilities, with the limitation of the easement right definitely stated on the plat.
- f. Lots numbered in numerical order, and blocks and sections lettered in alphabetical order or numbered in numerical order throughout the entire subdivision;
- g. Area for each lot;
- h. Accurate outlines of any area to be reserved or dedicated for common use by the residents of the subdivision, or for the general public use with the purposes indicated thereon;
- i. Space for subdivision approval permits (EXEMPT, APPROVED, and Planning Commission Stamp) and the County clerk's filing statement;
- j. Any area within the subdivision designated by the Federal Emergency Management Agency as flood plain area shall be shown with the floor elevation if available for each lot. If elevations are not available for each lot, show the extent of the 100 year flood plain within the property to be developed and on adjoining property;

- k. As per West Virginia Code 39-1-16, any subdivision abutting a municipality shall obtain approval of the council or commissioners of the municipality. Approval and the date thereof shall be indicated on the plat before the same is filed in the office of the clerk.

Article 9: Forms and Fees

The Planning Commission shall have the authority to devise such printed forms as will reasonably assist in the implementation of this Ordinance.

Reasonable fees for examining plats and other required material, and for making inspections, shall be proposed by the Planning Commission and approved by the Hardy County Commission. The amount of the fee will approximate, as closely as possible, the costs of performing the review work and the inspections. Exemptions will also be required to pay fees.

The application fee is payable upon submission and is non-refundable. All application fees shall be paid before any public hearings are held or final plats stamped. If the developer wishes to submit the subdivision in sections, either for preliminary or final approval, the application fee shall be applicable for each section. Final plat approval is not official until all fees are paid.

Article 10: Time Limits

A. Planning Commission Time Limits

The County Planner shall approve or disapprove a final plat within fourteen (14) working days following the submission of said plat and all required accompanying materials, and payment of required fees. If said decision is not made within said fourteen (14) days, then the final plat shall be considered to be approved.

The above deadline shall not apply if the Planning Commission or County Planner has notified the developer in writing of specific items which must be submitted or completed before further action will be taken.

B. Developer Time Limits

If the Planning Commission or County Planner decides that the developer has not submitted all required data in proper form during the preliminary approval process, it may request this additional material from the developer. If the developer fails to respond within thirty (30) days, then the application shall be considered to be withdrawn.

The developer shall have one (1) year from the time of approval of the sketch plat by the Planning Commission to complete all work as required by this ordinance and submit a satisfactory final plat, unless a greater time period is requested in the application, or at a later date, and is approved by the Planning Commission. Any request for an extension shall be submitted in writing to the Planning Office twenty (20) days prior to the next scheduled meeting of the Planning Commission. The Planning Commission shall consider and approve or reject the request at that meeting. Such request for an extension shall be submitted before the one (1) year time frame for preparation for the final inspection by the County Planner.

If the developer has not requested an extension and the one (1) year time period has elapsed, the application for the permit to establish a real estate subdivision shall be considered withdrawn and the entire process must be repeated if the developer fails to meet the specified time of completion.

Any of the above time periods binding upon either the Planning Commission or the developer may be waived by an approved variance request under Article 17, section B of this ordinance.

Article 11: Multi-Section Subdivisions

A developer may submit a proposed subdivision in phases in their application to the Planning Commission. The time frame of one (1) year, as stated in Article 10 of this ordinance is applicable in all respects. The developer is responsible to make clear, which section or sections they are applying for and the time frame to complete each section.

The Planning Commission may approve or deny proposals of sections of a subdivision submitted by the developer.

The purpose being to allow lots to be sold once the section has been approved by the Planner, stamped and signed by the President of the Planning Commission. This option is discretionary with the Planning Commission and shall depend on the particular circumstances of the subdivision.

Article 12: General Provisions

A. Deed Covenants

As a condition for issuance of a permit, the Planning Commission shall require a developer to impose on each lot within the subdivision by deed, such restriction covenants as are reasonably calculated to protect both lot owners and the owners of adjoining property from economic loss resulting from the use of land within the subdivision, or to protect public health and safety. Covenants shall provide for their enforcement through legal action by any person adversely affected by a violation thereof, or by the subdivision's Property Owners Association. Protective covenants may be required to be either permanent or revocable by vote of the persons affected. Covenants shall provide for road maintenance and trash pickup but not be limited to these only.

