

MONROE County



Dilapidated Building and Neglected Property Ordinance



2010 Edition

A MONROE COUNTY ORDINANCE

AN ORDINANCE REGULATING THE REPAIR, ALTERATION, IMPROVEMENT, VACATING, CLOSING, REMOVAL, OR DEMOLITION OF DILAPIDATED BUILDINGS AND THE REMOVAL AND CLEANUP OF ANY ACCUMULATION OF REFUSE, SALVAGE, DEBRIS, OVERGROWN VEGETATION, TOXIC SPILLAGE, TOXIC SEEPAGE, OR OTHERWISE NEGLECTED OR DERELICT PROPERTY.

WHEREAS, the Monroe County Commission desires to adopt an ordinance regulating the repair, alteration, or improvement, or the vacating and closing or removal or demolition, or any combination thereof, of any dwellings or other buildings unfit for human habitation due to the dilapidation, defects increasing the hazard of fire, accidents, or other calamities, lack of ventilation, light, or sanitary facilities, or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect; and

an ordinance regulating the removal and cleanup of any accumulation of refuse, salvage or debris, overgrown vegetation or toxic spillage or toxic seepage located on private lands which is deemed to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare whether the result of natural or manmade force or effect; and

an ordinance designating the enforcement agency and fair and equitable rules of procedures and standards to guide the enforcement agency and its agents in conducting investigations hereunder; and

an ordinance providing for fair and equitable rules of procedure for instituting and conducting hearings in such matters before the County Commission, and the burden of proof to be met by the enforcement agency in the presentation of its evidence and the findings of fact, conclusions of law, and orders which may be made by the County Commission; and

an ordinance providing for various remedies for failure of the property owner or owners to comply with the orders of the County Commission; and

an ordinance providing for an appeal of the decisions and orders of the County Commission to the Circuit Court; and

an ordinance providing for the County Commission to enforce its orders by contracts with independent contractors to make the ordered repairs, alterations, improvements, demolitions, removal, or cleanup; and

an ordinance providing for the enforcement of County Commission orders and contracts in Circuit Court, subjecting the property in question to a lien for the amount of the contractor's costs in carrying out the Commission's orders and contracts, together with any daily civil monetary penalty imposed, court costs, and reasonable attorney fees, and for the sale of the subject property to satisfy this lien.

an ordinance authorizing the Monroe County Commission to receive grants, subsidies, donations and services in kind.

**ARTICLE 1. AUTHORITY, EFFECTIVE DATE, TITLE, PURPOSE,
JURISDICTION, SEVERABILITY**

Section 1.1 Authority

This Ordinance is adopted by virtue of the authority granted in Chapter 7, Article 1, Section 3ff of the West Virginia Code as amended and is in accordance with the Monroe County Comprehensive Plan as adopted by the Monroe County Commission.

Section 1.2 Effective Date

This Ordinance shall become effective immediately upon the date the Monroe County Commission acts to adopt it.

Section 1.3 Title

This Ordinance shall be titled and cited as the Monroe County Dilapidated Building and Neglected Property Ordinance.

Section 1.4 Purpose

The purpose of this Ordinance is to promote the public health, safety, and welfare of the citizens of Monroe County, West Virginia, by requiring, as the case may be, the repair, alteration, improvement, vacating, closing, removal, or demolition of dwellings or other buildings, or any combination thereof, unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents, or other calamities, lack of ventilation, light, or sanitary facilities, or other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous, or detrimental to the public health, safety, or welfare, whether the result of natural or manmade force or effect, exclusive of buildings being utilized for farm purposes on land actively engaged in farming; and by requiring, as the case may be, the removal and clean up of any accumulation of refuse, salvage or debris, overgrown vegetation, junked motor vehicle, toxic spillage, or toxic seepage located on private land which is determined to be unsafe, unsanitary, dangerous, or detrimental to the public health, safety, or welfare, whether the result of natural or manmade force or effect.

Section 1.5 Jurisdiction

This ordinance shall apply to all properties within Monroe County, West Virginia, exclusive of properties under the ownership, jurisdiction, or control of the United States Government, the State of West Virginia, and the incorporated municipalities.

Section 1.6 Severability

Should any article, section, subsection, or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.

