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May 8, 2020

City of Ranson
~Building, Site & Infrastructure Division
~Tony Grant, City Manager
Ranson City Hall
312 S. Mildred Street
Ranson, WV 25438

Re: Roxul USA, Inc. d/b/a Rockwool – IMMEDIATE STOP WORK REQUEST

To Building, Site & Infrastructure Division & Mr. Grant:

Please be advised that I represent Jefferson County Vision, Inc. and many other concerned citizens of Ranson.

Rockwool has been issued its vertical building permit and continues to construct its plant for industrial use. By Order dated May 5, 2020, the Jefferson County Circuit Court determined that the "Industrial District Ordinance was enacted without the required notice under W.Va. § 8A-7-8 being provided." The Court has ordered that Ranson "advise...as to its intent with regard to whether it will seek to re-enact the now failed amendments to the Industrial District Ordinance through the proper statutory procedures for public notice."

As such and pending further Court action, the Jefferson Orchards parcel reverts to its prior use classification as Smart Code - New Community, thus prohibiting any and all industrial uses. Ranson must immediately revoke Rockwool's building permit and order that all work cease and desist until such time as the parcel is properly zoned for industrial uses, or Rockwool otherwise prevails on its affirmative claims.

I urge the City to seriously consider this request. If it fails to do so, it will clearly be placing the interests of Rockwool above those of its citizens and the rule of law. My clients will seek legal relief and damages as a result.

Additionally, Rockwool may now have a claim against Ranson that it was permitted to construct without the proper industrial use zoning classification. In that event, Ranson must mitigate any damages by immediately halting all work, as Rockwool might seek damages for any value added to the parcel.

It is my hope that Ranson will finally do the right thing for its citizens.

Very truly yours,

Christopher P. Stroech, Esq.

JEFFERSON COUNTY VISION

Media Contact:
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www.jeffersoncountyvision.com

FOR IMMEDIATE RELEASE

CIRCUIT COURT REJECTS CITY OF RANSON REZONING TO HEAVY INDUSTRY

Jefferson County Vision (JCV) holds Ranson accountable for their unlawful attempt to limit public notice on the Rockwool project

CHARLES TOWN, W.Va. (May 6, 2020) — On May 5, Jefferson County Circuit Court Judge David Hammer agreed with the claim in Jefferson County Vision's (JCV) lawsuit: the City of Ranson failed to provide adequate public notice when it changed its zoning to permit heavy industrial uses at Jefferson Orchard.

Within a week of the announcement of the secret Rockwool deal in 2017, Ranson rapidly moved to change the zoning at Jefferson Orchard to allow heavy industrial use and block almost all other uses of the property. Ranson denied its citizens the applicable public hearing notice, undermining public participation. The Court's ruling emphasized the distinct statutes regarding zoning ordinances as directed by the WV State Code and notes that compliance is not at the unilateral discretion of a municipality.

"For these reasons, the Court denies [Ranson's] motion based on the pleadings and briefs, it appears the Industrial District Ordinance was enacted without the required notice under W.Va & 8A-7-8 being provided." Ranson misused existing "sustainable community" smart zoning to allow heavy industry when they rezoned for Rockwool, and they did it without proper notice.

Jefferson County Vision Board Member Catherine Jozwik commented, "Now the Court agrees that Jefferson Orchards was not lawfully rezoned for heavy industry and that Ranson does not have authority to exempt itself from State law requirements. We are grateful for the court's careful consideration of the issues in this case."

The Court has ordered the City of Ranson to advise, by July 3, 2020, as to its intent to address "the now failed amendments in their procedures to attempt the Industrial District Ordinance."

JCV believes Ranson officials need to step back and pull the plug on their disastrous plan to industrialize the heart of Jefferson County. This project is clearly unwanted and it is time to restore the Ranson Renewed vision for Jefferson Orchard.

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Jefferson County Vision is a non-partisan, non-profit organization whose mission is to lead legal, political, and community action to support sustainable growth, without heavy industry, and to empower our citizen's voices to ensure clean, transparent government in Jefferson County. For more information, visit www.jeffersoncountyvision.com.