In no case shall any restrictive covenants circumvent or be less restrictive than the Hardy County Zoning Ordinance.

B. Independent Review of Subdivision Sections

Review and approval of any section of a subdivision does not constitute an intention or responsibility on the part of the Planning Commission to approve future sections of the subdivision. This provision shall apply regardless of improvements, expenditures, or efforts a subdivider may make (at his own risk) in anticipation of future approval by the Planning Commission.

C. Private Contracts

Unless specified otherwise, approval of a subdivision by the Planning Commission bears no relation to any private easement, covenant, agreement, restriction, or condition accompanying said subdivision, nor is the responsibility of enforcing such private easement, covenant, agreement,

restriction, or condition assumed by the County Commission or the Planning Commission or County Planner.

D. Sources of Information

In order to permit a complete review and evaluation of subdivision proposals, the Planning Commission or County Planner may request information from any individual or agency. Such requests may be made through correspondence, by telephone, or at meetings conducted for that purpose. All information received shall become a part of the official record for the subdivision consideration.

E. Access to Public Highway

The developer shall be responsible for providing each lot within the proposed subdivision with access to a public highway by a road that meets the standards for right-of-way and roads hereunder. If feasible, the developer may be required to provide more than one access to a public highway for the subdivision.

Any proposed subdivision that is not adjacent to a public highway shall be connected to a public highway by a right-of-way and road that meet the standards required for rights-of-way and roads within the proposed subdivision. Subdivision road entrances onto public roads must be acceptable to the West Virginia Department of Highways, as to location, number of entrances, drainage provisions, traffic safety and general design.

F. Flood Prone Areas

If a subdivision lot lies within a flood-prone area designated on those official maps prepared by the Federal Emergency Management Agency, copies of which are available in the County Planner's office and which it is the duty of a developer to examine, the developer shall provide each prospective purchaser of such a lot, before any commitment to purchase is made, a written statement saying the following:

"All or some of this real estate lies within an officially designated flood zone. The legal ramifications of this are significant and use of this land may be limited. Details may be obtained from the Hardy County Planning Commission. Reference shall also be made to the Hardy County Flood Plain Ordinance and article III, section I of the Hardy County Zoning Ordinance."

An identical provision shall appear or be referenced in every deed by which any such lot is conveyed, either by the developer or by a future owner.

All flood prone areas must be shown on the final plat before final approval and recording, based on the most recent FEMA maps.

G. Inspections

All subdivisions reviewed under this Ordinance are subject to announced or unannounced inspections, from the time of original application until the final permit has been issued and all work is satisfactorily completed, by any persons acting on behalf of the Planning Commission. Such inspections may be for the purpose of determining project feasibility, reviewing compliance with this Ordinance, determining the progress of construction, examining the construction of parks, roads, signs, or drainage, water and sewage systems, and for other reasonable purposes.

H. Utility Rights-of-Way

Adequate utility rights-of-way must be provided. All utilities must meet the requirements of the utility company providing the service to the development. In no case shall the utility right-of-way be placed within the proscribed road travel-way.

I. Permits for Road and Ditch Construction

The developer shall be required to obtain all permits from appropriate governmental agencies pertaining to road and ditch construction.

J. Improvement Location Permits

1. As stated in West Virginia Code 8A-4-2, any new construction or modification to existing construction on newly formed parcels of an approved minor or major subdivision, shall obtain an Improvement Location Permit, issued by the Hardy County Planning Office, before commencing the construction.

2. The process for obtaining an Improvement Location Permit shall be as proscribed in the Hardy County Zoning Ordinance, Section 3 and 4, pages 59 to 61.

3. No buildings or improvements on subdivision lots may be constructed until the final plat has been approved and the Planning Commission President's signature is on the seal.

Article 13: Property Owners Association

Each subdivision must have an association composed of its property owners, the stated purposes of which shall be to maintain the roads and other mutually beneficial facilities within the subdivision, to enforce the restrictive covenants for the lots within the subdivision by lot owners, and to otherwise act for the common welfare of all the landowners within the subdivision.

The developer shall establish a bank account in the name of the property owners association into which account, lot owners shall be required to deposit annual Property Owners' fees.

The property Owners' association shall be established once seventy-five percent (75%) of the lots have been sold. Any lots still owned, by the developer at this point, will be required to pay fees into the established bank account. In addition, the developer is responsible for the road maintenance for a period of one (1) year after the association has been established.

