

BEFORE THE CITY OF WHEELING, WEST VIRGINIA
PLANNING COMMISSION

In re:

GC&P Development, LLC - Bethany Pike, WV 88

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TRANSCRIPT OF PROCEEDINGS

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Monday, October 21, 2019
5:00 p.m. - 6:44 p.m.

West Virginia Northern Community College
B&O Building Auditorium
Wheeling, West Virginia

Planning Commission Members in Attendance

James Mauck, Chairperson
Martha Wright, Vice Chairperson
Howard Monroe
Wendy Scatterday
Christina Schessler
William Schwarz
Jeremy West

Also in Attendance

Rosemary Humway-Warmuth, Esquire, City Solicitor
Thomas Connelly, AICP
Michael Hooper, Esquire
Douglas Grayson, Thrasher Group
Robert Matejczyk, Thrasher Group

P R O C E E D I N G S

1
2 CHAIRMAN MAUCK: We will call the October 21st
3 meeting of the Wheeling Planning Commission to order.

4 The hour is 5:00. Commissioner Conner and
5 Commissioner Jebbia are excused this evening.

6 Our first item on the agenda is action on the
7 August minutes.

8 Commissioners, you have had time to review those?
9 Do you have any questions, corrections, comments? If not,
10 the chair will entertain a motion.

11 COMMISSIONER MONROE: Absent any corrections, I
12 move the minutes be approved as submitted.

13 CHAIRMAN MAUCK: Approved by Commissioner Monroe.
14 Second?

15 COMMISSIONER SCHESSLER: Second.

16 CHAIRMAN MAUCK: Seconded by Commissioner
17 Schessler.

18 All in favor?

19 ALL: Aye.

20 CHAIRMAN MAUCK: Opposed, same sign?

21 (No response.)

22 CHAIRMAN MAUCK: They stand approved.

23 Any communications to speak of, Mr. Connelly?

24 MR. CONNELLY: Nothing other than what was included

1 in the staff report.

2 CHAIRMAN MAUCK: No hearings this evening.

3 No standing committee reports.

4 The staff has submitted the 2018-'19 annual report.
5 Commissioners, you've had time to review that. Any accolades
6 for Mr. Connelly, and then you can make a motion.

7 COMMISSIONER MONROE: I move that the report be
8 approved as submitted us to, with a letter of our
9 appreciation for the hard work by our staff and Mr. Connelly.

10 COMMISSIONER SCATTERDAY: Second.

11 CHAIRMAN MAUCK: So moved by Commissioner Monroe,
12 seconded by Commissioner Scatterday.

13 All in favor?

14 ALL: Aye.

15 CHAIRMAN MAUCK: All opposed, same sign?

16 (No response.)

17 CHAIRMAN MAUCK: They stand approved.

18 Our next item is unfinished business, Special Area
19 Plan. You have had time to review the Staff Report. I'm
20 going to ask Mr. Connelly to take a few minutes and review
21 that with us and add any comments he would like to make about
22 any of the items.

23 MR. CONNELLY: Thank you, Chairman. I'll do my
24 best to speak up as well. If you need the volume turned up,

1 there is a dial in the front and a dial in the back of the
2 room that you can adjust the volume.

3 As the chairman said, we're here to review the
4 Special Area Plan that was submitted August 12th by the
5 applicant. Since that time, the staff has been gathering
6 information on the request that is an amendment to the
7 Comprehensive Plan called the Special Area Plan, and that
8 requires me to reach out to City and State entities for their
9 input and feedback on the proposed Comprehensive Plan
10 amendment.

11 Since that time in August, the Commission has had
12 time to review the materials. The public has had time to
13 review the materials. There is a page on the website that
14 has all the exhibits, all the maps, staff reports, e-mails to
15 the Commission. So there was every opportunity for the
16 material to be reviewed up until tonight.

17 The Staff Report that was submitted for tonight
18 basically just breaks down Page 55 of the Comprehensive Plan
19 that outlines the process that the Planning Commission is to
20 go through when considering a Comprehensive Plan amendment.

21 The purpose of the Special Area Plan is to allow
22 for an opportunity to review the proposed development that's
23 not consistent with the existing future land use map rather
24 than completely exclude it. That's why we are here. We're

1 looking at the possibility of amending the future land use
2 map.

3 It states five steps necessary to provide feedback
4 from the public and to have the Commission analyze the
5 benefits and impact of the proposed alternatives that are
6 being presented to identify how the Special Area Plan better
7 reflects the community vision that was established in the
8 plan, and then establish a new revised category for the
9 designated area.

10 So the first step was to provide opportunities for
11 the public up until this point. The Planning Commission is
12 limited in how they can do that simply because they need to
13 be advertised meetings, but there have been other
14 opportunities for the public to engage with each other and
15 the developer on the application.

16 No. 2 is to analyze the benefits and the impacts
17 before making a decision on the Special Area Plan that needs
18 to occur. I outlined in the Staff Report that the Commission
19 conduct an analysis, and they need to have full complete
20 information on.

21 The third step is to identify how that Special Area
22 Plan better reflects the community vision. The community
23 vision is outlined on Page 37. Then it's followed with
24 community initiatives and goals.

1 Then the developer is to establish a new
2 designation for that area. It's currently conservation
3 development. The new category would need to be applied if
4 the amendment were to go through.

5 As it pertains to having as much information as
6 possible for the request, following the August meeting, I did
7 reach out to various State offices. Page 3 of the Staff
8 Report is a summary of those. Then a complete index of all
9 of the transmittals were provided.

10 But to summarize there on Page 3, we reached out to
11 the West Virginia Department of Highways, Department of
12 Environmental Protection, State Historic Preservation Office,
13 the City of Wheeling Water Department, Water Pollution
14 Control, Engineering, Fire, Police, Engineering and Public
15 Works.

16 The Department of Highways comments -- Point 1
17 states that they acknowledge the proposed access point on the
18 Special Area Plan appears to be feasible, but that a full
19 scope of the proposal application would be determined from an
20 approved traffic impact study, and until that traffic impact
21 study is provided, determination cannot be made regarding the
22 ability of the Department of Highways roadways to accommodate
23 traffic associated with the proposed development, and that
24 any proposed modifications to the State highway system will

1 be implemented by the developer. The Department of Highways
2 has not committed to design or construct those modifications.

3 The second set of comments from the State Office of
4 Environmental Protection -- that entire correspondence has
5 also been provided -- basically states that they cannot
6 provide comments related to the proposed development until an
7 application is filed with the Department of Environmental
8 Protection.

9 The final state office that was contacted was the
10 State Historic Preservation Office, and they would be
11 submitting their comments under a Section 106 review, which
12 is initiated if and when federal dollars are spent on a
13 project, which would include Army Corps of Engineers.

14 As far as the City of Wheeling offices go, at the
15 bottom of Page 3, the Water Department has identified that
16 the proposed site would not be able to be served by the tank
17 that currently services that area based on elevation and
18 capacity and the different needs. So the City's consultant
19 engineer is looking into the possibility of providing the
20 water service.

21 The wastewater or Water Pollution Control
22 Department also have consulted with their engineers to
23 determine a flow study to determine if any additional
24 wastewater can be taken into the City system in that area.

1 So those two studies are ongoing.

2 That summarizes the State and City departments that
3 the Planning Commission has instructed me to reach out to try
4 to paint an entire picture of what the Special Area Plan
5 might have in terms of can the property be developed, and
6 then should the property be developed. But trying to
7 determine if it can based on the highway network, City
8 infrastructure, those things have not yet been determined.

9 CHAIRMAN MAUCK: Thank you, Mr. Connelly.

10 At this time, Commissioners, what we'll do is
11 continue with our questioning, clarifications, trying to
12 extract some data from Mr. Hooper on which we can base our
13 decision.

14 So I'll open the floor up. I'll remind you of the
15 questions that we've already asked are contained in the
16 minutes from August 12th. You may review those and continue
17 with some of those or come up with some new ones.

18 MR. CONNELLY: Just for the Commission's
19 notification, I do have all of the maps available. If anyone
20 has a specific question, I'm able to pull it up on the
21 overhead.

22 MS. HUMWAY-WARMUTH: Also for a point of
23 clarification, we are having this meeting transcribed. All
24 the documents that were supplied to the Commission are on the

1 website and the public documents will be integrated and
2 become a part of the record of this proceeding this evening.

3 CHAIRMAN MAUCK: Since no one has a question, I'll
4 start. I'll go first.

5 Your engineer from the Thrasher Group, Rob, I have
6 a question that he may want to answer.

7 MR. HOOPER: Okay. Come on up, Rob. Rob Matejczyk
8 from the Thrasher Group.

9 MR. MATEJCZYK: Good evening.

10 CHAIRMAN MAUCK: At the last meeting -- we were
11 here August 12th -- I asked a question about the material
12 that you were going to extract from the site. I was told
13 that approximately 8.8 percent would remain as fill and 91
14 percent would be hauled away. Then on what Mr. Connelly has
15 as Exhibit No. 11 -- just to let you know, I'm not looking at
16 it -- the second page, second complete paragraph, states
17 something like this: There will be 9,278,000 cubic yards of
18 cut and 2,478,000 will be reused. The rest will be exported.
19 Does it say that?

