

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, May 11, 2020  
5:04 p.m. - 5:42 p.m.

All Attendees Appearing Via Zoom Teleconferencing

Planning Commission Members in Attendance

James "Jeff" Mauck, Jr., Chairperson  
Martha Wright, Vice Chairperson  
Christina Schessler  
Wendy Scatterday  
Russell Jebbia  
Howard Monroe  
Thomas Conner  
Jeremy West

Also in Attendance

Rosemary Humway-Warmuth, Esquire, City Solicitor  
Thomas Connolly, AICP  
Michael Hooper, Esquire

P R O C E E D I N G S

1  
2 CHAIRPERSON MAUCK: Okay. Moving on to unfinished  
3 business, can you bring on Mike Hooper?

4 MR. CONNELLY: Yes.

5 CHAIRPERSON MAUCK: Mike, we're looking for your  
6 report on the Traffic Impact -- brief report on the Traffic  
7 Impact Study and any comments by the Department of  
8 Transportation. We also received your report on permits,  
9 particularly West Virginia Department of Education [sic] --  
10 brief us on that -- and your geotech study. The floor is  
11 yours.

12 MR. HOOPER: Okay. You have received my Exhibit 13  
13 which --

14 CHAIRPERSON MAUCK: Can you make that louder?

15 MR. HOOPER: Can I make it louder? I will try to  
16 talk as loudly as I can. Is that better?

17 CHAIRPERSON MAUCK: That's better.

18 MR. HOOPER: Wonderful.

19 All right. Exhibit 13 is the Preliminary Land  
20 Development Permit Summary that was provided by our  
21 engineering firm, Thrasher Engineering, which -- I think one  
22 point to this is to make it very clear that the City is just  
23 one supervising entity, that each and every one of these  
24 entities will in some way have to look, touch and approve

1 what is done before anything is completed. So I think that  
2 report is fairly self-explanatory.

3 As I have said before, with all these reports at  
4 the final hearing, we will have all of our experts there, all  
5 of our engineers to answer specific questions that you have  
6 as to any of the reports, any of the permits, anything of  
7 that nature.

8 Exhibit 14 is, as Chairman Mauck mentioned, about  
9 830 pages of a traffic information study that was prepared by  
10 Stahl Sheaffer Engineering. I have not had a chance to look  
11 at it, and I doubt -- well, maybe Tom did. He reads faster  
12 than I do. I don't know if anybody has had the opportunity  
13 to really read through that in any detail, so we'll be  
14 digesting that. Likewise, representatives from Stahl  
15 Sheaffer Engineering will be available at the final public  
16 hearing to address questions, comment on that. They can  
17 explain what is done, what the assumptions were done and go  
18 from there.

19 They can also discuss the Division of Highways  
20 aspect of things. As can our geotech folks, they can speak  
21 their comments, their discussions with the West Virginia DEP.  
22 I'll certainly defer to them because we're getting to the  
23 point now of some higher end positions that I would rather  
24 defer to them. Suffice it to say, at this point, Ascent,

1 which is handling a lot of our geotech, is finalizing some of  
2 the updated maps dealing with some of the mining questions  
3 that have been raised. Those will be answered with a little  
4 luck by report as opposed to just an oral presentation.  
5 Suffice it to say, they've had extensive discussions already  
6 with the West Virginia DEP over the permitting process, what  
7 needs to be done, what the process will be.

8           So that's really kind of where we are. It was a  
9 bit of a Herculean effort to get the traffic study put  
10 together and over to you-all. I do apologize that it's later  
11 than I had hoped, but at least it's here, and it should be  
12 fairly self-explanatory.

13           CHAIRPERSON MAUCK: So are you telling us that at a  
14 future meeting there will be someone with you to explain the  
15 traffic study --

16           MR. HOOPER: Yes.

17           CHAIRPERSON MAUCK: -- and to talk about the  
18 geotech report?

19           MR. HOOPER: Absolutely.

20           CHAIRPERSON MAUCK: At a future meeting?

21           MR. HOOPER: Yes.

22           CHAIRPERSON MAUCK: Not tonight?

23           MR. HOOPER: I was told my job was to give a brief  
24 overview of where we are and that we would be given an

1 opportunity to make final presentations before a decision is  
2 rendered. That's what I've done. I've try to keep it brief.  
3 I've tried to keep it summarized.