ARTICLE 2. DEFINITIONS

Section 2.1 Interpretation

For the purpose of this ordinance, the following interpretations shall apply:

- (a) Words used in the present tense include the future.
- (b) The singular includes the plural.
- (c) The plural includes the singular.
- (d) The word "person" includes a corporation, unincorporated association, or partnership, chartered associations, partnerships, natural persons, joint ventures, joint stock company, club, company, business trust, or the manager, agent, servant, officer, or employee of any of these entities or organizations.
- (e) The term "shall" is mandatory and the term "may" is permissive.
- (f) The word "county" shall refer to Monroe County, West Virginia.

Section 2.2 Definitions

Abandoned Salvage Yard. Any unlicensed salvage yard or any salvage yard that was previously licensed but upon which the license has not been renewed for more than one year.

Blighted area. "Blighted area" shall mean an area (other than a slum area) which by reason of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site improvement, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

Building. Any structure on a parcel of land that has one or more walls.

Commission. The County Commission of Monroe County, West Virginia.

Commissioner. An elected member of the County Commission.

County Board of Health. An agency of local government created pursuant to Chapter 16, Article 2, Section 3 of the West Virginia Code to oversee the health needs of the citizens of the County in accordance with the law.

County Engineer. An engineer (or other technically qualified county employee) employed by the Monroe County Government either as an employee or as a consultant, or an engineer who volunteers time as a member of the Property Review Board. The County Engineer must also be registered by the West Virginia Board of Registration for Professional Engineers as a "Professional Engineer".

County Health Officer. A health officer (or County Sanitarian or designee) appointed by the County Board of Health pursuant to Chapter 16, Article 2, Section 12 of the West Virginia Code, or a physician appointed by the West Virginia Department of Health pursuant to Chapter 16, Article 2, Section 1 of the West Virginia Code and who is a member of the Property Review Board.

County litter control officer. An officer hired to prevent litter and enforce litter control regulations within Monroe County and who is accountable to the Enforcement Agency.

Debris. The scattered remains of something broken or destroyed; rubble or wreckage.

Dilapidated Building. Any building unfit for human habitation due to defects increasing the hazard of fire, accidents, or other calamities, lack of ventilation, light, or sanitary facilities, or other conditions prevailing in any dwelling or building which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous, or detrimental to the public health, safety, or welfare, whether the result of natural or manmade force or effect, exclusive of buildings being utilized for farm purposes on land actively engaged in farming.

Disaster. "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including fire, flood, earthquake, wind, snow, storm, chemical or oil spill, or other water or soil contamination, epidemic, air contamination, blight, drought, infestation, or other public calamity requiring emergency action.

Deed. A written instrument, signed and delivered, by which a person transfers and conveys title to real estate to another person.

Deed of Trust. A written instrument by which legal title to real estate is placed in one or more trustees to secure the payment of a sum of money or the performance of other conditions, which serves the purpose and function of a mortgage.

Easement. A lawfully acquired right or privilege to use a parcel of land or portion thereof for a specified purpose such as a road.

Floodplain. Areas subject to inundation by a one hundred year flood as determined by the Flood Insurance Study prepared by the Federal Emergency Management Agency (FEMA) for Monroe County.

Historic Site. Any lot, parcel, historic structure, or designated area that has been listed in the West Virginia or National Register of Historic Places.

Judgment Lien. A claim, encumbrance, or charge on property for payment of some debt, obligation, or duty owed to another person as decreed by a court of law and recorded among the land records of Monroe County.

Motor Vehicle. Any vehicle which is self-propelled by use of an internal combustion engine or by electrical engine which is intended to be driven upon a highway.

Motor Vehicle, Junked. Any motor vehicle that is discarded, wrecked, ruined, scrapped, dismantled, or would not pass the State of West Virginia motor vehicle inspection laws and is not serving a reasonable functional use or purpose and is not inside an enclosed building.

Neglected Property. Any accumulation of refuse or debris, overgrown vegetation, toxic spillage, or toxic seepage located on private land which is determined to be unsafe, unsanitary, dangerous, or detrimental to the public health, safety, or welfare, whether the result of natural or manmade force or effect.

Occupied Private Residence. A privately owned residential single-family dwelling that is occupied for at least six months each year.

Owner. A person who holds legal title to any real estate or personal property.

Property Review Board. The enforcement agency of Monroe County Government charged under Chapter 7, Article 1, Section 3ff of the West Virginia Code with the investigation and enforcement of violations of that statute and this Ordinance.

Public Body. The State or any municipality, county, township, board, commission, authority, district, or any other subdivision or public body of the State.