20 MR. MATEJCZYK: It does not. The correspondence
21 I'm looking at is dated September 25th, 2019.

22 CHAIRMAN MAUCK: I'm not looking at that. I just
23 have "Exhibit No. 11, Page 2" written down. Okay. Okay. 15
24 percent of the total volume of material at the development

1 site.

2 MR. HOOPER: Those numbers have changed based on
3 fill. The easiest way to look at it is one-third of the
4 material stays on the site for fill, roads, that sort of
5 thing. Two-thirds is to be removed.

6 CHAIRMAN MAUCK: Okay.

7 MR. HOOPER: If that helps. That kind of
8 simplifies the process.

9 CHAIRMAN MAUCK: But Exhibit No. 9 has a
10 discrepancy where it states that approximately 18 percent of
11 the fill will go off site and the rest will stay on site. So
12 we kind of need to coordinate those. That's just the
13 opposite of the other two examples.

14 MR. HOOPER: The best estimate that we have -- we
15 really don't know until we get into it. The best estimate
16 that we have is approximately --

17 CHAIRMAN MAUCK: One-third.

18 MR. HOOPER: -- one-third, with a total volume of
19 about 9,000,000. The total is about the same.

20 CHAIRMAN MAUCK: All right. Now it's your turn,
21 Mr. Monroe.

22 COMMISSIONER MONROE: I have a couple of questions.
23 One is a personal reference to the project, and the other I
24 want to talk about the Comprehensive Plan, your analysis of

1 -- looking at the special Area Plan.

2 I can't recall if it was at our previous meeting or
3 conversations that I've had with you folks. As you know, I'm
4 really concerned about the access road. I'm really concerned
5 that it might not be adequate for this road. I know in your
6 plans you have shown a significant improvement to Bethany
7 Pike.

8 MR. MATEJCZYK: Correct.

9 COMMISSIONER MONROE: Widening the road, stop
10 signs, stop lights, a number of different things which to me
11 sounds like it has potential.

12 In conversations with you -- and I just want to
13 make sure I understand this correctly -- or Mr. Coyne, you
14 have said that that would be the responsibility of the State
15 to do that road; is that correct?

16 MR. HOOPER: I have yet to be involved in one of
17 these circumstances where each party doesn't say the other
18 party is going to pay for it.

19 As I said, the problem with this process is we're
20 trying to do an amendment to a Comprehensive Plan at the same
21 time that you're getting into zoning issues, at the same time
22 you're asking for information that deals with site plan
23 improvements. Usually these kind of questions happen at the
24 third phase of the process. For better or worse, the way the

1 status is and the way the process is, these are getting
2 somewhat commingled in.

3 So what I can tell you is it is a process that will
4 be negotiated. We certainly would prefer for others to pay
5 for it. By the same token, we understand that there's going
6 to be some portion that comes from us.

7 We also have a significant amount of equity
8 capital. We have the houses that would be
9 necessary (inaudible). From that standpoint, right off the
10 bat, there is likely to be some contribution by the developer
11 for that.

12 We plan on -- in fact, we've already discussed
13 before we started up the meeting to meet in Charleston with
14 the Division of Highways folks to talk about just that, so we
15 can talk about more about what's happened.

16 As you've already seen, we've got feasibility
17 letters. They have seen the very same plans that you've
18 looked at, and they are the ones that provide the letter to
19 the City that says, yes, this project is feasible.

20 Now, the devil is always in the details, so we need
21 to get into those details, and that is the next step.

22 COMMISSIONER MONROE: I do understand and -- again,
23 probably we've got a two-phase issue. One is: Do we revise
24 the Comprehensive Plan because the scope and the size and

1 value of this project would suggest that it can be greater
2 use (inaudible) --

3 MR. HOOPER: That's the threshold --

4 COMMISSIONER MONROE: I understand that.

5 However, in order to assess the value of the scope
6 and size of that project, one of my concerns is whether or
7 not it's feasible given the current access road. The letter
8 quite clearly says right here the developer can implement any
9 modifications that are recommended to do that. So I hear
10 what you're saying.

11 MR. HOOPER: Understood.

12 COMMISSIONER MONROE: That is a real sticking point
13 for me. It's something -- that's why maybe we are taking a
14 long time to deal with this before we can get a grasp on it.

15 MR. HOOPER: Someone has got to pay the bill. We
16 understand that.

17 CHAIRMAN MAUCK: Correct me if I'm wrong, Counsel,
18 but I believe the letter says that the feasibility of the
19 project appears -- not is -- appears to be pretty good.

20 MR. HOOPER: If you have the letter in front of
21 you, you know better than I do.

22 CHAIRMAN MAUCK: I don't have it in front of me.

23 COMMISSIONER MONROE: It says that the proposed
24 site access appears to be feasible, but full scope would need

1 to be determined following additional studies. It does go on
2 to say that they would expect the developer to implement
3 (inaudible). Again, I do understand that's something that
4 would come at a later date, but if we can overcome that to
5 begin with, then the value of this project probably to my
6 mind is going to be difficult.

7 MR. HOOPER: That's why we need input as well.
8 We've also supplied eight different variations, eight plans,
9 which I can boil down to three essential types. One is what
10 we have called the preferred plan, and I think that's how
11 Mr. Connelly and I have referenced it, which is the true
12 mixed-use development, which we think is the most beneficial
13 for the City, the most beneficial for the developer, and the
14 best -- the highest and best use for that particular land.

15 The second is purely commercial, the mall kind of
16 thing, power center which is somewhat of a passe
17 circumstance, and that was something that was from former
18 City leadership that led to the development of the mixed-use
19 development.

20 Finally, remember conservation development is a
21 designated future use. The property is currently zoned
22 residential. My client does have the right to develop this
23 property. He also has the right to move forward with a
24 residential development. Actually, is that the highest and

1 best use for the property? I submit to you it is not. Is it
2 the best for the tax base for the City of Wheeling? I submit
3 that it is not. Residential developments doesn't generate a
4 whole heck of a lot of money for the City. What does is a
5 mixed-use development.

6 But at this point, I don't know whether the City
7 wants us to be an apple, an orange, or a pear. So if it's
8 this body's desire that -- for purposes of these assumptions,
9 for purposes of these calculations, for purposes of whatever
10 studies are required and will be required, are we doing it
11 based on a residential housing development, a power center,
12 or on the preferred plan, which is a mixed-use development?
13 I don't have that guidance from you.

14 Quite frankly, I think it's very difficult and very
15 expensive for my client to propose based on all of your
16 scenarios. That was a long answer to your first question.

17 But, again, that gets to the first threshold
18 inquiry: Does the City want to amend the future use to allow
19 something other than conservation development?

20 Again, I submit -- and I know you told me I was
21 wrong at the last one -- that conservation development is not
22 necessarily exclusive for doing this by amendment. I don't
23 think you need to. Mr. Connelly has said that you do. If
24 that's what this body says, then I assume that's what we have

1 to do. But I think it's permissible and feasible under the
2 Comprehensive Plan and West Virginia law to move forward
3 without having a Comprehensive Plan. That's the one question
4 that I have: Are we moving forward on the apple, the orange,
5 or the pear?

6 COMMISSIONER MONROE: The problem I have with that,
7 Mr. Hooper, is according to our Staff Report -- Mr. Connelly,
8 the purpose of the special Area Plan is allow an opportunity
9 for the review of proposed developments of larger tracts of
10 land that are not consistent with the existing future land
11 use maps. Until we know what the developments are, it's
12 difficult to determine whether the scope of that project is
13 adequate to consider changing the Comprehensive Plan. Does
14 that make sense based on what I'm saying?

15 MR. HOOPER: I understand this is a wonderful
16 catch-22 circular sort of situation. I'm assuming, for
17 purposes of this meeting and future meetings, we are moving
18 forward with the preferred plan, which is the mixed-use
19 village. If someone on the Planning Commission feels
20 otherwise, great. But if not, at least give me some
21 validation of that assumption. It's not a ruling, but it's
22 going to cost my client money to move forward with that.

23 COMMISSIONER MONROE: I'm just suggesting -- I
24 think at some point we've got to know what the plan is before

1 we decide whether that plan is adequate to consider an
2 amendment to the Comprehensive Plan.

3 MR. HOOPER: I understand.

4 COMMISSIONER MONROE: We had a previous situation
5 years ago as well where it was unclear what it is that we're
6 looking at. So that is another one of my concerns is what
7 exactly are we looking at and how can we determine whether it
8 is of a size and scope that deserves for us to consider an
9 amendment if we don't really fully understand what that plan
10 is. I understand that we have a number of more meetings,
11 public and individual and so on. Again, I have to raise that
12 question.

13 MS. HUMWAY-WARMUTH: Can I be recognized for a
14 moment?

15 Legal has had these discussions with you,
16 Mr. Hooper, but from my perspective and speaking with
17 Mr. Connelly and others in regard to the thoughts about what
18 development would go on there, it's incumbent for the
19 applicant to provide information for the Commission to rule
20 upon. The applicant information that is before this body
21 right now is the mixed-use model. It does not foreclose the
22 developer should that not come to fruition to come back to
23 the body with some other potential use, but what's in front
24 of us is not an apple/orange/pear situation. It's what you

1 have chosen.