JEFFERSON COUNTY VISION

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FOR IMMEDIATE RELEASE

JEFFERSON COUNTY VISION CALLS UPON RANSON TO REVOKE ROCKWOOL'S BUILDING PERMIT

RANSON, W.Va. (May 8, 2020) — Jefferson County Vision (JCV) called upon the City of Ranson to revoke Rockwool's building permit immediately. A cease work request was delivered today to the City of Ranson on behalf of JCV and all citizens of Ranson who are monitoring continued construction by Rockwool. The call for cease work follows a May 5 court decision that rejected heavy industry rezoning at the Jefferson Orchards site.

The cease work request, hand-delivered to the City of Ranson by JCV attorneys, was prompted by a decision this week by Jefferson County Circuit Court Judge David Hammer. Judge Hammer agreed with the claim in JCV's lawsuit, ruling that the City of Ranson failed to provide adequate public notice when it changed its zoning to permit heavy industrial uses at Jefferson Orchards. The Court's ruling emphasized the distinct statutes regarding zoning ordinances as directed by the WV State Code and notes that compliance is not at the unilateral discretion of a municipality.

"In 2017, Ranson rapidly moved to change the zoning at Jefferson Orchards to allow the secret Rockwool deal to proceed. Their error denied Citizens a required public hearing notice. Now, is the time for Ranson to revoke Rockwool's building permit," said Jefferson County Vision President Anastasya Tabb.

In Judge Hammer's ruling, the Court has ordered the City of Ranson to advise, by July 3, 2020, its intent to address "the now failed amendments in their procedures to attempt the Industrial District Ordinance." Yet as it stands, the Court's decision has effectively reverted the Jefferson Orchards parcel to its prior use classification, which prohibits any and all industrial uses.

JCV attorneys also note in the cease work request that the Court's decision this week could prompt Rockwool to seek damages against the City of Ranson. Immediately halting all factory construction will put a hold on any value added to the parcel, which would mitigate damages Rockwool could seek.

Tabb echoed the closing sentence in the letter delivered, "It is my hope that Ranson will finally do the right thing for its citizens."

###

Jefferson County Vision is a non-partisan, non-profit organization whose mission is to lead legal, political, and community action to support sustainable growth, without heavy industry, and to empower our citizen's voices to ensure clean, transparent government in Jefferson County. For more information, visit www.jeffersoncountyvision.com.

West Virginia E-Filing Notice

CC-19-2018-C-201

Judge: David Hammer

To: Christopher Patrick Stroech
cstroech@arnoldandbailey.com

NOTICE OF FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA
JEFFERSON COUNTY VISION INC., a West Virginia Non-Profit Corporation v. THE RANSON CITY COUNCIL, a Public Corporation of the State of West Virginia
CC-19-2018-C-201

The following order - case was FILED on 5/5/2020 4:56:40 PM

Notice Date: 5/5/2020 4:56:40 PM

Laura Storm
CLERK OF THE CIRCUIT
Jefferson
119 N George Street
CHARLES TOWN, WV 25414

(304) 728-3231
circuitclerk@jeffersoncountywv.org

In the Circuit Court of Jefferson County, West Virginia

JEFFERSON COUNTY VISION INC., a West Virginia Non-Profit Corporation, Donald Sutherland, William Howard Adams, Plaintiffs,	)	
vs.)	)	Case No. CC-19-2018-C-201
THE RANSON CITY COUNCIL, a Public Corporation of the State of West Virginia, Defendant	)	

ORDER GRANTING PLAINTIFFS' MOTION TO AMEND; DENYING RANSON'S MOTION TO DISMISS; AND, GRANTING, in part, ROXUL USA'S MOTION FOR JUDGMENT ON THE PLEADINGS

This matter came before the Court upon review of various motions, including Plaintiffs' Motion to Amend, Defendant Ranson City Council's (City of Ranson's) Motion to Dismiss, and Defendant Roxul USA, Inc.'s [Rockwool] Motion for Judgment on the Pleadings, in which Ranson joins. After thorough consideration, the Court rules as follows:

