



CITY OF WHEELING PLANNING COMMISSION

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STAFF REPORT November 18, 2019

PROPERTY LOCATION: Vicinity of Bethany Pike (WV88)
Tax Parcels: W25-50,51,52,53,54,55,58,59,60,62,62.1
W26-90, 90.1, 90.2 W32-99.2
W33-6.2 W27A-1

NATURE OF REQUEST: Comprehensive Plan Amendment: Special Area Plan (SAP)

APPLICANT: Michael E. Hooper, Esq. on behalf of owner, GC&P Development, LLC

OCTOBER MEETING COMMENTS:

- The applicant expressed confusion over the three steps involved for the project to move forward. The same three steps have been provided to the applicant in writing, over the phone and in-person at meetings and have remained consistent dating back to 2016: 1- Special Area Plan/Comprehensive Plan Amendment, 2- Zone Change Request, & 3- Site Plan Review)
- Staff perceived less certainty from the applicant regarding the proposed development than what was presented in August (“Preferred Layout- Mixed Use Village Special Area Plan”). This plan was referenced in the applicant’s Exhibit 5 as “having spent considerable time and resources to investigate the feasibility of such a project”. Statements made during the October 21 meeting, shifted to an “evolving vision”, with terms like “flexible”, “preference of apples, oranges or pears waiting on guidance from the city”
- The applicant informed the Commission of their position that the excavation and removal and materials is exempt to the DEP’s quarry permit identified in Section 22-4-29 of WV State Code.
- In order to pursue a major subdivision for the “residential only” development option, a major subdivision application would need to be reviewed by the Planning Commission. Part Thirteen of City Code, Chapter One -Subdivision Regulations outlines the review procedures, which include “identifying policies and regulations that create opportunities or pose significant constraints for the proposed development” (§1305.01) referencing back to the land use policies of the comprehensive plan.
- Tax parcel W33-6 was subdivided into three separate lots, one of which, W33-6.2 (4.399 acres) was transferred in May 2015 to GACS LP without following the subdivision process (Deed Book 892 Page 639).
- Following the October meeting, staff provided the Commission with information from State Code via email pertaining to the Comprehensive Plan as it involves Economic Development and the Planning Commission.

COMMISSION MEMBERS

JAMES J. MAUCK, CHAIR · MARTHA WRIGHT, VICE CHAIR · THOMAS CONNER · RUSTY JEBBIA
HOWARD MONROE · CHRISTINA SCHESSLER · WILLIAM SCHWARZ · WENDY SCATTERDAY · JEREMY WEST

STAFF: THOMAS CONNELLY, AICP

STAFF RECOMMENDATION:

The Commission placed this item on the table at the October 21, 2019 pending the receipt of comments from the WVDOH on the Traffic Impact Study and the WVDEP. The Commission has not yet received this information and therefore recommends the item remain on the table.

ATTACHMENTS:

WV State Code 22-4-29
Exhibit 1b: W33-6.2 & aerial map
Deed Book 892 Page 639
Staff Email to Commission (10/24/19)

2012 West Virginia Code

CHAPTER 22. ENVIRONMENTAL RESOURCES

ARTICLE 4. QUARRY RECLAMATION ACT.

§22-4-29. Exemptions.

Universal Citation: WV Code § 22-4-29 (through 1st Spec. Sess. 2012)

- a) The provisions of this article do not apply to activities of the West Virginia department of transportation or any legally constituted public governing entities including municipal corporations or other political subdivisions, including the federal government, or to activities of any person acting under contract with any of these public agencies or entities, on highway rights-of-way or borrow pits owned, operated, or maintained solely in connection with the construction, repair and maintenance of the public roads system of the state or other public facilities. This exemption does not become effective until the public agencies or entities have adopted reclamation standards applying to the activities.
- b) The provisions of this article do not apply to quarrying on federal lands when performed under a valid permit from the appropriate federal agency having jurisdiction over the land.
- c) The provisions of this article do not apply to the following activities:
 - 1) Operations engaged only in processing minerals;
 - 2) Excavation or grading conducted solely in aid of on-site farming or on-site construction for purposes other than quarrying;
 - 3) Removal of overburden and of limited amounts of any mineral when done only for the purpose of prospecting and to the extent necessary to determine the location, quantity or quality of any natural deposit, if no minerals are sold, processed for sale or consumed in the regular operation of business;
 - 4) The handling, processing or storage of minerals on the premises of a manufacturer as a part of any manufacturing process that requires minerals as raw material;
 - 5) The removal or deposit of backfill material associated with construction, farming and noncommercial activities;
 - 6) Noncommercial quarry operations by a landowner if the disturbed area does not exceed one acre in area, upon notice to the director by the owner of his or her intent to establish the quarry.