4 CHAIRPERSON MAUCK: Go ahead.

5 MS. HUMWAY-WARMUTH: From the City's standpoint,  
6 also we are somewhat agreeable that this is a difficult time,  
7 but getting the information together, we have not be able,  
8 from the Legal Department or the Planning Commission, to  
9 evaluate the reports, et cetera. I think with that we kind  
10 of felt that it would take a little bit more time. However,  
11 the DEP, I have made some contact with but not had contact  
12 back from them. Maybe it's because of the offices being  
13 closed. But once we have gotten this, we will step it up to  
14 make sure we get some more correspondence back and forth from  
15 the DEP and also the Department of Mineral and Mining, et  
16 cetera, in regards to some of our concerns. But we also will  
17 then have ample time, I'm hoping, even stepping it up for  
18 another month in regard to the traffic survey.

19 MR. HOOPER: And let me just reiterate, too --  
20 again, I'm not the engineer, but I know it's certainly  
21 pertinent. There has been a lot of comments in the  
22 newspaper, publically, social media. I want to make it clear  
23 that part of our reports are that, with our plan of  
24 development, that the work that would be done on the site

1 will, in essence, mediate 50 percent of the stormwater runoff  
2 from that hill that affects woodsdale. So I understand  
3 that's very topical, but I would be remiss if I didn't point  
4 out that that is a very, very -- well, in addition to the tax  
5 benefit that we will speak to again, that the stormwater  
6 mitigation is an integral part of the project, something that  
7 will be required, something, as I said, will mitigate  
8 50 percent of the stormwater, and also mitigate the  
9 underwater ground water that does seep in through the mines  
10 which is mostly on the eastern side of the property, but I  
11 think the most recent flooding was much heavily on the far  
12 eastern side, even past our property going all the way to  
13 Edgington Lane and the intervening property that's owned by  
14 the Wheeling Park Commission.

15 So those are all important things, and I think  
16 something that both sides need to look at in a lot of detail.

17 CHAIRPERSON MAUCK: Other questions, Commissioners?

18 COMMISSIONER MONROE: Just for the record, for any  
19 of the public that is paying attention -- and a lot of them  
20 are -- we just received this information literally an hour  
21 ago, as Mr. Hooper said and as the City Solicitor said. It's  
22 understandable. No problem with that, but I want it clear  
23 we're not able to -- I have literally not even opened the  
24 file yet. We just received the information an hour ago, so

1 it's not possible to really have any kind of conversation  
2 about it today. Not that we're dodging it or ignoring it,  
3 but we literally just got it.

4 MR. HOOPER: There's a lot there.

5 CHAIRPERSON MAUCK: Mike, we received an e-mail  
6 from a citizen who accessed some files from the DEP which,  
7 from my analysis, said that your permit has lapsed and you  
8 may be in the permit process again and for some reason it's  
9 been denied because it was on the wrong form. Are you aware  
10 of any of that?

11 MR. HOOPER: The permit is based on a five-year  
12 recurring term as I recall. It is in the reapplication  
13 resubmission process. My understanding is that everything is  
14 fine on that. I appreciate what this citizen is doing, but  
15 they are inaccurate, and there are no problems from our  
16 standpoint on that.

17 CHAIRPERSON MAUCK: well, they just sent us files  
18 from the DEP. They didn't interpret it. We read it for  
19 ourselves.

20 MR. HOOPER: Sure.

21 CHAIRPERSON MAUCK: Do you have a permit in hand  
22 that you can -- that's been approved or that could be  
23 forwarded to any of us or to Tom?

24 MR. HOOPER: I don't on hand. I can certainly get

1 one. We've already submitted permits before to the City of  
2 Wheeling, including this permit, but if need be, I will find  
3 a way to get permission to get back into my office in  
4 Pittsburgh and get whatever you want.