Motion to Amend

Plaintiff's Motion to Amend seeks to change the Complaint's reference to "Ranson City Council" to "City of Ranson" as a defendant. "Motions to amend should always be granted when the amendment permits the presentation of merits of action, adverse party is not prejudiced by the sudden assertion of subject amendment, and adverse party can be given ample opportunity to meet issues." *Christian v. Sizemore*, 383 S.E.2d 810, 181 W.Va. 628 (1989). Although the City of Ranson objects to its inclusion in this suit for the reasons set forth in its Motion to Dismiss, it did not object to the Plaintiff's requested revision of the misnomer. Accordingly, Plaintiff's Motion to Amend is GRANTED and it is ORDERED the Amended Complaint is deemed filed herein. The Clerk shall change the caption of this case to reflect the amendment.

Correction of the misnomer does not substantively affect Ranson's arguments in its Motion to Dismiss and Motion for Judgment on the pleadings, and thus, the Court will proceed to rule on those arguments.

Motion to Dismiss

Plaintiffs' complaint at first sought two distinct types of relief: First, Plaintiffs requested that this Court "declare the subject zoning ordinance changes and zoning map amendments invalid and void as a matter of law." Second, Plaintiffs sought an award of attorney's fees and costs, however, Plaintiffs now concede that enacting an ordinance is a legislative function and they cannot recover monetary damages from Ranson in this action.

Plaintiffs' declaratory judgment request is based on Ranson's alleged failure to publish legal notice of its proposed zoning amendments for **two** successive weeks, instead of only for the **one** week that notice was published. In other words, because Ranson gave *statutorily* inadequate public notice of its proposed amendments to Ordinance #s 2017-301 ("the Stack Ordinance") & 302 ("the Industrial District Ordinance"), the amended ordinances themselves were not validly adopted and should, according to the Plaintiffs, be declared void.

In response to Plaintiffs' allegations, as permitted by the West Virginia Rules of Civil Procedure, Ranson moved to dismiss the case because, according to Ranson, it is statutorily immune from "claims" arising from legislative or quasi-legislative functions, such as enacting ordinances. *See* Governmental Tort Claims and Insurance Reform Act ("Tort Claims Act"), W.Va. Code §29-12A-1, *et seq*. Plaintiffs respond that the Tort Claims Act does not preclude declaratory judgment actions, citing the Act's explicit reference to non-monetary remedies, such as injunctions and other extraordinary remedies, remaining available. *See* W. Va. Code § 29-12A-4(b)(1) (2018).

> Except as provided in subsection (c) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to persons or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or

> proprietary function: Provided, That this article shall not restrict the availability of mandamus, injunction, prohibition, and other extraordinary remedies.

The Court agrees with the Plaintiffs that the West Virginia Uniform Declaratory Judgments Act, W.Va. Code §55-13-1, specifically authorizes an action against a municipality to determine the validity of an ordinance. W.Va. Code §55-13-2 provides:

> Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, *municipal ordinance*, contract or franchise, *may have determined any question of construction or validity arising under the* instrument, statute, *ordinance*, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

Moreover, W.Va. Code §55-13-11 (entitled "Parties") provides, in part:

> When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, *such municipality shall be made a party*, and shall be entitled to be heard . . . .

The Tort Claims Act, which is intended to make liability insurance more affordable by limiting liability for damages in civil actions for injury, death, or loss to persons or property, makes no mention of declaratory judgment actions that seek to declare the validity of a municipal ordinance. W. Va. Code § 29-12A-2 [legislative findings]; § 29-12A-4(b)(1), *supra.* Ranson has not cited any supporting authority from the Supreme Court of Appeals of West Virginia for its interpretation of the Tort Claims Act as applied to declaratory judgment actions. The Court rejects Ranson's argument to the extent it conflates the statutory obligation to publish notice of intent to enact an ordinance with tort liability for the substance of the ordinance itself, as both being legislative or quasi-legislative functions.