Public Safety. The prevention of and protection from events that could endanger the safety of the general public.

Real Property. All land, including improvements and fixtures thereon and property of any nature appurtenant thereto or used in connection therewith, and every estate, interest, and right, legal or equitable therein, including terms for years.

Refuse. Items or material discarded or rejected as useless or worthless.

Right-of-Way. A right that 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.

Salvage. Old or scrap copper, brass, rope, rags, batteries, paper, tires, or rubber; trash or waste; junked, dismantled, or wrecked machinery, machines, or motor vehicles; parts of any junked, dismantled, or wrecked machinery, machines, or motor vehicles; iron, steel, and other old or scrap ferrous or nonferrous materials.

Salvage Yard. Any place that is maintained, operated, or used for the storing, keeping, buying, selling, or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard. No salvage yard or any part thereof shall be established, operated, or maintained without a state license. The Commissioner of the Division of Highways has the sole authority to issue such a state license. All licenses are issued in accordance with the West Virginia State Code and the Rules and Regulations established by the Division of Highways. The term shall also include garbage dumps and sanitary landfills. Any collection of more than three junked motor vehicles, or combination of ferrous or nonferrous materials together with one or more junked motor vehicles, or a collection of any salvage contained in an area more than one-quarter acre in size, shall be considered a salvage yard.

Slum area. "Slum area" shall mean an area in which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, age or obsolescence, deterioration, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger human life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare.

Solid Waste Disposal Facility. Any facility established, modified, or operated for the purpose of the disposal of solid waste as defined by West Virginia Division of Natural Resources, Legislative Regulations for Solid Waste Management, as amended.

Structure. Anything constructed, the use of which requires fixed location on the ground; or, anything attached to something having such location. Structures do not include fences, driveways, or retaining walls. Structures do include prefabricated buildings, whether anchored to the ground or not

Subdivision. The partition or division of land into two or more lots, tracts, parcels, plots, sites, areas, units, interests, or other division of land, for the purpose, whether immediate or future, of offer, sale, lease, transfer of ownership, building construction, development, or land use. Subdivision applies to all forms of development including residential,

commercial, and industrial and includes the division of land either by deed, deed of trust, contract of sale, metes and bounds description, devise, intestacy, lease, map, plat, or other instrument, or by act of construction or land use. Subdivision includes re-subdivision and, when appropriate to the context, shall relate to the land subdivided.

Toxic Substance. Any substance which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may: (1) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, incapacitating, or reversible illness; or (2) pose a substantial present or potential hazard to human health exclusive of any proper application of substances for bona fide farming operations.

ARTICLE 3. PROPERTY REVIEW BOARD

Section 3.1 Membership

Membership in the Property Review Board shall be composed of: the County Engineer (or other technically qualified county employee or consulting engineer), the County Health Officer (or County Sanitarian or designee), a Fire Chief from a county fire company, one member of the county Solid Waste Authority, the County Litter Control Officer (if the County Commission chooses to hire one), and two members at-large appointed by the County Commission. The County Sheriff and one County Commissioner shall serve as ex officio members of the Property Review Board. The County Sheriff is also the county officer charged with enforcing the orders of the County Commission under the authority of the State Code and this ordinance. The voting members shall each serve a two-year term, staggered as necessary so as not more than half of the members terms of office expire at the same time.

Section 3.2 Meetings

- (a) The members of the Property Review Board shall meet one evening a month in public session, with the exception of December.
- (b) An election shall be held at Board's first regular meeting of the fiscal year, with elections held annually at the Board's first regular meeting of each fiscal year. A slate of nominees as candidates for the offices of President, Vice President, and Secretary, as recommended by the nominating committee, shall be presented at the Board's first regular meeting of the fiscal year. At the election the Board shall elect a President, Vice President, and Secretary. The term of office shall be one year.
- (c) Three voting members in attendance at the monthly meeting shall constitute a quorum.
- (d) Meetings of the Property Review Board shall be conducted generally in accordance with Roberts Rules of Order.
- (e) At the monthly public meeting, the Property Review Board shall receive completed and signed complaints from any resident or non-resident property owner, state or county law enforcement officer, on official complaint forms provided by the Property Review Board which are completed and signed by a complainant concerning: dwellings, other buildings, or any combination thereof that may be unfit for human habitation due to dilapidation or defects increasing the hazard of fire, accidents, or other calamities; lack of ventilation, light, sanitary facilities, or any other conditions prevailing in these dwellings or other buildings whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous, or detrimental to the public health, safety, or

welfare, whether the result of natural or manmade force of effect; and complaints concerning accumulation of refuse, salvage, debris, overgrown vegetation, toxic spillage, or toxic seepage located on private land which may be deemed to be unsafe, unsanitary, dangerous, or detrimental to the public health, safety, or welfare, whether the result of natural or manmade force or effect.