5 CHAIRPERSON MAUCK: Tom, do we have an active  
6 permit from the DEP?

7 MR. CONNELLY: I'm not familiar with it. I think  
8 the date on that was --

9 MS. HUMWAY-WARMUTH: '19.

10 MR. CONNELLY: -- like 2015. I don't think I have  
11 anything from that time, but that's not to say that maybe our  
12 Water Pollution Control Department might not have it  
13 cross-filed with their stormwater permits.

14 MR. HOOPER: Plus I can contact the folks at Ascent  
15 that are working with the DEP on this and get whatever you  
16 want.

17 MS. HUMWAY-WARMUTH: I would suggest that -- I  
18 think that, Mike, if you can -- you and I, within the next,  
19 say, week to 10 days, no more, so we can get some information  
20 with the DEP and some other of the State offices in regard to  
21 permitting because it may not just be City permitting, but we  
22 work in conjunction with the State on the stormwater runoff.  
23 We can get our guys and Rusty's in the Public Works  
24 Department on that as well to say what we have with the City



1 of wheeling and maybe address those concerns from the  
2 citizens in regard to if something that obviously was posted  
3 on the west Virginia DEP site.

4 MR. HOOPER: Absolutely. Like I said, that's why I  
5 gave you Exhibit 13. It shows the additional permits. I  
6 know there's an interrelationship between all of those  
7 entities and all those permits. So as I said, we'll work  
8 with you and get whatever you need.

9 MS. HUMWAY-WARMUTH: Okay.

10 CHAIRPERSON MAUCK: Other questions, Commissioners?  
11 Wendy?

12 COMMISSIONER SCATTERDAY: Mr. Hooper, the list  
13 compiled of the different regulatory bodies, I don't actually  
14 see a reference to the Division of Mining. So is it the  
15 intent that the chart is inclusive of that under the DEP, or  
16 should there be a separate line item that is addressing the  
17 review by the Division of Mining? What is the status of the  
18 participation of that office?

19 MR. HOOPER: Based on what I've been told by  
20 Thrasher Engineering and Ascent Engineering, this is an  
21 accurate list. If the plans are modified or changed along  
22 the way, is there other regulatory agencies involved? There  
23 certainly can be. But at this point, as we sit here today  
24 with what's been presented, I've been told by the experts

1 that this is the list.

2           COMMISSIONER SCATTERDAY: I was thinking back to  
3 last month, you had made a reference about making -- going  
4 through with the different State agencies and the  
5 determination regarding the exemption permit that you-all  
6 were potentially seeking, but then in one of the other public  
7 meetings, you had mentioned that you were going to move  
8 forward with not seeking the exemption. So that was kind of  
9 more my question. I'm not seeing it here on the list.  
10 That's kind of harkening back to your previous conversation  
11 about entering into that determination with those agencies.

12           MS. HUMWAY-WARMUTH: Councilwoman, that's also why  
13 I prefaced the discussion a few moments ago. We will  
14 doggedly be on that. It's just been difficult in regard to  
15 some of the political offices closed in Charleston, but  
16 hopefully maybe -- I understand Thrasher and Ascent pretty  
17 much have that within their bailiwick, let alone Mr. Hooper,  
18 but we will -- I've been trying to get some follow-up on  
19 that, and I will pursue it more aggressively.

20           MR. HOOPER: The other thing to consider, too, is  
21 remember all of this is not something that is done at one  
22 time. This is done in phases. All construction projects of  
23 this magnitude are done in phases. So our plan from Day 1,  
24 we've said, is to get in and start on the two front pads.

1 That's Phase 1. Then you move forward with the roads. Each  
2 of those can have different permits. It's not like you go in  
3 right off the bat and say, okay, we're going to have a permit  
4 that's going to allow us to totally do everything on this  
5 property at one time. It's very, very, very rarely done that  
6 way.

7 MS. HUMWAY-WARMUTH: I understand that, but the  
8 position of the City of Wheeling and the Planning Commission,  
9 with all due professional respectability here, Counselor, is  
10 that if the bottom line is to have a development that takes  
11 over, whatever, 9,000,000, whatever it is, overburden, then  
12 that may well be much more of a mining and extraction permit  
13 versus just site preparation, and that's never been a secret.  
14 It's been something that has been discussed from Day 1. So I  
15 just want that on the record as well.