2 MR. HOOPER: That's perfectly fine, and that's why
3 it's the preferred plan.

4 COMMISSIONER MONROE: Again, if that's what we're
5 looking at, I got that. You got the apples and oranges
6 thing. You said maybe we'll just do residential or maybe
7 just commercial --

8 MR. HOOPER: The City solicitor clarified that for
9 us.

10 COMMISSIONER MONROE: You are presenting a
11 mixed-use village concept?

12 MR. HOOPER: Got it.

13 COMMISSIONER MONROE: I'm asking you that.

14 MR. HOOPER: Yes.

15 COMMISSIONER MONROE: Again, the Staff Report on
16 the issue of Special Area Plan, Mr. Connelly reviews
17 conservation development. "Portions of the site are also in
18 the suburban residential core." "Land designated for
19 conservation development on the future land use map should be
20 maintained in its natural state to the maximum extent
21 possible." Suburban residential is described as
22 "well-established neighborhoods with some historic context
23 that should continue as-is." Those are two very different
24 approaches.

1 As I understand the request here, we would be
2 looking to roll all of that into one Special Area Plan; is
3 that correct?

4 MR. HOOPER: Yes, which actually gets into the
5 dichotomy of what zoning actually works. I know that that's
6 the second phase of it. There really is no
7 non-downtown-based mixed-use zoning. So that's one of the
8 hurdles, if we do get past Step 1, which is the amendment to
9 the Comprehensive Plan, what that zoning is going to be. Do
10 we go with the existing and do we segregate portions of the
11 property? Do we move on to Step 2 with all the restrictions?
12 Or do we create a new type of zoning that's going to work?
13 There are definitely challenges, and progress requires
14 challenge, and progress requires a lot of thought. I
15 appreciate the process that we're going through.

16 COMMISSIONER MONROE: I just kept thinking about
17 this when I was looking over one of the Thrasher reports on
18 stormwater, the stormwater reports making estimates on --
19 which makes sense -- estimates on the water that a hotel,
20 retail store, and coffee shop and so forth would present,
21 which brings me to the question: How certain are you that
22 these things are going to come to fruition? These plans are
23 being designed with specific businesses in mind. Are you
24 still looking at sort of a visionary plan, or do you actually

1 have some strong reasons to believe these things are going to
2 happen? Because these particular things have driven this
3 conclusion on stormwater --

4 MR. HOOPER: We were asked for an estimate based on
5 what we know. We know, based on initial context that we
6 have -- do we have signed commitments from folks? It's
7 premature in the game. We have significant interest. We
8 have a lot of folks that think this is going to be a really
9 great thing for the City of Wheeling. So when we were asked
10 for an estimate, we ran based upon the materials that have
11 already been presented to the City, which shows the specific
12 uses that are listed. The specific uses are what are
13 referenced in the water and sewage flow estimates.

14 You've got to start somewhere. I kind of like the
15 phrase "visionary." It's good to be a visionary. I think
16 those are realistic goals.

17 COMMISSIONER MONROE: That's all that I have for
18 right now.

19 COMMISSIONER SCHWARZ: A couple of questions.
20 Backing up a few steps, as far the permitting, the Division
21 of Highways indicates that conceptually the access road is
22 feasible, but they would need to determine that there would
23 be a traffic impact study. I assume you're moving forward
24 with a traffic impact study sometime in the near future?

1 MR. HOOPER: Mr. Grayson, do you want to address
2 traffic impact studies?

3 This is Doug Grayson, one of the two co-owners of
4 GC&P Development. As I mentioned, 28 years in the real
5 estate business. I'll let you introduce yourself. That's
6 probably the best way.

7 MR. GRAYSON: All right. Doug Grayson with GC&P
8 Development. Yes, I have been in development for some time
9 with a large public company in Philadelphia, Pennsylvania
10 Real Estate Investment Trust.

11 Regarding the TIS, there is a couple of things that
12 I would like to say about the TIS. One thing that has been a
13 challenge for us, similar to the point that Mr. Monroe was
14 making about the calculations on stormwater or sewer or
15 whatever, these are very specific questions that are being
16 asked during what is a land use discussion. The questions go
17 to how are you going to mitigate the impacts of your
18 development which are usually questions that are addressed
19 during a site plan approval, when the applicant is at a point
20 where they are much further along.

21 The same thing that is going to come up as an issue
22 when it comes to trying -- assuming for the moment that we
23 all conclude that somehow a TIS can be prepared and that that
24 TIS will actually be some kind of relevant or reliable

1 decision criteria on which to make this land use decision --
2 because to do an effective TIS, you have to be specific about
3 the uses that are in the development. You have to be able to
4 say, okay, this is a grocery store, this is a restaurant,
5 this is service retail, this is general retail, this is
6 office space, this is this kind of housing, and also have
7 different trip generation rates. Also you have to distribute
8 that over the network. Those are all different, depending on
9 what kind of uses those are.

10 So the traffic impact study is a very specific tool
11 and can be very useful as a decision criteria for a city or
12 for a developer, whomever is looking for that to try to
13 project what the traffic might be.

14 But we also -- the traffic generated by this
15 mixed-use village development versus what? Okay. Because it
16 is 100 acres of property that in our belief is going to be
17 developed. Right now it's zoned residential, potentially
18 could accommodate a large piece of property. You might be
19 able to accommodate 400 homes. If you put 400 homes on
20 there, the trip generation of 400 homes might be greater than
21 what we have proposed. I mean, if you look at the total
22 constructed area or useable area, it's actually a larger
23 development potentially than a mixed-use village that we're
24 talking about.

1 The other thing that you have to look at is: Is a
2 TIS really an effective planning tool for an urban area or
3 infield area? It may not be as useful a decision tool as
4 some people think it is. All jurisdictions just seem to
5 automatically default to TIS, but it's really a much better
6 predictor when you're talking about rural areas or remote
7 suburban areas to an urban center. When you have a situation
8 like what we're talking about in the Route 88 corridor where
9 much of it is already developed and much of it is even
10 outside of the jurisdiction of what you have the ability to
11 plan -- you've got a lot of county real estate out there that
12 seems to all be evolving as suburban residential. So one of
13 the challenges you're going to have is -- you know,
14 residential is a significant trip generator. Because
15 residential is a use -- it not only generates trips when it's
16 created, but it grows under time. It tends to grow over
17 time. Those households get bigger, have more cars.

18 So you have a situation right now in the Route 88
19 corridor where you've got a lot of residential and not a
20 whole lot of services to support in terms of commercial. I
21 mean, all around the periphery of our property, there's a lot
22 of commercial zoning, but you might want to consider then in
23 addition to asking for a TIS, being specific about what kind
24 of development you want a TIS for. Do you want a TIS that

1 compares -- or some kind of traffic analysis that compares --
2 what would the residential development that they are
3 currently considering for, how would that compare to the
4 village that they're talking about. Because mixed-use tends
5 to have -- tends to be a mitigation tool that people employ
6 to try to mitigate traffic, which is one of the reasons why
7 we proposed a mixed-use development.

8 It might be a good idea for the City to think
9 seriously about proposing alternative land uses, especially
10 for a property like this. I don't know how many properties
11 of 100 acres or more you have, but this might be an
12 opportunity, given the way the corridor has been developing
13 and is likely going to develop in the future -- it might be a
14 way to get services in a place where you really need them and
15 try to shorten trips that are already occurring. Right now
16 anyone who has a home in that corridor now -- they know where
17 they are going to accomplish that shopping, whether it's high
18 end in St. Clairsville, Pittsburgh or local places around the
19 town of Wheeling. There's a lot of outflow of retail sales
20 or commuter trips or whatever is happening because all those
21 residents are going somewhere, and they are using that
22 corridor for those trips.

23 When we have -- once we decide exactly what that
24 traffic space is going to be in the scope of it, one of our

1 arguments is going to be -- there are significant options,
2 which are the trips that are already in the network. Okay.
3 Because all those homes that are in the corridor right now
4 have to go somewhere to accomplish the services that they
5 need.

6 So our hope was that the City would conclude that
7 putting this kind of land use in the corridor and doing it in
8 a fashion where it's a mix of uses not only keeps the
9 development sort of community in scale but has the effect of
10 traffic mitigation that mixed-used can have and offers use
11 types that aren't currently in the model.

12 So rather than building a single family home, which
13 is currently what it is zoned for, how about doing a housing
14 unit type that isn't currently available or not in great
15 supply and tends to be in great demand?

16 So, yes, we will do a TIS. We're a little
17 frustrated that we're being asked to do the TIS at a time
18 when no developer has the kind of information necessary to
19 make the TIS a really reliable decision tool, because for the
20 TIS to be really good, it needs to be specific.

21 I think there is already some big picture things
22 that the City can rely on at this point when we're in the
23 land use stage and say, you know what, it might be a good
24 idea for us to strive to have other services in this corridor

1 as a traffic mitigation strategy, and then once a specific
2 development is proposed with specific users, then it's clear
3 that that TIS will have to be done, and the development's
4 impasse as far as traffic will have to be mitigated.

5 So you can always mitigate the impacts of a
6 development. The question is just what are they and how much
7 is it going to cost and who is going to pay for it. But they
8 can be mitigated.

9 Doing a significant development here on this
10 property, in addition to traffic and the land use that's
11 decided for this property, I think a good land use decision
12 here can help traffic, a good land use decision here can help
13 with what a lot of people perceive -- where the development
14 of property can help with what a lot of people perceive as an
15 existing stormwater issue in this area. It's a very massive
16 watershed that's vacant land right now with really hard
17 material. You know, the water, in a rain event, strikes it
18 and runs. When you develop a property, the DEP requires that
19 you fix that situation. So this is an opportunity to make a
20 dramatic improvement in the existing stormwater condition,
21 not the other way around.