In no case shall any restrictive covenants circumvent or be less restrictive than the Hardy County Zoning Ordinance.

Article 14: General Standards for Roads

The Planning Office shall require from the developer written certification from each licensed contractor/sub-contractor, certified engineer and licensed surveyor that the work they preformed on the subdivision roads have met the ordinance specifications before the final inspection and the final approval.

A. Roadway Design

1. Subdivision roads shall be coordinated with existing or proposed public roads. Subdivision road entrances and lot

road entrances must be approved by the West Virginia Department of Highways, as to location, number of entrances, drainage provisions, traffic safety and general design. An access permit from the Department of Highways shall be required for all subdivision roads that access public roads or highways.

2. Subdivision road design shall have a reasonable relationship to tract topography in order to minimize earthwork and erosion, insure reasonable grades and produce useable lots. Rectilinear road patterns are discouraged.
3. Dead-end roads shall terminate in a cul-de-sac. In no case shall the diameter of travel way be less than 70 feet, with two (2) foot shoulders.
4. All roads shall have at least an eighteen (18) foot wide travel-way surface, exclusive of parking areas, plus two (2) foot wide shoulders on each side plus such additional area as may be required for drainage, construction maintenance and emplacement and/or maintenance of public utilities.
5. All subdivision roads shall be sloped laterally or sloped from a centerline crown at a ratio of $\frac{1}{4}$ inch vertical to 1 foot horizontal.
6. Road grades shall not be greater than 12%. Within 100 feet of the point where a subdivision road intersects with a public road or highway, the grade shall not be greater than 5%.
7. If any of the subdivision lots are two (2) acres or less in size, all subdivision roadways must be paved. In addition, the following shall be required:
 - (a) Earthwork fills shall be constructed of engineered fill. Each lift of fill shall not be greater than six (6) inches compacted to 95% maximum density.
 - (b) Asphalt roads shall have a minimum of four (4) inches compacted stone base and three (3) inches of asphaltic concrete.
 - (c) Asphalt material shall comply with the minimum specifications required by the West Virginia Department of Highways for public roads. Concrete roads may be

substituted for asphalt roads provided the concrete roads equal or exceed asphalt roads in longevity and performance.

8. All subdivision roads shall be clearly identified by permanent road signs. A road sign at the entrance to each subdivision shall identify the name of the subdivision as well as the entrance road. Each road sign shall be of all weather material of not less than 6 inches by 19 inches in size and shall be secured or hung from a sign post at a height of 7 - 10 feet above ground level. The subdivision identification sign shall be not less than 2 feet x 3 feet in size. Developers may name the subdivision roads with the approval of the Hardy County OES Center.
9. All stumps, downed trees and other debris which has been displaced and accumulated as a result of road and ditch construction shall be removed by the developer away from the right-of-way.

B. Road Specifications

1. Subgrades shall be free of organic material and shall consist of shale or other suitable material. If the material at the location of the proposed road is not acceptable for roadbed construction, acceptable material shall be brought from another source. The compacted subgrade shall be a minimum of eight (8) inches in depth. All subgrades shall be proofrolled under the observance of a Planning Commission representative and approved by same prior to placing base stone.
2. Earthwork fills shall be constructed of engineered fill. Each lift of fill shall not be greater than six (6) inches compacted to 95% maximum density.
3. Gravel roadway surfaces shall be a minimum of two (2) inches thick of compacted base stone. The surface shall be smooth, uniform and tightly packed.

C. Earthwork

1. All cuts and fills shall have side slopes that are stable for the soil involved.
2. Side slopes of earth fills shall not be steeper than 2:1. Any slopes steeper must be designed by a geotechnical

engineer and approved by the Planning Commission prior to constructing.

3. Cut slopes shall not be steeper than 2:1. Any slopes steeper must be designed by a geotechnical engineer and approved by the Planning Commission prior to constructing.