(f) The members of the Property Review Board may, if a quorum is present and by a majority vote, accept a complaint for investigation.

(g) Upon completion of an investigation of the complaint and without further public input, the members of the Property Review Board, relying upon the investigative report of the County Engineer or County Sanitarian, by a majority vote of those present in public session may:

(1) dismiss the complaint; or

(2) continue the matter until a later monthly meeting to permit further investigation; or

(3) propose an agreement with the property owner to remedy deficiencies and continue the matter until a later monthly meeting in order to permit the property owner time to remedy deficiencies in accordance with the agreement between the Property Review Board and the property owner, and in a case where the property subject to the deficiencies is an owner occupied private residence and the owner appears to be unable to afford the repairs, the report will be referred to the West Virginia Department of Health and Human Resources for no longer than six months to allow repairs to be made; or

(4) from the findings of an investigative report of the County Engineer or County Sanitarian determine that the dwelling, building, accumulation of refuse, salvage, debris, overgrown vegetation, toxic spillage, or toxic seepage is unsafe, unsanitary, dangerous, or detrimental to the public health, safety, or welfare and should be repaired, altered, improved, vacated, removed, closed, cleaned up, or demolished, as the case may be, and direct the County Engineer or County Sanitarian to initiate proceedings before the County Commission by petition/complaint to seek an order of the County Commission requiring the property owner to repair, alter, improve, vacate, remove, close, clean up, or demolish the dwelling or building in question within a reasonable time or to remove or clean up any accumulation of refuse, salvage, debris, overgrown vegetation, toxic spillage, or toxic seepage within a reasonable time, and to show proof of legal disposal; and to impose daily civil monetary penalties upon the property owner who fails to obey the order of the County Commission and, if necessary, to request that the County Commission advertise for and seek a contractor to make the ordered repairs, alterations, improvements, demolition, removal, or clean up; and to institute a civil proceeding in the Circuit Court of Monroe County, West Virginia to subject the private land in question to a lien to satisfy: the contractor's costs in making the ordered repairs, alterations, improvements, demolition, removal, or clean up; the daily civil monetary penalty imposed; reasonable attorney fees and court costs expended; and to order the private land in question sold to satisfy this lien; and order and decree that the contractor may enter upon the private land in question to perform the ordered repairs, alterations, improvements, demolition, removal, or clean up.

Section 3.3 Property Review Board Rules for Conducting Investigations

(a) Upon the members of the Property Review Board voting to accept the complaint and conduct an investigation, the County Engineer or County Sanitarian may contact the following public officials and ascertain the following information as appropriate:

(1) Sheriff's Tax Office to ascertain the property owner's address, the tax district map and parcel number for the property in question, its assessed value for both the land and buildings, acreage or lot size, the status of taxes paid or due and owed on this property, and any lien information.

(2) County Clerk to ascertain any information about judgment liens, tax liens, mechanics liens, or deed of trust liens on the subject property and obtain a copy of the deed or other document by which the owner obtained title to the property in question.

(3) Assessor's Office to ascertain lot or parcel size and a copy of the tax map for the property in question.

(4) County Health Officer to ascertain the type of water and sewer system serving the property in question.

(5) Permit Officer/Floodplain Manager to ascertain the number of improved lots in that or nearby subdivisions; location of the property in question insofar as flood prone areas, rivers, streams, ponds are concerned; the location of nearby schools, hospitals, and residences in the immediate area and in the watershed area.

(6) Local United States Department of Agriculture office and/or West Virginia Department of Agriculture office to ascertain the types of farming operations in the area in question and the soil types.

(7) County 9-1-1 System to ascertain the number of fire service or ambulance calls to that property in the last three years.

(8) West Virginia State Police and Monroe County Sheriff's Department to ascertain the nature and number of law enforcement problems originating from the property in question in the last three years.