22 So that's a long answer to the TIS question, but if
23 you could -- I mean, I think that it would be helpful if you
24 could think about other things other than just the TIS,

1 especially while we're in the land use phase, other things
2 that sort of affect how to make the traffic decision here.
3 Maybe the study should be -- now that we're in the land use
4 stage rather than site plan approval, maybe the study should
5 be: Can you give us traffic information comparing the single
6 family home development that could be done on this property
7 versus the mixed-use development? That's a hypothetical.
8 Even though we don't know the specifics in either one of
9 those plans, we could say, okay, this many homes generates
10 these trips, this mixed-use village generates these trips.

11 At the moment, because we don't know who they are
12 or what it is, we can say that in either case, those trips
13 are going to have fairly significant impacts around the road
14 network, but you can at least look at the total quantity and
15 how they compare in deciding what is the most appropriate use
16 for the property.

17 CHAIRMAN MAUCK: As the solicitor stated, we're
18 looking at a mixed-use village. So the TIS should be
19 concerning a mixed-use village.

20 No. 2, we've asked for comments from the west
21 Virginia Department of Transportation. Their reply was we
22 need a TIS before we can do that and look at the federal
23 highway Route 88 and the improvements that you put forward.
24 So that's the reason. We want it because they want it.

1 MR. GRAYSON: Okay. That's fair, and we will do a
2 TIS. If everybody has concluded that what should be
3 evaluated here is a mixed-use development, then that's fine.
4 We will do the best we can as far as generating traffic
5 information, but when you don't know who the specific users
6 are in the development, which is something that no developer
7 can be expected to know until they are at site plan approval,
8 then it's just a real challenge for coming up with something
9 that can be considered reliable.

10 CHAIRMAN MAUCK: The other comment that I have
11 about Mr. Monroe talking about water requirements on the
12 mixed-use village is -- we're looking at the Special Area
13 Plan with the mixed-use village as you presented it in our
14 eyesight. That's right in the sight of what we're looking
15 at.

16 MR. GRAYSON: Okay. I think when we first
17 submitted documents, I think that the plan process that was
18 presented to us was to submit alternatives for development in
19 the special Area Plan. Correct me if I'm wrong. Our
20 obligation was to show you various alternatives so that you
21 could debate which were the most appropriate for the site.
22 We were sort of expecting a response back on that from you
23 saying that the most appropriate use of the various plans
24 that you submitted to us, under the regimen of how you go

1 about a special area district application, is you evaluate
2 those alternative land uses and then tell us which one is the
3 preferred.

4 So this is a different process that we're
5 encountering here which is you want to tell us -- it's almost
6 like you're asking us to do site plan approval under the
7 Special Area Plan at the land use stage.

8 MR. CONNELLY: Just a couple of comments on that.
9 The process to get the site plan to the final step would
10 require a zone change. You can't get a zone change -- it's
11 unlikely to get a zone change if your request doesn't
12 correspond to the future land use map.

13 The future land use map shows conservation
14 development. You're unlikely to get a zone change to a
15 commercial district to some other district that allows mixed
16 uses. So that's why the first step is to address the
17 comprehensive land use category.

18 If what the property owner has in mind for the
19 property isn't permitted or isn't foreseen in the
20 conservation development, it's up to them to come up with a
21 plan and then categorize that into a land use category that
22 this Planning Commission can make a determination on whether
23 or not it meets the goals and objectives of the Comprehensive
24 Plan.

1 If that's done, then the zone change could proceed
2 and a site plan could proceed, but you have to have something
3 to use as the basis for the discussion, understanding it may
4 not be exactly this tenant or that tenant.

5 We've been presented with videos and drawings and
6 everything on a mixed-use village with a parking count. So
7 that is the idea that is and has been floated to the Planning
8 Commission, and that's what the City offices are using as
9 kind of a baseline for water consumption, sewer needs. I
10 believe that's what we're looking for the highways to use as
11 a baseline for traffic demands.

12 So just as we wouldn't, let's say, entertain or
13 maybe we wouldn't entertain for long -- if the applicant said
14 I want to make this heavy industry, well, all you have to do
15 is look at the Comprehensive Plan and say what goes into the
16 heavy industry land use category. You need rail. You need
17 barges. You need different things in order for it to make
18 sense to apply that land use category to a piece of property.

19 So when you try to apply an existing land use
20 category, say commercial office or something like that, you
21 need to look and see what the City's Comprehensive Plan says
22 of the commercial office category. It's on heavy traffic
23 roads. It has infrastructure capable of supporting it. It
24 has all these different things that would lend that property

1 to be a successful development of the city.

2 I don't think you can just say let's get to the
3 site plan stage, and then we'll figure everything out. I
4 think it's currently designated conservation development.
5 State conservation development, as far as the Planning
6 Commission is concerned, it's up to the property owner to
7 present the proposed change and to vet that out.

8 It is zoned single family residential. I believe
9 it's a handful of parcels. Each one can accommodate one home
10 on it. If they wanted to maximize the number of single
11 family dwellings there, it would take a major subdivision
12 review with roads and property boundaries and all the
13 subdivision processes.

14 I think that the land use category that's selected
15 has characteristics to it that the Planning Commission needs
16 to say, yes, this development fits in with the commercial
17 office because it's on a road or system of roads that can
18 accommodate the traffic based on the data that goes along
19 with institutional and commercial and mixed residential.

20 So I think that's the purpose, to get some baseline
21 information from highways and from water pollution, realizing
22 that things may change, but overall does this property lend
23 itself to the infrastructure in place, with the road network
24 there, to support and not become a burden on any one of the

1 systems or all of those systems.

2 So I think that's where -- I understand what
3 Mr. Grayson is saying about the site plan, but we're just
4 hypothetically throwing around -- we're not pinning him down
5 to a movie theater and a bowling alley and an office space.
6 We're just trying to say what the plan -- the preferred plan
7 you've presented and all the information -- all the materials
8 you've put into that preferred plan, how does it flush out
9 taking it the rest of the way? That's my take.

10 MR. HOOPER: If I could just interject, that's why
11 I was asking those questions because specifically in the
12 application materials that we are given by the City, it
13 didn't state submit all other alternatives. So I think we've
14 clarified the situation pretty well, but we were facing -- do
15 we do a traffic study on all eight of the submittals, which
16 were the alternatives? I think we've clarified that, but we
17 just gave what was requested in the application. This is the
18 first one that we're doing. We understand there has to be a
19 little give and take on that. So I apologize to the extent
20 that there was some confusion, but that was the basis of our
21 confusion.

22 Now I think we've got it straight, the mixed-use
23 plan is, has been and will continue to be our preferred plan
24 and what we think is best for the City of Wheeling.

1 COMMISSIONER MONROE: I need to make a point just
2 to sort of go back to what Mr. Connelly is saying and what
3 Mr. Grayson said -- by the way, Mr. Hooper, I think this is
4 the dialogue that helps all of us get a better sense of what
5 we're working for in this. The City, through the Planning
6 Commission's Comprehensive Plan, has already said what it
7 believes is the best use of that property. The Comprehensive
8 Plan has proposed the future use as conservation. So you're
9 saying you want the City to fund the proposals. The
10 Comprehensive Plan has shown what the City felt was the best
11 future use.

12 The concept of amending the Special Area Plan, it's
13 incumbent upon somebody to come and say, i.e. you, we have a
14 really significant project that should make you rethink that.
15 The City has said what it wants, and they approved the
16 Comprehensive Plan.

17 I'm just saying who is supposed to do what? At
18 this stage of the game, here's what the City has said.
19 You're coming us to and saying, hey, we think there is a
20 better use of this. Now we need to figure out whether that's
21 actually feasible. Does that make sense?

22 MR. GRAYSON: Yes, it does.

23 Tom, you'll recall, because I had discussions with
24 both Tom and you at the time when the Comprehensive Plan was

1 prepared, that a significant part of what motivated this idea
2 of a special area district was the existence of a property
3 layout. I think it's fair to say that it was concluded that
4 with this kind of property, it's of significant importance
5 that it's something where the City should have this kind of
6 flexibility to consider other uses because you don't have a
7 large inventory of 100-acre-plus properties that could
8 accommodate development that is of significance to the City.
9 So I just wanted to make that point.

10 Then I would also -- and this is just one man's
11 point of view. Okay. I've done a lot of developments.
12 Conservation development in a rural area means something
13 different than what it does in a suburban area and what it
14 means inside an urban boundary.

15 Part of what drove us to prepare a mixed-use
16 village conceptual plan and to use approximately 55 acres of
17 our 100 acres of property is that we believed that a
18 mixed-use village development finds the right balance for an
19 urban area in terms of the levels of densities that they need
20 to try to achieve because they are totally different than
21 what some suburban or rural area would look at and when you
22 have something, in your Comprehensive Plan telling you that
23 it's worthwhile to have this notion of a special area
24 district where you can do special things on pieces of

1 property is significant.

2 So we came into this thinking that we were already
3 compliant with conservation development by offering a
4 mixed-use village that used approximately a half of our
5 property.