The Court does not believe that the Tort Claims Act and the Declaratory Judgments Act are in conflict in the circumstances here. But insofar as Ranson portrays them to be in conflict, rules of statutory construction require that when two statutes relate to the same subject matter and cannot be reconciled, the more specific statute takes precedence over the more general

statute. *See generally State ex rel. Tucker Cty. Solid Waste Auth. v. W. Virginia Div. of Labor*, 222 W. Va. 588, 598, 668 S.E.2d 217, 227 (2008) [compiling cases that recite this rule of statutory construction]. Thus, the Court finds that claims seeking a declaration of the validity of a municipal ordinance where a statutory failure to publish notice of amendment the requisite number of times is not subject to dismissal as the immune legislative or quasi-legislative functions of municipality under the Tort Claims Act.

Accordingly, Ranson's Motion to Dismiss based on Tort Claims Act immunity for legislative or quasi-legislative acts is DENIED.

Motion for Judgment on the Pleadings

Standard of Review

Next, Rockwool and Ranson argue for partial judgment on the pleadings regarding the validity of two ordinances at issue herein – Ordinance #2017-301 ("the Stack Ordinance") and Ordinance #2017-302 ("the Industrial District Ordinance"). The Court grants judgment on the Stack Ordinance, finding it withstands Plaintiffs' procedural challenge, but denies judgment on the Industrial District Ordinance for the following reasons.

The Supreme Court of Appeal of West Virginia has held a Rule 12(c) dismissal is analogous to one made under Rule 12(b)(6) (motion to dismiss for failure to state a claim) of the Rules of Civil Procedure. *Copley v. Mingo County Bd. of Educ*., 195 W.Va. 480, 466 S.E.2d 139 (1995). Dismissal under either rule for failure to state a claim or defense is appropriate only if it is clear that no relief could be granted under any set of facts that could be proven consistent with the allegations contained within the pleadings. *SeeConley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80, 84 (1957). Under this standard, a court is to read a pleading liberally and accept as true the well-pleaded allegations of the complaint and the inferences that reasonably may be drawn from the allegations. *SeeState ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc*., 194 W.Va. 770, 776, 461 S.E.2d 516, 522 (1995). Conversely, although the plaintiff enjoys

the benefit of all inferences that plausibly can be drawn from the pleadings, a party's legal conclusions, opinions, or unwarranted averments of fact will not be deemed admitted. *SeeHishon v. King & Spalding*, 467 U.S. 69, 73, 104 S.Ct. 2229 2232, 81 L.Ed.2d 59, 65 (1984).

Applicability of State Law

As an initial matter, the Court rejects Defendants' argument that the State code governing amendments to zoning ordinances does not apply to certain future zoning changes Ranson makes because Ranson enacted a municipal code that provides certain future modifications (specifically, placement or replacement of transect zones) shall not be considered amendments triggering State code notice requirements. The Court has not been provided authority, and is unaware of any authority, establishing the right of a municipality to unilaterally exempt its zoning changes from State law notice requirements, and accordingly, finds State law controls. *See e.g*. *Wolfe v. Forbes*, 159 W.Va. 34, 39, 217 S.E.2d 899, 903 (W. Va. 1975) ("[i]n West Virginia, municipalities derive general authority to adopt zoning ordinances from [state law]") and Syl. Pt. 1, *Vector Co. v. Bd. of Zoning Appeals*, 155 W.Va. 362, 184 S.E.2d 301 (1971) ("When a provision of a municipal ordinance is inconsistent or in conflict with a statute enacted by the Legislature the statute prevails and the municipal ordinance is of no force and effect.").

Stack Ordinance

Defendants first argue that because the Stack Ordinance was adopted upon recommendation of the Ranson Planning Commission any notice requirements are governed by W.Va. Code §8A-7-9 (entitled "Amendments to the zoning ordinance by petition"). The Court agrees enactment of the Stack Ordinance required compliance with W.Va. Code §8A-7-9, but disagrees with Defendants' tandem argument that a zoning amendment upon petition from a planning commission is *solely* governed by W.Va. Code §8A-7-9. Rather, for reasons discussed below apropos the Industrial District Ordinance, the Court finds a zoning amendment by petition must also comply with any applicable notice requirements of W.Va. Code §8A-7-8 (entitled

"Amendments to the zoning ordinance by the governing body"), which are incorporated by reference in W.Va. Code §8A-7-8a (entitled "Requirements for adopting an amendment to the zoning ordinance").