Disclaimer: These codes may not be the most recent version. West Virginia may have more current or accurate information. We make no warranties or guarantees about the accuracy, completeness, or adequacy of the information contained on this site or the information linked to on the state site. Please check official sources.



Tax Parcel W33-6.2



GACS AND GC&P PROPERTIES

R-1A:		R-1B:		C-2:	
1. W26-90 (GC&P)	5. W25-50 (GC&P)	9. W25-54 (GACS)	13. W25-60 (COYNE)	17. W27A-1 (GACS)	
2. W26-90.1 (GACS)	6. W25-51 (GC&P)	10. W25-55 (GACS)	14. W25-62 (GACS)		
3. W26-90.2 (GC&P)	7. W25-52 (GACS)	11. W25-58 (GACS)	15. W25-62.1 (GACS)		
4. W33-6.2 (GC&P)	8. W25-53 (GACS)	12. W25-59 (GACS)	16. W32-99.2 (GC&P)		

EXHIBIT
1 (b) 2

D E E D

This DEED, made this 29th day of May, 20 15, by and between **DONALD C. ROSS and LORRAINE M. ROSS (a/k/a Lorrie M. Ross)**, husband and wife, "Parties of the First Part," and **G C & P DEVELOPMENT, LLC**, a West Virginia limited liability Company, "Party of the Second Part."

W I T N E S S E T H:

That for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the said Parties of the First Part do GRANT and CONVEY unto the Party of the Second Part the following described property:

The following tract of land situate north of Woodlawn Court, City of Wheeling, Ohio County, West Virginia and being more particularly bounded and described as follows:

Beginning at a point in the easterly line of the 1 and 237/1000 acre tract of land that was conveyed by Edward J. Valek and Mary Eileen Valek, his wife, to Milton G. Bailes and Virginia L. Bailes, his wife by deed dated July 9, 1986 and recorded in the Office of the Clerk of the County Commission of Ohio County, West Virginia in Deed Book 632, at page 263, said point being located N. 02° 56' E. (based on the meridian of Deed Book 775, at page 680, of which the hereindescribed is a part), 186 and 61/100 feet from a point at the northwest corner of Lot 5 as shown on the Plat of Woodlawn Court, recorded in said County Clerk's Office in Plat Book 3, at page 1; thence from said beginning point and with said easterly line N. 02° 56' E. 502 and 57/100 feet to a point in the southerly line of the 20 and 96/100 acre tract of land (Tract 2), that was conveyed by JSR, L.L.C., to GC&P Development, LLC, by deed dated December 14, 2010 and recorded in said County Clerk's Office in Deed Book 811, at page 147; thence with same N. 64° 23' E. 353 and 83/100 feet to a point in the westerly line of 70 and 34/100 acre tract of land, less exception, (Tract 1), in said last mentioned deed; thence with same S. 52° 34' 48" E. 48 and 76/100 feet to a point at the northwest corner of the Edgewood Club Condominiums, a plat of which is recorded in said County Clerk's Office in Plat Book 4, at page 30; thence with same S. 08° 30' 05" W. 667 and 57/100 feet to a point; thence with other lands remaining to the party of the first part hereto N. 83° 00' W. 292 and 78/100 feet to the place of beginning, containing four and three hundred ninety-nine one

thousandths (4 and 399/1000) acres, more or less, as compiled from calculations by Stegman & Schellhase, Inc., Civil Engineers and Surveyors on March 3, 2015.