6 I just wanted to make those two points.

7 CHAIRMAN MAUCK: Is there a comment down here?
8 Wendy Scatterday.

9 COMMISSIONER SCATTERDAY: Just for clarification,
10 in the Comprehensive Plan right now, it does actually define
11 what a conservation development is in the definition for the
12 City of Wheeling here since 2014. The definition we're using
13 includes land designated for conservation development on the
14 future land use map should be maintained in its natural state
15 to the maximum extent possible. So that's how it's being
16 defined, and that's -- this is the document that we're
17 working with just to help better clarify the parameters and
18 any debate about words and meanings and different locations
19 and different places. In our city, this is the language that
20 applies, just to point that out.

21 I think for clarification sake, the State of West
22 Virginia requires that a municipality of certain sizes
23 exercise and go through the process of a comprehensive plan
24 every 10 years. So that's where this document came from.

1 The process started in 2012, went through 2013 into 2014, and
2 then was adopted by the prior City Council in 2014.

3 So the provision and ability to potentially amend
4 the Comprehensive Plan was incorporated into this document
5 because of the likelihood that there could be opportunities
6 and parcels for consideration within that prescribed 10-year
7 period of time that might bear a reevaluation from time to
8 time.

9 The alternative here is that we don't have to
10 consider any of this at all. The document exists, and 10
11 years from 2014, we'll start the process again. At that
12 point, the opportunity to reevaluate land use across the
13 City -- the same process would be engaged, and it would be
14 multi-year, and where we would end up and all of that.

15 So the fact that the Special Area Plan provision
16 was incorporated into this document is a mechanism. Just so
17 we're all clear about the parameters that we're working in
18 here, things were already decided. The Comprehensive Plan
19 was created with a mass of public input and user groups. You
20 participated. People from all across the City participated,
21 and that's how this was created.

22 I don't want to have anybody under the impression
23 that this is just some document that got pulled out of a
24 rabbit hat scenario. There was a lot of thought. Mr. Monroe

1 and other Commissioners were instrumental in creating the
2 plan. So this is what we're working with.

3 If this process isn't satisfactory, we can stop and
4 we can just wait until another day and time when the Comp
5 Plan will be up for review. This is the tool that we have at
6 our disposal.

7 I do also want to provide a clarification because
8 land use is entirely integrated to what stresses a particular
9 land use might have on an area. Those stresses on
10 infrastructure, on topography, on the area around it, those
11 things are all integrated in.

12 So, again, if this process isn't satisfactory, the
13 idea of chicken and egg, of deciding what the development
14 might be or might not be, decide this or decide that or which
15 thing comes first -- I think we've established that the
16 applicant has and does indeed have a preferred scheme and
17 that's what's been submitted and that's what's going to be
18 evaluated. Again, that's the process that we have.

19 To the extent that parsing out differentiation
20 between land use consideration, changing the Comprehensive
21 Plan, zoning use change requests, and then a site plan, I do
22 want to -- because this has been muddied in the waters of
23 public comment over the last several weeks, but in our own
24 zoning ordinance, under the section of amendments to the

1 zoning ordinance, section 1377.06, one of the subsections
2 specifically and clearly states that an applicant proposing
3 an amendment for a zoning ordinance -- and it goes on to say
4 shall submit all the things -- present the use, present the
5 zoning district and any proposed plan by the applicant for
6 the property, proposed zoning district and the vicinity map
7 showing property lines, district lines, existing uses within
8 500 feet and any other items as the design office may
9 require. So it's within our purview and it's in the Comp
10 Plan, it's in the zoning ordinance, it's in plenty of other
11 places where it's under our purview to ask for any materials
12 in order to properly consider all the information that needs
13 to be considered.

14 So, again, if providing the specifics that are
15 being requested is not satisfactory, then we can just stop.

16 MR. HOOPER: Again, we've never said that we
17 weren't going to provide what was requested. We asked a good
18 faith question of what I perceived to be --

19 COMMISSIONER SCATTERDAY: Understood. Understood.
20 But Mr. Grayson and yourself, just in the time that we've
21 been here, you've both expressed frustration, and so I am
22 trying to address that this may not be a perfect process, but
23 it's a defined process. I really don't want to muddy the
24 water and have the impression that we're asking too much.

1 we're not asking too much because the applicant is asking to
2 do an extraordinary thing with this property. You're looking
3 to remove 9,000,000 cubic yards of soil. That's very
4 significant. It's very invasive.

5 There has to be an understanding on the City's part
6 as to how feasible that is, how physically achievable that
7 is, what the safety factors are.

8 Obviously this is an area that I represent. So the
9 feedback that I'm getting from residents and property owners
10 relate specifically to safety concerns. The issues of runoff
11 frankly have been exacerbated by the actions of your client
12 over the years.

13 So the table that's been set where we sit today is
14 not necessarily an advantageous point because of all the past
15 history. So there's a lot of scepticism, and there are
16 frankly, I think, reasonable safety concerns. So that's
17 where my focus is.

18 So my question for the Thrasher Group, if you can
19 speak to the concerns and the engineering and your assessment
20 of this location as it's situated within a highly dense
21 neighborhood of over 1,000 homes. And when we're talking
22 about removing 9,000,000 cubic yards, can you speak to sort
23 of the engineering aspects of developing a property in that
24 way given the parameters? What is it that your firm is

1 working on as you are making the considerations and making
2 recommendations to your client?

3 Specifically, we all know that the proposed entry
4 off of Route 88, because of the elevation and the existence
5 of the existing mines from the Pittsburgh seam and the
6 Hutchinson seam -- we do understand from your drawings that
7 at that elevation for the new entry point, that you would be
8 breaching the existing mine area.

9 Can you talk about sort of the proposal that you
10 have on paper and what you're looking at in terms of
11 mitigating the effects on the existing site location because
12 of the removal of the soil and then the cuts from the fill?

13 CHAIRMAN MAUCK: Would you state your name for the
14 record.

15 MR. MATEJCZYK: Again, my name is Robert Matejczyk
16 from the Thrasher Group.

17 COMMISSIONER SCATTERDAY: Speak into the mic, sir.

18 MR. MATEJCZYK: So you asked a bunch of questions.
19 It was a very broad assessment of what you think we should be
20 looking at this point. I can tell you that we're at the very
21 conceptual stage of the project. Doug alluded to that as
22 well earlier.

23 The area, in particular, you're talking about on
24 one of our drawings depicts the entranceway where it may, as

1 you say, breach the area where the coal bed is located.
2 Those are concept plans. If the project were to proceed to
3 the point that we're actually designing -- we really haven't
4 designed much of the grading plans. So as I said, when we
5 would proceed with the final design and move into the design
6 stage, we'll be addressing these issues. At the conceptual
7 stage, we recognize that there is potential for an issue
8 there, and we'll address it as best we can, but at this
9 point, we really can't give details for it.

10 COMMISSIONER SCATTERDAY: Do you have concerns
11 about that, I guess? Do you have concerns about what's on
12 the drawings right now and the elevations and that cut --
13 from your professional perspective, what are the sort of
14 generalized concerns that go with an intervention such as
15 that?

16 MR. MATEJCZYK: Again, as we proceed, we can move
17 toward more detailed solutions, but the best I can tell you
18 is we recognize there is a potential issue, and we will
19 address those as we move forward.

20 MR. HOOPER: The other thing, just if I can
21 interject, the Pittsburgh No. 8 seam runs over pretty much
22 all of Woodsdale and a good bit of the City of Wheeling. Our
23 development is going to be a good 150 to 200 feet above that
24 part of the roadway. It may cross through there. When we

1 get to that portion of it, it will have to be properly
2 engineered and properly approved.

3 But the interesting thing is the old Robinson Seam
4 3 area cuts through that very same layer, and they've had no
5 problems. They've had no water issues.

6 So the only mine entrance that I even know is to
7 the south of our property. There are no entrances on our
8 property. So from that standpoint, it's something that we
9 have to deal with. It's something that we're aware of. But
10 by the same token, I don't think I'm aware of any
11 circumstances where that has been a problem where they are
12 making cuts at that elevation in that area of woodsdale.

13 COMMISSIONER SCATTERDAY: One of the other things
14 we talked about when we were together in August was providing
15 a geotechnical report. After several weeks, we did receive
16 the summary and then the boring logs for three locations.

17 what additional geotech reporting information is
18 going to be made available? From my perspective, what has
19 been provided was not what I would have expected in terms of
20 a full geotech report in terms of -- for a site this size, I
21 would have expected test borings taken at 50, 75, 100
22 different locations over the entire parcel. Has any of that
23 actually occurred or when will that occur?

24 MR. HOOPER: At this point in the process, no,

1 there would not be that many borings.

2 Doug, am I correct -- there were four or five
3 borings?

4 MR. GRAYSON: Three borings and various test pits
5 to test the material on the surface.

6 MR. HOOPER: In terms of what other items you want
7 from the geotech, let us know and we'll provide it.

8 COMMISSIONER SCATTERDAY: Okay. Well, I would say
9 that if an applicant anywhere in the City of Wheeling is
10 wanting to remove 9,000,000 cubic yards of material from a
11 hilltop location, full geotech analysis to understand the
12 feasibility and the impact of that work needs to be
13 understood.

14 MR. HOOPER: Regardless of zoning?

15 COMMISSIONER SCATTERDAY: From my perspective, this
16 is an integrative process. You're asking for -- you're
17 actually not just asking for land use. You're asking for an
18 intervention to this property that is a removal of 9,000,000
19 cubic yards of soil. So we need to be able to understand
20 whether that's technically feasible, what comes along with
21 that.