The Court does, however, find that the Class II-0 legal advertisement requirements under W.Va. Code § 8A-7-8 are not applicable to the Stack Ordinance because that ordinance neither "involves a change in the zoning map classification of any parcel of land" nor "a change to the applicable zoning ordinance text regulations that changes the allowed dwelling unit density of any parcel of land." The Court acknowledges Plaintiffs' argument that by adding minimum acreage requirements for Business Special Districts and Industrial Special District the Stack Ordinance *may* result in less land being utilized for residential purposes (*i.e*. dwellings). But any effect of those minimum acreage requirements for Business and Industrial Special Districts on "allowed dwelling unit density of any parcel of land" is entirely speculative and tenuous, at best.

Although "dwelling unit density" does not appear to be defined in Chapter 8A,[1] the Court believes the straightforward meaning of the phrase refers to either the number of dwellings permitted within a particular parcel of land (e.g. "each dwelling must have a minimum of a quarter-acre lot" or "there shall be no more than four dwellings per acre") or refers to the number of units that can be contained within a dwelling (e.g. "an apartment building on this parcel of land can contain no more than four individual apartments"). Review of the Stack Ordinance text reveals no mention of "dwelling unit density" or any specific, direct changes that would fall under the plain meaning of the phrase.

The Court notes that Article 6 (entitled "Building Placement"), Section 6.1.1 of the Stack Ordinance does include an amendment in the form of a strikethrough of the following language: "One principal building at the frontage, and one outbuilding to the rear of the principal building, may be built on each lot as shown in Table 15." (See Plaintiff's Complaint, Exhibit A, p. 004.) The Court is unable to find this change to building placement collaterally modified the "allowed

dwelling unit density of any parcel of land" because upon review of Ranson's SmartCode Chapter 19A, Article 5, it appears dwelling unit density is governed by Table 7 (entitled "Building Intensity"), which contains reference to residential restrictions in certain areas, including, *e.g*., "[t]he number of dwellings on each lot is restricted to one within a principal building and one within an accessory building." The Stack Ordinance does not amend Table 7 (or Table 8 entitled "Building Use") and makes no changes to "dwelling unit density" within Section 6.1.3 (also entitled "Building Use"), which retains the following unmodified language in subsection (a): "Buildings in Special Districts shall conform to the uses and intensities described in Table 7 and 8."

Accordingly, the Court finds a Class II-0 legal advertisement of the Stack Ordinance was not required under W.Va. Code § 8A-7-8. Therefore, the Stack Ordinance's presumptive validity withstands the procedural challenge presented by Plaintiffs in this case, and it is ORDERED Defendants are granted judgment on the pleadings as to Count I of the Plaintiffs' Amended Complaint (the Stack Ordinance).

Industrial District Ordinance

Plaintiff's Complaint further alleges that the Industrial District Ordinance is invalid because notice of the proposed amendment was not published twice pursuant to W.Va. Code § 8A-7-8. *See* Syl. Pt. 1, *Grady v. City of St. Albans*, 171 W.Va. 18, 297 S.E.2d 424 (W. Va. 1982) ("It is generally held that where a statute requires publication of a notice for public hearing prior to the enactment of a zoning ordinance the failure to comply with this requirement will render the zoning ordinance invalid.") Defendants' appear to concede that a Class II-0 legal advertisement under W.Va. § 8A-7-8 was not completed prior to the enactment of the Industrial District Ordinance, but argue such notice was unnecessary because 1) Ranson exempted placement and replacement of transect districts from notice requirements under State law, and 2) even if State law applies, only the Class I legal advertisement under W.Va. § 8A-7-9 was

required because the amendment was based on a landowner's petition.