EXCEPTING AND RESERVING to Grantors, their heirs, executors, administrators, successors, and assigns, all oil and gas underlying the above described property. Grantors shall have no surface access or rights to the said property.

Said tract being subject to any and all conditions, exceptions, reservations, stipulations, rights of way, etc., as may be contained in prior deeds.

NOTE: THIS TRACT IS LANDLOCKED BUT IS BEING CONVEYED TO AN ADJOINING OWNER WHO HAS ACCESS TO A PUBLIC ROAD.

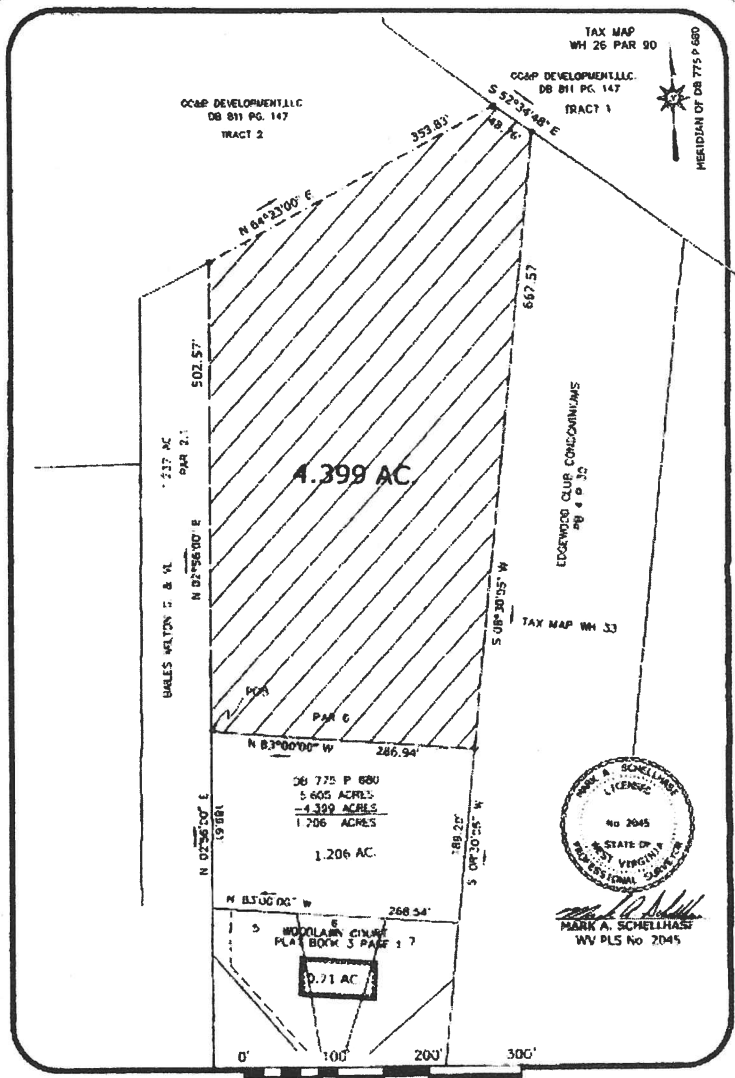
BEING a part of the 5.606 acre tract of land that was conveyed to Donald C. Ross and Lorraine M. Ross, husband and wife by Walter C. Gallaway and Michelle P. Gallaway by Deed dated March 30, 2007, and recorded in the office of the Clerk of the County Commission of Ohio County, West Virginia, in Deed Book 775 at Page 680.

This conveyance is made subject to all exceptions, reservations, restrictions, covenants, conditions, rights-of-way, other easements and other interests of other parties appearing in prior instruments of record.

The Parties of the First Part WARRANT GENERALLY the property hereby conveyed.

The Parties of the First Part have no actual knowledge or reason to believe that the property or the substrata or subsurface of the property has been used for the storage, treatment, or disposal of hazardous waste or contains an underground storage tank or tanks.