(b) The County Engineer or County Sanitarian shall deliver notice to the property owner by certified mail, return receipt requested, to the property owner's address as ascertained from the Sheriff's tax office, and by personal service by the Sheriff's Department to the physical location of the subject property informing the property owner of the general nature of the complaint and informing the property owner that the County Engineer, County Sanitarian, County Sheriff, and other members of the Property Review Board will visit the property at a specific time and date to investigate the allegations set forth in the complaint. The notice shall inform the property owner that photographs will be taken of the property in question and that soil samples may be taken from the property in question. However, any such entrance upon the property in question shall be made in such a manner as to cause the least possible inconvenience to the persons in possession.

(c) The County Engineer or County Sanitarian shall, whenever possible, take written statements from the complainant, the property owner, neighbors, and other interested persons and attach these statements to the investigative report.

(d) The County Engineer or County Sanitarian shall, at the conclusion of the investigation, prepare an investigative report and provide a copy to each member of the Property Review Board at least three calendar days before the monthly meeting of the Property Review Board where the investigative report shall be considered.

- (e) The County Engineer or County Sanitarian may propose an agreement between the property owner and the Property Review Board, signed and dated by both parties, whereby the property owner agrees to remedy all deficiencies to the satisfaction of the Property Review Board within a specified period of time.
- (f) The County Engineer or County Sanitarian shall, at the direction of the Property Review Board, initiate by petition/complaint on behalf of the Property Review Board, an action before the County Commission to seek an order of the County Commission requiring the property owner to repair, alter, improve, vacate, remove, close, clean up, or demolish the dwelling or building in question within a reasonable time; or to remove or clean up any accumulation of refuse, salvage, debris, overgrown vegetation, toxic spillage, or toxic seepage within a reasonable time; and to show proof of legal disposal; and to impose daily civil monetary penalties upon the property owner who fails to obey the order of the County Commission; and, if necessary, to request that the County Commission advertise for and seek a contractor to make the ordered repairs, alterations, improvements, demolition, removal, or clean up; and to institute a civil proceeding in the Circuit Court of Monroe County, West Virginia to subject the private land in question to a lien to satisfy: the contractor's costs in making the ordered repairs, alterations, improvements, demolition, removal, or clean up; the daily civil monetary penalty imposed; reasonable attorney fees and court costs expended; and to order the private land in question sold to satisfy this lien; and order and decree that the contractor may enter upon the private land in question to perform the ordered repairs, alterations, improvements, demolition, removal, or clean up.

The petition/complaint shall state the findings and recommendations of the Property Review Board and inform the property owner that upon being served with this petition/complaint, unless the owner or owners of the property shall file with the County Clerk's Office a written request for a hearing before the County Commission within ten calendar days of receipt of the petition/complaint, an order will be issued by the County Commission implementing the recommendations of the Property Review Board.

ARTICLE 4. PROCEEDINGS BEFORE THE COUNTY COMMISSION

Section 4.1 Institution of Proceedings Before the County Commission

The County Engineer or County Sanitarian may file in the County Clerk's Office a petition/complaint on behalf of the Property Review Board seeking an order of the County Commission requiring the property owner to repair, alter, improve, vacate, remove, close, clean up, or demolish the dwelling or building in question within a reasonable time; or to remove or clean up any accumulation of refuse, salvage, debris, overgrown vegetation, toxic spillage, or toxic seepage within a reasonable time; and to show proof of legal disposal; and to impose daily civil monetary penalties upon the property owner who fails to obey the order of the County Commission; and, if necessary, to request that the County Commission advertise for and seek a contractor to make the ordered repairs, alterations, improvements, demolition, removal, or clean up; and to institute a civil proceeding in the Circuit Court of Monroe County, West Virginia to subject the private land in question to a lien to satisfy: the contractor's costs in making the ordered repairs, alterations, improvements, demolition, removal, or clean up; the daily civil monetary penalty imposed; reasonable attorney fees and court costs expended; and

to order the private land in question sold to satisfy this lien; and order and decree that the contractor may enter upon the private land in question to perform the ordered repairs, alterations, improvements, demolition, removal, or clean up.

The petition/complaint shall state the findings and recommendations of the Property Review Board and inform the property owner that upon being served with this petition/complaint, unless the owner or owners of the property shall file with the County Clerk's Office a written request for a hearing before the County Commission within ten calendar days of receipt of the petition/complaint, an order will be issued by the County Commission implementing the recommendations of the Property Review Board.