22 My question would be -- perhaps a different
23 consideration of the property in terms of little to no
24 topographical change and put together a proposal that is

1 developing the property and a much different approach which
2 doesn't engage and involve breaching mine locations and
3 removing 9,000,000 cubic yards of material. You can develop
4 this property without manipulating the topography to the
5 maximum extent that has been provided in your proposal.

6 MR. HOOPER: Sure. I understand what you're
7 asking. I understand that the City has the right to ask for
8 what it wants to ask for, but I also state that there was no
9 geotech when Mr. Bedway removed significant amounts of debris
10 from his property and continues to do that. There was no
11 concern raised when his property is basically only 40 feet
12 over that very same mine seam.

13 Similarly, when the work was done at Wheeling
14 Hospital, portions of that hill were removed as well, and I
15 don't believe geotech was required in that.

16 Again, we'll give you what you're asking for, but
17 just remember where we are in the process.

18 COMMISSIONER SCATTERDAY: Sure. I would say
19 lessons were learned in those cases because there were slips
20 and other activity that went along with those interventions
21 that may not have been as understood as they needed to be in
22 advance of those interventions. You know, call this a
23 belt-and-suspenders approach, but I think the citizens of
24 Wheeling and the property owners are owed that.

1 MR. HOOPER: We don't dispute that.

2 COMMISSIONER SCATTERDAY: The health, safety and
3 welfare and protecting the general public is really what our
4 charge is.

5 MR. HOOPER: If there were specific items that you
6 want, we'll address and give to them to you as quickly as we
7 can.

8 COMMISSIONER SCATTERDAY: Great.

9 MS. HUMWAY-WARMUTH: Commissioners, if I may, and
10 Mr. Connelly, we have broached this subject in regard to the
11 questions and for transparency and place that on the record
12 as well.

13 Mr. Connelly, would you address the difference or
14 the situation in regard to the Bedway development just so we
15 can kind of put that to rest.

16 MR. CONNELLY: Some of the history of that project
17 site -- the majority, I believe, was extricated out in the
18 1960s when the highway was put through. That's the
19 conversation that I had with the City engineering department.
20 Then it was left undeveloped. The City Planning Commission
21 reviewed a subdivision in -- I think it was 2004, 2003,
22 somewhere around there -- to divide it up into four or five
23 lots, one of which ended up resulting in the construction of
24 a hotel.

1 Just looking recently at those site plans, it
2 seemed like plus or minus 15 feet is what the difference in
3 elevation was. It didn't seem -- 200 foot or 150 difference
4 in elevation -- it seemed like a lot of the elevations were
5 around the 780, 790 mark. A lot of the elevations were
6 within 15 feet or so. It didn't seem like it was on the same
7 scale as would be proposed here.

8 MS. HUMWAY-WARMUTH: Thank you very much.

9 CHAIRMAN MAUCK: Other questions?

10 COMMISSIONER SCATTERDAY: I have others, but I'll
11 wait.

12 COMMISSIONER SCHWARZ: I guess I have another
13 question, along the similar lines of the permitting. I think
14 we're kind of talking about future vision, but it seems to me
15 that if there is going to be additional permitting that can't
16 take place, then it's all meaningless. So that's kind of
17 what my point was with the traffic study. I think we made
18 clear that the State actually is requiring the traffic study
19 to be done before they give their approval.

20 Also in the information Mr. Connelly requested from
21 the DEP regarding quarry permits, I would like to ask: Has
22 application been made yet for a quarry permit for the
23 property?

24 MR. HOOPER: Mr. Connelly and I will have to

1 address this. My reading of west Virginia code is, to the
2 extent that there's site clearing for construction of a
3 project, there's a specific exemption under the West Virginia
4 code where it's not designated as a quarry.

5 In fact, there's also a specific exemption to the
6 extent of the one-third of the material that's going to be
7 used for fill. That is clearly exempt under west Virginia
8 code.

9 So we're going to have to look into that a little
10 bit further because my definition doesn't quite jive with
11 what Mr. Connelly has been stating. It's certainly an issue
12 that we will take up with the west Virginia DEP. We've
13 consulted with them about this before, and we were not told
14 that we needed a quarry permit. So obviously it's something
15 that has to be addressed, but from our standpoint, we believe
16 it's exempt.

17 MR. CONNELLY: I'm not saying it's required. I'm
18 saying the person who has the authority to designate that is
19 the secretary of the Department of Environmental Protection.
20 I'm not saying a quarry permit is necessary, but if you look
21 at the section, the State code just says that the person in
22 the state of west Virginia that has sole authority over that
23 issue of whether or not one is required or not is the
24 secretary. So that is why I reached out to their offices to

1 simply ask that question, is one required. If the answer is
2 no, then we'll proceed. If the answer is yes, then that
3 takes it into a different set of --

4 MS. HUMWAY-WARMUTH: Mr. Connelly and legal has
5 consulted -- not to delve into attorney-client communication,
6 but did we not review that section of the statute that also
7 said that, yes, it's within their purview, but there are many
8 procedural things that are triggered as well that goes along
9 with that?

10 MR. CONNELLY: Yes. If it's determined that the
11 DEP is going to require a permit of that nature, they have
12 their own processes and procedures that need to be followed.
13 But, yeah, I mean, that's been a question this whole time,
14 and it's been asked for a few years now to determine what is
15 necessary.

16 According to my reading of the State code
17 (inaudible).

18 MR. HOOPER: Exactly. The same with the Division
19 of Highways. Those are State-related questions. We are
20 meeting and we'll continue to meet with the State
21 representatives to get the approvals that are deemed
22 necessary. But, in particular, if you want to look at West
23 Virginia Code Section 22-4-29, that addresses it.

24 You're correct to the extent if there is a quarry

1 permit required, then we have public hearings on that. To
2 the extent that we're talking about site clearing, there
3 would not be.

4 There are a lot of things that need to be tied up
5 here. There's a lot of work to be done. This is a complex
6 project. In our purview, it's certainly one that's
7 beneficial for the City of Wheeling.

8 while we're at it, real quick, there's been a lot
9 of discussion about that. I do want to make clear, it's been
10 bantered about that my client did not have requisite permits
11 for the work that has been done to date. I do submit that
12 those permits have all been in place. We've had the West
13 Virginia DOT industrial curb cut.

14 The City asked for a business license for my
15 client, as well as for the timbering company that did it.
16 Denoon Lumber had a forestry permit. Denoon Lumber received
17 a bond clearance.

18 There was notice given to the City of Wheeling to
19 widen 196 Bethany Pike, though that was not needed because it
20 was less than a 1-acre disturbance. Went to the extent -- we
21 wanted to go beyond the 1-acre. Notice of intent was done.
22 We had permission to go up to a 2.99-acre disturbance from
23 the West Virginia DEP. That gets us 700 feet up the hill.

24 Burn permits from both the State forester and from

1 the city of wheeling were acquired to do the core samples
2 that we had done. It was deemed a State non-environmental
3 event, so no permit was needed, but we still provided notice
4 to the State DEP.

5 Thereafter, we increased the disturbance permit
6 with West Virginia DEP from 2.99 to 7.99 acres. That's a
7 West Virginia DEP general N, P as in Paul, D as in David, E
8 as in Edgar, S as in Sam -- permit. After 8 acres, we can go
9 up to a 15.99 disturbance under a general West Virginia DEP
10 Permit. At that point, we acquired that permit. That permit
11 required temporary stormwater management that was put in
12 place by my client.

13 The interesting thing is that west Virginia
14 Forestry kept jurisdiction over this while the site was being
15 cleared.

16 I believe there are four separate stormwater
17 investigations that were requested by the City. My
18 recollection is we passed all four of them.

19 So from our standpoint, we are permitted up to at
20 least 16.24 acres for disturbance on that property now, and
21 we've continued to renew that and will continue to renew
22 that.

23 I just wanted to make it clear for the record here.
24 To the extent that there have been things out in the press

1 and things out on social media that my client was acting
2 impermissibly, without permits, that is inaccurate.

3 COMMISSIONER SCHWARZ: Back to this quarry permit
4 issue, is it unclear how to determine whether a quarry permit
5 is required by the applicant? I don't really understand why
6 there's a question as far as if a quarry permit is required.

7 MR. CONNELLY: Okay. If you look at the
8 correspondence sent to the Department of Environmental
9 Protection -- I believe it's in one of my e-mails. In the
10 correspondence -- yeah -- right there in the correspondence
11 at Page 20 in my e-mail to Mr. Ward, who I believe is the
12 secretary, I asked him if he's able to determine from the
13 information that was provided by the applicant in an e-mail
14 -- "if a quarry permit would be required in order to remove
15 the material proposed? If not, is there additional
16 information the applicant could supply to help you reach a
17 decision?"

18 His response back was fairly straight forward. "If
19 the excavated meets the definition of Mineral as defined by
20 22-4-3(13) and the material is commercially marketed, a
21 permit is required."

22 I think I followed up with another question, and he
23 simply said until the application is submitted, they cannot
24 -- "until we see an application for a proposed activity, it

1 would be premature for me to offer any specific comment."