Should this conveyance or the above particular description, for any reason, prove incorrect or inadequate to cover the property intended to be conveyed as specified, the Parties of the First Part, their heirs, successors, beneficiaries or assigns, agree to execute any instrument or instruments as may be necessary to correctly or properly transfer the property intended to be conveyed as specified or to correct the particular description.



MARK A. SCHELLHASE
WV PLS No 2045

STEGMAN & SCHELLHASE, INC.
CIVIL ENGINEERS AND SURVEYORS
51 - 15th Street - P.O. Box 187
Martinsburg, WV 26003
(304) 252-8080 Phone
(304) 232-8087 Fax
DRAWN BY: JET SCALE: 1 INCH = 100 FEET
DATE: 2/11/15 REVISIONS: 3/16/15

MAP OF
4.399 ACRE TRACT OF LAND TO BE CONVEYED BY
DONALD C. & LORRAINE M. ROSS
CITY OF WHEELING, OHIO COUNTY, WEST VIRGINIA

DECLARATION OF WITHHOLDING AND CONSIDERATION

Under the penalties of perjury, the transferor(s) state that they are not residents of the State of West Virginia and that they are not exempt from withholding tax on West Virginia source income of non-residents pursuant to § 11-21-71b of the West Virginia Code.

The Parties of the First Part hereby declare that the total consideration paid for the property transferred by this document is \$64,000.00.

WITNESS the following signatures:



DONALD C. ROSS



LORRAINE M. ROSS

STATE OF Florida,

COUNTY OF Charlotte, TO-WIT:

I, Stacy S. Anderson, a Notary Public in and for the said State and

County, do hereby certify that DONALD C. ROSS, whose name is signed to the writing above bearing date the 4th day of June, 2015, has this day acknowledged the same before me.

Given under my hand and seal this 4th day of June, 2015.



STACY S ANDERSON
MY COMMISSION # FF 149637
EXPIRES: August 11, 2018
Bonded Thru Budget Notary Services

Stacy S. Anderson
Notary Public

Commission Expires 8-11-2018

STATE OF Florida,

COUNTY OF Charlotte, TO-WIT:

I, Stacy S. Anderson, a Notary Public in and for the said State and

County, do hereby certify that LORRAINE M. ROSS, whose name is signed to the writing above bearing date the 4th day of June, 2015, has this day acknowledged the same before me.

Given under my hand and seal this 4th day of June, 2015.



STACY S ANDERSON
MY COMMISSION # FF 149637
EXPIRES: August 11, 2018
Bonded Thru Budget Notary Services

Stacy S. Anderson
Notary Public

Commission Expires 8-11-2018

This instrument prepared by Michael E. Hooper, WVSB #4800, JACKSON KELLY PLLC, 1144 Market Street, Suite 400, PO Box 871, Wheeling, WV 26003, (304) 233-4000. By the preparation of this deed, Michael E. Hooper makes no representation or warranty with respect to the extent or quality of title to the property hereby conveyed or to any other matter which may be disclosed in a title examination.

Patricia A Fahey
OHIO County 09:09:25 AM
Instrument No 19592393
Date Recorded 06/09/2015
Document Type DEED

Pages Recorded 5
Book-Page 892-639
Recording Fee \$11.00
Transfer Tax \$281.60
Additional \$25.00

Tom Connelly

From: Tom Connelly
Sent: Thursday, October 24, 2019 3:23 PM
To: Bill Schwarz (bschwarz21@yahoo.com); Christina Schessler; Howard Monroe (RadioMonroe@aol.com); Jeff Mauck (svwarwood@aol.com); Joe Touvell jtouvell@wheelingwv.gov; Martha Wright; Nancy Prager; Paula Blake; Rose Humway-Warmuth; Rusty Jebbia (rjebbia@wheelingwv.gov); Thomas Conner; Wendy Scatterday; West, Jeremy
Subject: meeting follow-up

Commissioners, I have a few comments and general thoughts in follow-up to Monday's meeting from the position of the Economic & Community Development Department related to both the applicant's statements and some by the Commission. I wasn't able to take detailed notes as I was actively listening and responding so these aren't all inclusive. As you saw, a transcript of this and future meetings will be part of the record moving forward so it will be important to have accurate information and clarify or correct statements if necessary.