The Court has already rejected Defendants' argument that Ranson is able to unilaterally exclude certain zoning modifications from "amendments" requiring notice contemplated by State law. Defendants essentially suggest that the municipality is able to define what constitutes a zoning amendment under State law and Ranson has determined that placement or replacement of transect districts should not meet the definition. The Court has not found a statutory definition of the term "amendment" for purposes of Chapter 8A, but W.Va. § 8A-7-8(b) specifically describes two types of changes that trigger a Class II-0 legal advertisement, including "a change in the zoning map classification of any parcel of land".[2]

Upon review of the Industrial District Ordinance materials attached as Exhibit B to Plaintiffs' Complaint, the Court finds the Industrial District Ordinance involved a change in the zoning map classification of a parcel of land. The applicable public hearing notice states the following: "the purpose of the hearing is to accept public comments on a petition to rezone Jefferson Orchards"; "upon recommendation and approval of the zoning map amendment by the Ranson Planning Commission, an ordinance amending the zoning map will be presented"; and the "proposed zoning map amendment is intended to rezone Jefferson Orchards from Smart Code – New Community (SC-NC) to Smart Code Special District Industrial (SC-SDI)." (Complaint, Exhibit B, 0075). The Industrial District Ordinance states that "[t]he official City of Ranson Zoning Map be amended to reflect that Jefferson Orchards . . . identified as Map 12 as Parcel 1 . . . is Smart Code - New Community (SC-NC) with new allocated transect districts" and "upon approval of the Land Development Plan and Plat by the Planning Commission . . . specific transect districts shall replace the SC-NC designation on the official zoning map as part of the Planning Commission's approval of the land development plan and plat . . ." (Complaint, Exhibit B, 0098-99). The Planning Commission's resolution related to the Industrial District Ordinance states that it is "A Resolution recommending an amendment of certain portions of the

official Zoning Map of the City of Ranson, West Virginia, for the purpose of reallocating the transect districts of the Smart-Code New Community in place." (Complaint, Exhibit B, 00101).

Whether described as an amendment to the zoning map that "rezones" Jefferson Orchards; an amendment to the zoning map that reflects Jefferson Orchards has "new allocated transect districts"; an amendment to the zoning map, involving specific transect districts "replacing" the SC-NC designation; or an amendment to the zoning map that "reallocates" transect districts, the Court finds the Industrial District Ordinance entailed a change in Jefferson Orchards classification on Ranson's map that geographically illustrates all zoning district boundaries within a municipality. Accordingly, the Court finds Ranson should have complied with W.Va. § 8A-7-8(b) prior to enacting the Industrial District Ordinance.

In reaching this ruling, the Court rejects Defendants argument that W.Va. § 8A-7-9 is the sole applicable State code governing notice of the proposed amendment because it was initiated by a landowner's petition. The Court agrees that W.Va. § 8A-7-9 applies when landowners petition for a zoning amendment, but the Court finds no indication within W.Va. § 8A-7-9 that it operates as a substitute for or to the exclusion of W.Va. § 8A-7-8. W.Va. § 8A-7-9 makes no mention of W.Va. § 8A-7-8 being inapplicable when an amendment is initiated by landowner petition. Rather, W.Va. §8A-7-8a entitled "Requirements for adopting an amendment to the zoning ordinance" provides in subsection (a) that "[a]fter the enactment of the zoning ordinance, the governing body of the municipality may amend the zoning ordinance **in accordance with section eight of this article**, without holding an election." W.Va. §8A-7-8a(a) does not provide that an amendment without an election may be made in accordance with section eight *or* section nine. It strictly directs compliance with W.Va. § 8A-7-8, which makes no mention of a Class II-0 legal advertisement being required for certain amendments *unless* the amendment is initiated by landowner petition. In sum, when an proposed amendment is initiated by landowner petition and the amendment "involves a change in the zoning map classification of any parcel of land, or a

change to the applicable zoning ordinance text regulations that changes the allowed dwelling unit density of any parcel of land" then compliance must be made with W.Va. §§ 8A-7-8 and 9.