Section 4.2 Service of a Copy of Property Review Board Petition/Complaint Upon Property Owner

The County Clerk shall receive and file the petition/complaint of the Property Review Board and shall cause a copy thereof to be served upon the property owner in the manner provided in Rule Four of the West Virginia Rules of Civil Procedures. The County Clerk shall note on the original petition/complaint the date service was accomplished if by personal service, and cause the person making personal service to certify that personal service was performed on that date. A copy of this service shall be provided by the County Clerk to the County Engineer or County Sanitarian.

Section 4.3 Failure of Property Owner to Request a Hearing Before the County Commission Upon a Petition/Complaint of the Property Review Board

If the property owner or owners shall fail to file with the County Clerk, within ten calendar days of service of the petition/complaint upon said owner or owners, a written request for a hearing before the County Commission upon the petition/complaint of the Property Review Board, the County Commission may enter an order implementing the determinations and recommendations of the Property Review Board and ordering, as the case may be, the property owner to repair, alter, improve, vacate, remove, close, clean up, or demolish the dwelling or building in question within a reasonable time or to remove or clean up any accumulation of refuse, salvage, debris, overgrown vegetation, toxic spillage, or toxic seepage within a reasonable time and to show proof of legal disposal; and to impose daily civil monetary penalties on any owner or owners who fail to obey such an order. The County Clerk shall cause such an order to be filed and an attested copy of such order to be served upon the property owner or owners by certified mail, return receipt requested, at the same address utilized by the Sheriff for the property owner's tax bill. The County Clerk shall note on the file copy of the order the date of the mailing and the address to which it was mailed.

Section 4.4 Setting a Date and Time for a Hearing on the Petition/Complaint of the Property Review Board When Requested by the Property Owner

After receipt of a written request for a hearing upon the Property Review Board's petition/complaint by the property owner, the County Commission at its next regular meeting shall enter an order to schedule a hearing at a particular time and date within thirty calendar days of the receipt of the written request. In that regard, the County Clerk shall note the date of the filing of the written request upon the face of the written request. Upon entry of an order scheduling this matter for a hearing, the County Clerk shall file the original order and mail attested copies thereof to the property owner and County

Engineer or County Sanitarian by certified mail, return receipt requested, to the address of the property owner at the return address specified in the property owner's written request or the address utilized by the Sheriff for the property owner's tax bill. The County Clerk shall note on the filed order the address, date, and method of mailing of each attested copy mailed.

Section 4.5 Hearing Before the County Commission

The hearing before the County Commission upon the petition/complaint of the Property Review Board shall either be recorded by electronic device or by court reporter. The President of the County Commission will call the hearing to order and note on the record each member of the County Commission in attendance and whether a quorum exists to proceed. The President will note on the record the presence or absence of each of the litigants, and/or their respective counsel. Witnesses will be administered an oath by the President prior to testifying. The President of the County Commission will conduct the hearing and rule on matters of procedure and law. The West Virginia Rules of Evidence shall not apply to the proceedings, but each party shall have the right to present evidence and examine and cross-examine all witnesses. Documentary evidence will be marked as exhibits and, if relevant and probative, admitted into evidence. The County Commission shall have the right to recess the hearing and visit the property in question for a view. Facts discerned by Commission members on the view are evidence that may be considered. Each party shall have the right to make an opening and a closing statement. The Property Review Board has the burden of proving its allegations by a preponderance of the evidence and shall have the duty to go forward with the evidence.

Section 4.6 Findings of Fact, Determinations, Conclusions of Law, Orders, Civil Monetary Penalties Imposed by the County Commission

- (a) At the conclusion of the Section 4.5 hearing, the County Commission shall, by a majority vote, make findings of fact, determinations, and conclusions of law as to whether a dwelling or building:
- (1) Is unfit for human habitation due to dilapidation, whether the result of natural or manmade force or effect, which would cause the dwelling or other building to be unsafe, unsanitary, dangerous, or detrimental to the public health, safety or welfare; and/or
 - (2) Has defects that increase the hazard of fire, accidents, or other calamities, whether the result of natural or manmade force or effect, which would cause the dwelling or other building to be unsafe, unsanitary, dangerous, or detrimental to the public health, safety, or welfare; and/or
 - (3) Lacks ventilation, light, or sanitary facilities, whether the result of natural or manmade force or effect, which would cause the dwelling or other building to be unsafe, unsightly, unsanitary, dangerous, or detrimental to the public health, safety, or welfare; and/or
 - (4) Has other conditions prevailing therein, whether used for human habitation or not, and whether the result of natural or manmade force or effect, which would cause such dwelling or other building to be unsafe, unsightly, unsanitary, dangerous, or detrimental to the public health, safety, or welfare, and/or
 - (5) Has other conditions which result in a negative visual impact from public roads.