- To succinctly answer Mr. Hooper's question as to why/whether a Comprehensive Plan amendment is necessary as it pertains to GC&P's application, please see section 8A-7-9 of state code below regarding zone change requests. Recall that the property is zoned R-1A and "mixed use villages" are not permitted in the R-1A district. A zone change request to a district that would allow a mixed use village, (C-2), is not consistent with the adopted comprehensive plan and therefore would unlikely be approved. In order for a zone change request to be approved, (be consistent with the plan) the comprehensive plan must first be amended.

§8A-7-9. Amendments to the zoning ordinance by petition.

(c) If the petition to amend the zoning ordinance is from the owners of fifty percent or more of the real property in the area, then before amending the zoning ordinance, the governing body with the advice of the planning commission, must find that the amendment is consistent with the adopted comprehensive plan. If the amendment is inconsistent, then the governing body with the advice of the planning commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.

- With regard to "highest and best use" phraseology that is being used, the Commission and City Council have determined that the highest and best use of the property is single family residential as indicated in the current zoning map.
- With regard to the discussion on the Commission's role in the economy/ economic viability/ determining business success/locations/guiding development into certain parts of the city; yes it is absolutely the role of the Commission to guide development to certain parts of the city based in part on location, characteristics, infrastructure, access, etc. We have even identified "Priority Reinvestment Areas" on Map 9 and "Opportunity Areas" on Map 10. Please find below sections of state code I believe to be relevant:

§8A-3-4. Mandatory components of a comprehensive plan.

(a) The comprehensive plan is a written statement on present and future land use and development patterns consisting of descriptive materials, including text, graphics and maps, covering the objectives, principles and guidelines for the orderly and balanced present and future economic, social, physical, environmental and fiscal development of the area under the jurisdiction of the planning commission.

(b) A comprehensive plan shall meet the following objectives:

(1) A statement of goals and objectives for a governing body, concerning its present and future land development;

(5) A statement of recommendations concerning future land use and development policies that are consistent with the goals and objectives set forth in the comprehensive plan;

(c) The comprehensive plan shall have, but is not limited to, the following components:

(1) Land use. -- Designate the current, and set goals and programs for the proposed general distribution, location and suitable uses of land, including, but not limited to:

(A) Residential, commercial, industrial, agricultural, recreational, educational, public, historic, conservation, transportation, infrastructure or any other use of land;

(E) Constraints to development, including identifying flood-prone and subsidence areas.

(3) Transportation. -- Consistent with the land use component, identify the type, location, programs, goals and plans to meet the intermodal transportation needs of the jurisdiction, including, but not limited to:

(A) Vehicular, transit, air, port, railroad, river and any other mode of transportation system;

(B) Movement of traffic and parking;

(4) Infrastructure. -- Designate the current, and set goals, plans and programs, for the proposed locations, capabilities and capacities of all utilities, essential utilities and equipment, infrastructure and facilities to meet the needs of current and anticipated future residents of the jurisdiction.

(8) Economic development. -- Establish goals, policies, objectives, provisions and guidelines for economic growth and vitality for current and anticipated future residents of the jurisdiction, including, but not limited to:

(A) Opportunities, strengths and weaknesses of the local economy and workforce;

(B) Identifying and designating economic development sites and/or sectors for the area;
and

(C) Type of economic development sought, correlated to the present and projected employment needs and utilization of residents in the area.

(9) Community design. -- Consistent with the land use component, set goals, plans and programs to promote a sense of community, character and identity.

(10) Preferred development areas. -- Consistent with the land use component, identify areas where incentives may be used to encourage development, infill development or redevelopment in order to promote well designed and coordinated communities and prevent sprawl.

I hope this helps the discussion and review moving forward. Thank you for taking the time and energy to actively participate in this review.

-Tom

Thomas Connelly, AICP
Assistant Director
Economic & Community Development Department
City of Wheeling
1500 Chapline Street, Room 305