2 So that's why part of the process of the Planning
3 Commission to reach out the State and Department of
4 Environmental Protection is big one to try to determine how
5 they are going to review the amendment to the plan. It
6 doesn't make sense to move from a conservation district to a
7 district that would allow for development knowing what the
8 preferred development is. What are all the different steps
9 that the State would require to achieve that goal? He is
10 unable to provide that information until an application is
11 filed.

12 MS. HUMWAY-WARMUTH: It would also be the -- in
13 speaking with Mr. Connelly and working -- with all due
14 respect, several interpretations of what the code may or may
15 not require -- I believe that the City would have at least
16 some input to know what an application -- it appears that
17 what they have come back to say is until an application is
18 filed, they wouldn't come down on one side to say if
19 Mr. Hooper is correct that, gee, this is not quarry in our
20 opinion and here's why, or here's what would be exempt from
21 the removal of overburden.

22 Again, we are at a stage in that process where
23 until -- I suppose at least from my view of this, that until
24 an application goes down there to say is it or is it not,

1 then we don't have the opportunity to weigh in yet or to say,
2 yes, it's going to be a quarry for a five-year period.

3 MR. GRAYSON: I would like to add something. We
4 have tried to be very open about exactly what it is that we
5 are doing here. We've been very specific -- as specific as
6 we possibly can at this stage about how much material we
7 intend to impact. So whether DEP ultimately concludes that
8 this is a quarry or boring site work pursuant to a
9 development, the scope of work that we're talking about
10 doing, we've told you exactly what it is.

11 So a lot of people, when they hear the word
12 "quarry," they tend to think of it like this permanent use of
13 this site always being used as a place where commercial
14 aggregates are coming out. That's not what we're proposing
15 to do.

16 We're proposing to develop this property. How
17 somebody ultimately chooses to characterize it, we're going
18 to get the approval that we have to get in order to do that.
19 We told you what we want to do, which is the amount of
20 excavation that we intend to do. So we've been very open
21 about that. So whatever it ends up being called, it's the
22 same scope of work no matter what you call it. In our view,
23 this is site work pursuant to a development.

24 COMMISSIONER WRIGHT: Can I ask a question

1 regarding that because I've heard varying figures on that?

2 CHAIRMAN MAUCK: Commissioner Wright.

3 COMMISSIONER WRIGHT: Provided that you could go
4 ahead and begin removing that overburden, whether or not you
5 consider that quarrying or site preparation, what is the
6 length of time of that process from the time you get the
7 first truckload off to where you have it at the level that
8 you want?

9 MR. HOOPER: About five years.

10 COMMISSIONER WRIGHT: Okay.

11 COMMISSIONER SCATTERDAY: I have a follow-up
12 question.

13 Mr. Grayson, if it was determined that the removal
14 and the topography change was not something that was going to
15 be able to be approved and therefore you had the ability to
16 develop the site but with limitations on the topography
17 changes, is this a property that you're still interested in
18 developing if it had topography restrictions on it?

19 MR. GRAYSON: We made an investment in this
20 property. It's our intent to develop the property. Without
21 knowing the specifics, I can't really speak in hypotheticals
22 other than to just say we made a substantial investment not
23 only in the original parcel but also in assembling -- trying
24 to put this piece of real estate back together so it could

1 become -- by acquiring the frontage where we think there is a
2 lot of improvement that could happen there to sort of improve
3 the arrival experience to Oglebay Park. There's a lot of
4 good things that could happen as a result of developing this
5 property, and we've made a lot of investment in making it
6 possible to develop it. That's our intention. We want to
7 develop it. We're hoping to work with you to come up with
8 what the best way to do that is.

9 COMMISSIONER SCATTERDAY: I'll be specific then.
10 If removing the 9,000,000 cubic yards of soil is not
11 something that is approvable, would you then not develop --

12 MR. GRAYSON: I don't want to get into that
13 hypothetical because I think that having a level piece of
14 ground is an important thing to creating sort of a viable
15 development. It is a hill. There are things that we need to
16 do. Just look all around the region. The first step is the
17 developer needs to try to level the piece of property so they
18 can improve it.

19 COMMISSIONER SCATTERDAY: I would disagree. You
20 can develop property without massively changing the
21 topography.

22 I appreciate that you've answered the question.
23 Thank you.

24 CHAIRMAN MAUCK: Mr. Connelly, is there any

1 language in the code to dictate how much of a bond would be
2 required should this project begin and not be completed to
3 bring it back to as close as you can to some level of
4 stability?

5 MR. CONNELLY: I have not looked into that section
6 of code, so I can't answer that. Perhaps the solicitor might
7 address it.

8 MS. HUMWAY-WARMUTH: There is some language that
9 can be interpreted in regards to assurances for certain plans
10 of development such as the roadway, greenery, lighting, some
11 of the infrastructure, if you will, but there is no language
12 that -- for lack of a better way to describe it, there's not
13 a bond that's going to be required to say put this hill back
14 or build a movie theater. There isn't that type of
15 assurance. We have looked, and we are still looking for some
16 of the costs, but most of the bonds -- like the bonds that we
17 have for subdivisions, et cetera, are for assurances of the
18 cost of the roads, the laying of the pipes for the utilities,
19 et cetera. That is clear within the purview.

20 I don't know if that answers your concerns, but
21 there isn't a provision to replace like the overburden or to
22 assure that the final mixed-use occurs as an addition and
23 what's in front of you.

24 CHAIRMAN MAUCK: Well, it's a fact that this

1 process could be started and find out that we can't finish it
2 and just walk away from it. That is a possibility. Not to
3 say that that will happen. So we need to keep that in mind
4 when we're reviewing all this information.

5 Any other questions, Commissioners?

6 COMMISSIONER SCHWARZ: Just a couple other quick
7 questions.

8 With regard to utilities that would need to be
9 upgraded, you spoke before about maybe negotiating with the
10 State about upgrading the roadway. Do you intend to do the
11 same with the City as far as the extensions to the water
12 supply system or the sewer system that would need to be
13 upgraded?

14 MR. HOOPER: My understanding is there would need
15 to be -- that is a discussion that would need to be had.

16 COMMISSIONER SCHWARZ: So you're hoping to get the
17 City to foot the bill for those --

18 MR. HOOPER: If you're offering, great. That might
19 be a little more difficult.

20 MS. HUMWAY-WARMUTH: If I may, the City is
21 controlled by the Public Service Commission, and as for any
22 type of -- because if you notice in the Water Department, the
23 current water tank serving the Oglebay area is not -- will
24 not be the source of water for this development in general.

1 However, the costs that are associated with that are borne by
2 the developer, and then there is a calculation in the cost
3 of -- if it needs to be built to spec for the City to accept
4 it, then there is a slight rebate feature down the road that
5 the Public Service Commission applies.

6 The same approach for private property -- it's very
7 similar to the subdivision. As I stated, bonds, et cetera,
8 are posted on that. They are done according to City specs
9 and paid for by the developer, done by the developer. The
10 City comes out when they are acceptable, then one year or so
11 after their use, then the City takes them as its utility if
12 that helps.

13 COMMISSIONER WRIGHT: It does. Thank you.

14 CHAIRMAN MAUCK: I want to thank the public for
15 sending comments to Mr. Connelly and concerns. They were
16 passed on to Commissioners, as well as the parties involved
17 here that's presenting this. We do read these.

18 I would like to ask a question of the Thrasher
19 Group. I'm going to read this, but it's not my words. It
20 comes from Sandin Phillipson who submitted comments. Why
21 weren't -- when you did your core samples and the pits, so
22 forth, why weren't -- the depth of the bedrock quarry
23 infiltration test, which is perc test, compaction test, shear
24 strength results, joint orientations, compression strengths

1 and rough strata, bench designs, so forth, also performed?

2 MR. MATEJCZYK: So you're making reference to
3 geotechnical work that had been performed previously. The
4 Thrasher Group at that time really weren't directly involved
5 with that, but those questions that are referred to in that
6 correspondence, again, are all questions that are typically
7 addressed in the final stages of design, at least in the
8 preliminary stages of design. Again, at this point, those
9 specific items that he's asking for probably are outside the
10 scope of what we would typically do early on with a
11 preliminary geotechnical evaluation.

12 CHAIRMAN MAUCK: But will be done at a later date?

13 MR. MATEJCZYK: Yes.

14 CHAIRMAN SCHESSLER: Okay. Mr. Chairman, I would
15 like to make a comment.

16 I do not have enough information to make a good
17 determination about the economic impact this is going to have
18 on the community. Most of the items that you're planning on
19 building in this location already exist within maybe 10
20 minutes of a drive. I really have a question how making
21 another one of those type of business is going to impact the
22 businesses that may be already struggling or just making it
23 based on the size of our community. So I have to question
24 why such a large development has to be done that is pretty

1 much going to conflict with other businesses. Just something
2 I'm throwing out there that I think needs to be thought
3 about.

4 MR. HOOPER: It is his money. I'll let him answer
5 the question.

6 MR. GRAYSON: So development is a process where
7 you're constantly trying to refresh and enliven, create new
8 environments. There is no question that a mixed-use village
9 is the kind of environment is something that people have
10 found a very desirable kind of environment.

11 In comparison to other things in the region, I
12 don't think anything that we're building here is all that
13 comparable to other things in the region. If you add up all
14 the in-line store on the village street that we're talking
15 about creating, it might be equivalent of one store at the
16 Highlands. You know, it's not -- nothing that we're doing
17 here is the equivalent of the kind of density that is found
18 in downtown. Nothing is like the retail that's being offered
19 over in St. Clairsville where you've got a large super
20 regional kind of environment trying to draw shoppers from all
21 over the place.