Defendants argue this interpretation results in superfluity. But it is not the Court's role to question the Legislature regarding whether a statutory scheme requires too much notice. The Court notes the types of required notice and the entities charged with providing such notice are distinct within the statutory sections at issue. W.Va. § 8A-7-8 requires the *governing body* to provide written notice to certain landowners and publish a Class II-0 legal advertisement *at least thirty days prior* to the *enactment* of or *election* on the proposed amendment. Whereas, W.Va. § 8A-7-9 requires either the *governing body or the planning commission* to publish a Class I legal advertisement *at least days fifteen prior to the public hearing*. In light of these separate provisions regarding the provider, timing, and triggering events of the notice, the Court is bound to construe the statutes so as to give full intent and meaning to both legislative enactments. "When two statutes address the same subject matter, we first attempt to construe the statutes in *pari materia* to give effect to the full intent and meaning of both legislative enactments. *State ex rel. Tucker Cty. Solid Waste Auth. v. W. Virginia Div. of Labor*, 222 W. Va. 588, 598, 668 S.E.2d 217, 227 (2008) ("Statutes which relate to the same subject matter should be read and applied together so that the Legislature's intention can be gathered from the whole of the enactments." Syl. pt. 3, *Smith v. State Workmen's Comp. Comm'r,* 159 W.Va. 108, 219 S.E.2d 361. Even "where two statutes are in apparent conflict, the Court must, if reasonably possible, construe such statutes so as to give effect to each." Syl. pt. 4, in part, *State ex rel. Graney v. Sims,* 144 W.Va. 72, 105 S.E.2d 886 (1958)"). The Court finds the law simply requires an additional notice procedure when certain types of zoning amendments are initiated by landowners or a planning commission. The Code is plain in that regard and the Court will not second guess the Legislature's directive.

For these reasons, the Court DENIES Defendants' motion for judgment on the pleadings

as to Count II of Plaintiff's Amended Complaint because based on the pleadings and briefs, it appears the Industrial District Ordinance was enacted without the required notice under W.Va. § 8A-7-8 being provided.

Case Status

The Court notes that the instant ruling does not dispose of the issues in controversy because Rockwool has raised certain defenses, including laches, that challenge Plaintiffs' request for this Court to order that the Industrial District Ordinance is invalid and void. *SeeSchaeffer v. Anne Arundel County* (1995), 338 Md. 75, 656 A.2d 751 (holding that laches barred a claim that a county ordinance enacted four years earlier was void due to a procedural defect in its enactment when there was no substantive objection to the ordinance's validity); and *Citizens for Responsible Govt. v. Kitsap County* (1988), 52 Wash.App. 236, 758 P.2d 1009 (holding that laches barred the 1986 challenge to a county zoning ordinance adopted in 1983 that allegedly violated statutory notice requirements). As discussed in oral arguments, the matter may also be rendered moot if Ranson were to simply re-enact the Industrial District Ordinance following proper notice. The Court acknowledges the pending discovery dispute, which appears to predominantly revolve around Rockwool's efforts to establish its laches defense and would likely involve significant expenditure of the parties' and judicial resources to fully litigate.

Thus, in the interests of judicial economy, the Court ORDERS Ranson to advise the Court by close of business on July 3, 2020 as to its intent with regard to whether it will seek to re-enact the now failed amendments to the Industrial District Ordinance through the proper statutory procedures for public notice. The Court will then likely convene a status conference for the purpose of developing a litigation plan to resolve the remaining issues.

It is so Ordered.

/s/ David M. Hammer
Circuit Court Judge
23rd Judicial Circuit

[1]W.Va. Code §37-6A-1 (3) defines "Dwelling unit" as “a structure or part of a structure that is used as a home or residence by one or more persons who maintain a household, including, but not limited to, a manufactured home.”
[2]W.Va. Code §8A-1-2(hh) defines "Zoning map" as “a map that geographically illustrates all zoning district boundaries within a municipality or county, as described within the zoning ordinance, and which is certified as the official zoning map for the municipality or county.”