D. Drainage

1. All ditches shall be built so as to provide positive drainage from any point on the road.
2. All subdivision roads and ditches shall have a minimum grade of 0.5 percent.
3. The elevation of bottom of ditch shall be at least one foot below that of the finished road surface.
4. Side ditches shall be trapezoidal with minimum side slopes of 2:1.
5. The ditches shall be lined as follows:
 - a) 0 to 3 percent slopes; seeded and mulched
 - b) Greater than 3 percent but less than 9 will be jute netting and seeded
 - c) 9 percent or greater shall be ripraped
6. Pipe outlets shall be constructed as determined from WV Erosion & Sediment Control Manual.
7. Culverts shall have a minimum diameter of fifteen (15) inches, and be installed to control runoff from the subdivision. The capacity of the culvert must correspond to ten-year frequency rainfall. Roadway culverts shall have a minimum of one (1) foot of cover as measured from subgrade to the culvert crown. The location and size of culvert must be shown on the sketch and final plats.
8. Driveway pipes shall be sized to correspond with a ten-year frequency rainfall. No culvert shall be less than fifteen (15) inches in diameter and shall not be less than twenty (20) feet in length.
9. The developer shall submit a copy of the WVDEP permit for erosion and sediment control to the Planning Office.

Article 15: Subdivision Accessibility to Public Utilities

A. Accessibility to Public Water and/or Sewage

If the subdivision adjoins a public water and/or sewage line, or if public water and/or sewage are within 300 Feet of any point of the "Development", the "Developer" shall install at his own expense, with the approval of the Public Service District (PSD) or Municipality, all main lines through the development to provide each lot with public water and/or sewage. All main line construction shall be to the PSD or Municipality Specifications' and be outside of the prescribed right-of-way, travel way and side shoulders except where necessary for crossovers. The "Developer" shall supply a letter to the Planning Commission from the PSD or Municipality stating that they do or do not have the capacity to service the "Development".

If the "Developer" can not provide such water or sewer to each lot because of lack of capacity or distance, then the developer shall so inform the purchaser in writing.

B. Accessibility to Electricity, Telephone, Cable Television, Etc.

If the subdivision adjoins an electric, telephone or cable television line, or any line providing a similar service to the public, or if such utilities are readily available, the developer must provide legal access to the proposed subdivision for adequate rights-of-way for each lot in the subdivision as may be required by each utility.

The utility right-of-way must be outside of the prescribed right-of-way, travel-way and side shoulders except where necessary for crossovers.

Article 16: Compliance, Administration, Enforcement, Violation & Penalty

A. Compliance

No land in Hardy County subject to the provisions of this Ordinance shall be subdivided nor shall any person record a subdivision plat, deed or other instrument, begin the sale or lease of lots or development of a subdivision by constructing buildings or homes, streets or roads, water facilities, sewerage facilities, drainage facilities, or other improvements, without having complied with the provisions of this Ordinance and approval therefore having been granted by the Planning Commission or County Planner.

Any plat, deed or other instrument which forms a new tract(s) of land not previously on record must be approved by the Planning Commission or County Planner as an exemption, minor subdivision or as a major subdivision.

A plat, deed or other instrument forming a new tract(s) of land not previously on record shall not be recorded by the Clerk of Hardy County unless it has been approved by the Planning Commission or County Planner. The recording of such a plat, deed, or instrument shall be without legal effect unless approved by the Planning Commission or County Planner.

All subdivision plats approved and sealed by the Planning Commission must be recorded with the Clerk of Hardy County within sixty (60) days from the date the seal is placed on the final plat.

B. Administration and Enforcement

Administration and enforcement of this Ordinance shall be the responsibility of the Hardy County Planning Commission or Hardy County Planner and the Planning Office staff.

When it appears that a violation of this Ordinance has occurred, the County Planner shall notify the responsible person by means of a written Violation Notice. The Violation Notice shall be sent via certified mail, specifying the nature of the violation, quoting the article and section of the ordinance and shall request that the violation be terminated within fifteen (15) days from the date appearing on the Notice. Failure to terminate the violation within the requested time shall be cause

for the County Planner to seek an injunction in the Circuit Court of Hardy County to restrain the responsible person from continuing the violation cited or seek an injunction requiring removal of structures or land uses from the property involved.

Article 17: Amendment, Variance & Appeal

A. Amendment

All amendments to this Ordinance shall be adopted by the Hardy County Commission according to the procedures set forth in Section 8A-4-5 through 8A-4-7 of the West Virginia Code.

B. Variance

Any request for a variance from the provisions of this Ordinance shall be made in written form and shall be submitted to the Planning Commission by the Subdivider.

The Planning Commission may grant a variance to this Ordinance when evidence is presented showing that such a variance will not affect the implementation of this Ordinance. The application for a variance shall be submitted with the application for the proposed subdivision.