22 What we're proposing to do is to try to create an
23 environment where the uses are nested very tightly together.
24 You can walk between one and the other. It's just a nice

1 environment to be in, to have a meal, to take care of those
2 kinds of things that people do on a daily basis, get their
3 coffee, whatever it is all in one place. I don't think these
4 kinds of services are -- there are people that are traveling
5 over some of the more congested parts of your road network,
6 for example, to get to the places to satisfy those needs.

7 There is a lot of residents who live in the Route 88
8 corridor, and I think it would be a good idea to provide them
9 services.

10 CHAIRMAN MAUCK: Any follow-up?

11 COMMISSIONER SCHESSLER: I'm still not convinced.
12 I mean, we're working hard to develop downtown in order to
13 have more housing and more stores and things like that. I
14 think we're spreading our eggs out too far. It's just
15 something that I think about.

16 MR. HOOPER: The point is we have a developer who
17 is willing to invest the dollars to do it in this location.
18 We don't have a whole lot of developers that have yet -- over
19 the many years that I've been doing development work, that
20 come and said they want to do anything on this scale in
21 downtown wheeling. We're not looking to compete with those
22 kinds of stores. We're not looking to compete with the
23 Highlands.

24 The largest store we have is 45,000 square feet.

1 That's smaller than the existing Kroger in Wheeling, which is
2 one of their smaller stores. That's the biggest one. So
3 everybody talks about it as being so huge, but it's about the
4 same size as where Cabela's is. That's it. Not the whole
5 Highlands. Cabela's.

6 And you get tax revenue in the City. That's the
7 other kind of important thing, and I will be presenting some
8 information on that. It's not done yet.

9 I think that helps understand the comprehensive
10 picture for this, both from the developer's side, from the
11 County's side and from the City's side.

12 CHAIRMAN MAUCK: I would like to remind you,
13 Mr. Hooper, that the existing Kroger in Wheeling is in
14 Warwood. Then there is another Kroger.

15 COMMISSIONER WRIGHT: I have a question. I was
16 looking at your Development Summary from Thrasher Group,
17 which is our Exhibit No. 9. I thought that there was a
18 number on the residential. For some reason I had in mind
19 that there were 88 townhomes originally on the plan, but
20 that's not a solid -- that's not in stone is what you're
21 saying?

22 MR. GRAYSON: In the current conceptual plan, there
23 is approximately --

24 COMMISSIONER WRIGHT: 88 units.

1 MR. GRAYSON: -- 88 housing units there. If we
2 were to take -- there is an assisted living
3 conceptually-designed area. Maybe we don't do that, and we
4 extend more --

5 COMMISSIONER WRIGHT: I was just curious about --

6 MR. GRAYSON: All of those things are open for
7 debate in terms of the mixed-use space.

8 COMMISSIONER WRIGHT: Understood. Thank you.

9 COMMISSIONER MONROE: With due respect to my
10 colleagues, I want to point out that we're a land use agency,
11 and it really isn't our responsibility to figure out whether
12 a developer has made the right business decision. They are
13 business people, and they make those decision for better or
14 ill.

15 I owned a business, a radio station. I didn't want
16 people listening to the radio station telling me what I do.
17 I don't mean to -- I just think it's not our role to decide
18 whether or not it's a good business decision. Our role is to
19 look at whether or not the land use makes sense. Again, I
20 think we have to keep coming back to that.

21 I will certainly agree that the question of what
22 will happen in the long run is something that we have to
23 consider in terms of any land use changes. I wouldn't want
24 to open up a mom-and-pop deli, let alone a major development,

1 because I don't know enough about it. I have to esteem to
2 people who have experience in that, and Mr. Grayson at least
3 does. That's just a comment. It's a long-time bugaboo for
4 me. I think we're always trying to second-guess people's
5 business plans.

6 COMMISSIONER SCATTERDAY: If I may, I understand
7 both of the points. I think the viability of this land use
8 is what is in question. To the point of economic viability
9 over a long period of time, that is, in my mind at least,
10 very applicable here because, again, what's being asked and
11 proposed as the land use is an extraordinary ask. The idea
12 that a transformative intervention would happen here with the
13 removal of 9,000,000 cubic yards is not to be entered into
14 lightly, nor is it to be entered into with a short-term
15 outlook. So the economic viability of a location such as
16 this, developed in that way, does need to be very well
17 understood for the 5-year, the 10-year, the 25-year, the
18 50-year to the extent that economic forces beyond 26003, but,
19 you know, the trends that trends that we do all understood
20 about retail and developments of this size and nature and
21 locations all over the country -- developments that were
22 created in 1970 and 1980 and 1990 and in 2000 have needed to
23 transform and adapt over time. So we can all look back to
24 many abandoned locations and vacant locations and places that

1 have been torn down that were heralded as economic progress
2 at the time that they were being constructed or requested for
3 permitting and approval.

4 So the long-term viability of the economics of this
5 development, I think, are germane in some way, shape or form.
6 To be able to demonstrate what that projection would be over
7 time, it would be something that I feel like we should be
8 asking for.

9 COMMISSIONER WRIGHT: I have to concur with
10 Mr. Monroe that we can't necessarily predict that. I guess
11 that's one of the joys of capitalism. You can start any
12 business that you can prosper at or lose your shirt on.

13 COMMISSIONER SCATTERDAY: I agree with you on that.
14 It's a question of whether we give permission to remove a
15 hilltop in order to facilitate that risk.

16 COMMISSIONER WRIGHT: We have dedicated a lot of
17 energy toward the downtown. I understand the question from
18 that point of view, and I think that's where you were going
19 with that. I do understand and I also have that same
20 frustration that we cannot sort of tell a developer what we
21 think is the highest best use because that is outside of our
22 purview and our expertise.

23 COMMISSIONER SCHESSLER: In a way, we are telling
24 them the highest best use because we zoned it residential.

1 MS. HUMWAY-WARMUTH: The highest and best use of
2 the land.

3 COMMISSIONER SCHESSLER: Yes.

4 CHAIRMAN MAUCK: The comment about these things
5 will be done down the road, the perc test, the compaction
6 test, the stress test, so forth, you had proposed a 200-foot
7 sheer south wall to block the development from Woodsdale,
8 Edgewood, and so forth. In considering the Special Area
9 Plan, you may be able to look down there, but we're standing
10 here, and we have to look down there from where we are, which
11 is on the other side of the special area plan. So we need to
12 see that that sheer 200-foot wall that's going to be there
13 that's going to block out the mixed-use village from view of
14 Woodsdale, which you say is permanent, nothing will happen to
15 it, when you move 9,000,000 cubic yards and there is some
16 blasting, some stress fractures that you didn't know were
17 there could change from day to night. So that's why I asked
18 a question and used Mr. Phillips' words because we have to
19 look beyond the Special Area Plan in considering whether this
20 piece of property qualifies for the Special Area Plan.

21 Commissioners, any other comments? Questions?

22 COMMISSIONER MONROE: Actually, to clarify, I feel
23 like I've got a better feel where we're going. I appreciate
24 that, and I hope it hasn't been too confrontational.

1 MR. HOOPER: It's process, not a designation. We
2 understand that.

3 We also renew our invitation to any member on this
4 Commission, City Council, representatives from the City to
5 come up on the property. You really don't get a good feel
6 for how this is going to work until you've been on the
7 mountaintop so to speak. It puts things in perspective. It
8 really does make all this make sense. We can only take two
9 at a time. That's the only limitation.

10 CHAIRMAN MAUCK: Mr. Hooper and Mr. Grayson, I
11 would like to thank you for the public forum you had
12 October 14th -- was it?

13 MR. HOOPER: Yes, sir.

14 CHAIRMAN MAUCK: It gives us a chance to ask
15 questions and look beyond this setting right here to be
16 interactive --

17 MR. HOOPER: Absolutely.

18 CHAIRMAN MAUCK: -- with residents with good
19 experience and an education.

20 At this point, I think what we need to do is
21 adjourn the meeting.

22 Mr. Hooper, I would like to say that the next time
23 we meet, we hope that the traffic impact study has been
24 completed and that the application to the DEP has been

1 STATE OF WEST VIRGINIA:

SS: C E R T I F I C A T E

2 COUNTY OF OHIO:

3
4 I, Susan Sommer LeCron, Registered Professional
5 Reporter and Commissioner within and for the State of West
6 Virginia, duly commissioned and qualified, do hereby certify
7 that the foregoing Transcript of Proceedings is a transcript
8 of verbatim stenotype notes taken during the proceeding and
9 said Transcript of Proceedings constitutes all the testimony
10 taken during this proceeding.

11 I do further certify that this hearing was taken at
12 the time and place in the foregoing caption specified.

13 I do further certify that I am not a relative,
14 counsel or attorney of either party, or otherwise interested
15 in the event of this action.

16 IN WITNESS THEREOF, I have hereunto set my hand and
17 affixed my seal of office at St. Clairsville, Ohio, on the
18 30th day of October, 2019.

19
20
21
22
23
24

Susan Sommer LeCron, RPR
Commissioner within and for the
State of West Virginia
My commission expires: 6/7/2022

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