If these findings of fact, determinations, and conclusions of law are made, the County Commission may, by majority vote, order the property owner or owners to repair, alter, improve, close, clean up, or demolish the dwelling or building in question within a reasonable time and to show proof of legal disposal; and to impose a daily civil monetary penalty of \$50 upon the property owner or owners jointly and severally for each calendar day after the time limitation has passed for the ordered work to be performed and completed to the satisfaction of the County Commission and if the ordered work has not been completed or for any other failure to obey the order of the County Commission beyond the time limitation set for compliance.

(b) At the conclusion of the Section 4.5 hearing, the County Commission shall, by a majority vote, make findings of fact, determinations, and conclusions of law as to whether:

- (1) There is an accumulation of refuse, salvage or debris on private land, whether the result of natural or manmade force or effect, which would cause such dwelling or other building to be unsafe, unsanitary, dangerous, or detrimental to the public health, safety, or welfare; and/or
- (2) There is overgrown vegetation on private land, whether the result of natural or manmade force or effect, which would cause such dwelling or other building to be unsafe, unsanitary, dangerous, or detrimental to the public health, safety, or welfare; and/or
- (3) There is toxic spillage on private land, whether the result of natural or manmade force or effect, which would cause such dwelling or other building to be unsafe, unsanitary, dangerous, or detrimental to the public health, safety, or welfare; and/or
- (4) There is toxic seepage on private land, whether the result of natural or manmade force or effect, which would cause such dwelling or other building to be unsafe, unsanitary, dangerous, or detrimental to the public health, safety, or welfare and/or
- (5) Has other conditions which result in a negative visual impact from public roads.

If these findings of fact, determinations, and conclusions of law are made, the County Commission may, by majority vote, order the property owner or owners to remove or clean up any accumulation of refuse, salvage, debris, overgrown vegetation, toxic spillage, or toxic seepage from the private land in question within a reasonable time and show proof of legal disposal; and to impose a daily civil monetary penalty of \$50 upon the property owner or owners jointly and severally for each calendar day after the time limitation has passed for the ordered work to be performed and completed to the satisfaction of the County Commission and if the ordered work has not been completed, or for any other failure to obey the order of the County Commission beyond the time limitation set for compliance. The County Commission shall have the option of extending the time frame for correction based upon mitigating circumstances.

ARTICLE 5. APPEALS OF DECISIONS OF THE COUNTY COMMISSION TO CIRCUIT COURT

Section 5.1 Appeals of Decisions of the County Commission to Circuit Court

Appeals to decisions made by the County Commission in the Section 4.5 hearing to Circuit Court shall be in accordance with the provisions of Article 3, Chapter 58 of the West Virginia Code as amended.

ARTICLE 6. PROCEDURES FOR CONTRACTING WITH VENDORS TO PERFORM THE REPAIRS, ALTERATIONS, IMPROVEMENTS, DEMOLITION, REMOVAL, OR CLEAN UP ORDERED BY THE COUNTY COMMISSION UPON THE FAILURE OF THE PROPERTY OWNER TO COMPLY WITH THE ORDER OF THE COUNTY COMMISSION

Section 6.1 Procedures for Contracting with Vendors to Perform the Repairs, Alterations, Improvements, Demolition, Removal, or Clean Up Ordered by the County Commission Upon the Failure of the Property Owner to Comply With the Order of the County Commission

Upon the failure of the property owner or owners to perform the ordered duties and obligations as forth in the order of the County Commission within the time limitation set by said order, the County Commission shall advertise for and seek a contractor to make the ordered repairs, alterations, improvements, demolition, removal, or clean up, and may enter into any contract with any such contractor to accomplish the ordered repairs, alterations, improvements, demolition, removal, or clean up. The County Commission may make this contract contingent upon the order and decree of the Circuit Court, making the contractor's costs or the contract amount in making these ordered repairs a lien upon the private land in question and ordering that the private land in question be sold to satisfy this lien, and ordering that the contractor may enter upon the private land in question to make these ordered repairs.