Where the Planning Commission finds that undue hardship may result from strict compliance with these regulations, it may modify the regulations so that substantial justice may be done and the public interest secured, provided that such modification will not have the effect of nullifying the intent and purpose of the goals and policies of Hardy County. The Planning Commission shall determine extraordinary hardship only if it finds the following facts in regard to the proposed subdivision.

- A. That the land is of such shape and size, or is affected by such topographical conditions, or is subject to such title limitations of record that it is impossible or impractical for the subdivider to comply with all of the regulations of this Ordinance.
- B. That the granting of the modification not be detrimental to the public or injurious to other property in the vicinity of the subject property.

The application for a variance shall be submitted to the Planning Commission, along with a fee of one hundred (\$100.00), and the applicant shall provide the Planning Commission with such other information as is required by them.

C. Appeal

Appeals regarding any decision made by the Planning Commission in the administration of this Ordinance may be made to the circuit court as set forth in West Virginia Code Chapter 8A, Article 9.

Article 18: Validity & Conflict with other Laws

A. Validity

If any article, section, subsection, paragraph, clause or provision of this Ordinance shall be declared by a court of competent jurisdiction to be invalid, such decisions shall not affect the validity of this Ordinance as a whole or any other part thereof.

B. Conflict with Other Laws

Where the provisions of this Ordinance impose greater restrictions than those of any other ordinance or regulation, the provisions of this Ordinance shall be controlling. Where the provisions of any statute, other ordinance or regulation impose greater restrictions than this Ordinance, the provisions of such statute, ordinance or regulation shall be controlling.

ARTICLE 19: FEE SCHEDULE

EXEMPTION FEE SCHEDULE

Formation of a cemetery	\$35.00
Reissue of plat or plat correction	\$35.00
Deed of trust	\$35.00
Transfer by deed of trust, per lot	\$25.00
Transfer to nonprofit or religious organization	\$35.00
Division among heirs	\$25.00+
\$25.00 per lot	

MINOR SUBDIVISION FEE SCHEDULE

Family Transfer, per lot	\$25.00
Plat/Deed for boundary line adjustment/settlement	\$25.00
Transfer for agricultural purposes	\$25.00
Merging of tracts to form one parcel	\$25.00
Conveyance for essential services	\$25.00
Final Plat, 1-3 contiguous lots	\$75.00 +
\$50.00 per lot	
Reissue of plat or plat correction	\$25.00
Application Fee	\$25.00
Inspection Fee (after 1 st visit)	\$150.00

MAJOR SUBDIVISION FEE SCHEDULE

Public Hearing Fee, Variance	\$100.00
Public Hearing Fee, Planning Commission	\$100.00
Application fee	\$25.00
Final Plat Fee	\$200.00
+ \$50.00 per lot, per section or phase	
Reissue of plat or plat correction	\$50.00
Inspections (after 1 st visit)	\$150.00

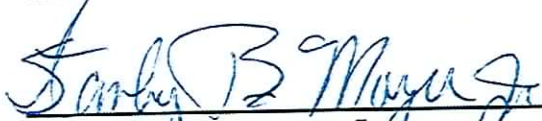
OTHER

Subdivision Ordinance Regulations	\$10.00
Inspection of Exempt Subdivision (Approved prior to adoption date)	\$150.00

This Hardy County Subdivision Ordinance Adopted
this 05th day of August, 2009.

This Hardy Count Subdivision Ordinance shall become Effective
this 01st day of September, 2009.

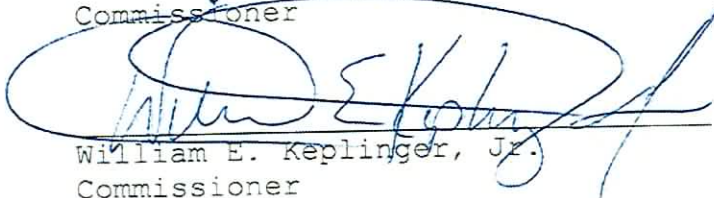
HARDY COUNTY COMMISSION



Stanley B. Moyer Jr.
President Hardy County Commission



A.J. Wade
Commissioner



William E. Keplinger, Jr.
Commissioner

This document presented and filed:
08/05/2009 03:19:11 PM



Gregory L. Ely, Hardy County, WV