16 MR. HOOPER: Again, if there is a need or a  
17 requirement for that, it is certainly something that we have  
18 to deal with and certainly something that the City is going  
19 to require us to do.

20 MS. HUMWAY-WARMUTH: Right.

21 MR. HOOPER: We do it one step at a time.

22 MS. HUMWAY-WARMUTH: Exactly. Okay. Thank you.

23 COMMISSIONER SCATTERDAY: Sorry, Mr. Hooper. My  
24 question was just recalling back to your previous statements

1 about the position that you-all were taking on the exemption  
2 or not the exemption, and that you had stated that you were  
3 pursuing the path that was not going to be the exemption. I  
4 was just trying to check in with you on --

5 MR. HOOPER: We're pursuing all of those avenues.  
6 Some portions of this material are going to be used on the  
7 site. They don't require that. Some of this property, some  
8 of this material can certainly be subject to the exemption if  
9 it's used for certain projects. Certain of this material is  
10 going to require permits. So is it a quarry permit? Is it a  
11 stormwater project permit? Quite frankly, I'm deferring to  
12 Ascent and I'm deferring to the other engineers who do this  
13 on a daily basis to tell us what the right answer is.

14 AS I've been told again and again by these guys,  
15 that from their perspective, these are done in phases, that  
16 it's not something that is done all at once. I mean, for a  
17 project -- where this project is right now where we don't  
18 have approval to do anything, to have the scope of  
19 engineering studies that have been done is amazing.

20 I understand this is a different sort of thing.  
21 This is something that hasn't been done in the City before,  
22 and we don't have a whole lot of precedent to work with it,  
23 but my experts are telling me that that's how it's done. So,  
24 yes, it can have elements of all of this.

1 CHAIRPERSON MAUCK: Does that answer your question,  
2 Wendy?

3 COMMISSIONER SCATTERDAY: I think the answer to the  
4 question is the DEP is still making the determination.

5 MR. HOOPER: They make the ultimate determination.

6 COMMISSIONER SCATTERDAY: I guess that's back to  
7 having them on your list in pursuing all the things that  
8 potentially apply here, that maybe that should be added.

9 MR. HOOPER: Let me also point out the very title  
10 of the document is "Permitting." Things change. Whatever is  
11 required will be done. We're not trying to sneak anything by  
12 you. We're trying to do everything according to the book,  
13 but there are a whole lot of requirements, and we have to  
14 take this step by step in the proper appropriate manner, at  
15 the same time answering all the questions and concerns that  
16 the City has, but we have a whole lot of other folks that  
17 have other requirements that we're going to have to satisfy.

18 COMMISSIONER SCATTERDAY: I appreciate the list and  
19 having it at a glance about each of the agencies is very  
20 helpful, and that was really where my first question came  
21 from, that the mining division potentially is an agency that  
22 would be related, and it would be nice to have them included  
23 at a glance here with all the others. That's why I was  
24 asking. Thank you.

1 MR. HOOPER: I understand.

2 CHAIRPERSON MAUCK: Rosemary?

3 MS. HUMWAY-WARMUTH: And I second that. DEP but  
4 also the mining division which is separate, and we have long  
5 recognized that.

6 CHAIRPERSON MAUCK: Tom?

7 MR. CONNELLY: I just had two questions for  
8 Mr. Hooper.

9 The preliminary permit summary, it's dated December  
10 of 2019. Mr. Hooper, is that reflective of the last three or  
11 four months we've been talking about this project, or do they  
12 just need to update the date on this spreadsheet?

13 MR. HOOPER: No. They need to update the date on  
14 the spreadsheet, but I wanted to get something to you.

15 MR. CONNELLY: That's fine. So this is all current  
16 information as of the last few weeks, not as of December?

17 MR. HOOPER: Correct, as of about 9:00 this  
18 morning.

19 MR. CONNELLY: Okay. The other question I have  
20 was: The Traffic Impact Study for WVDOT Review and Approval,  
21 are they just getting it today also for their review? What  
22 has been the interaction between the traffic engineer and the  
23 Department of Highways and what role did the Department of  
24 Highways do with that report? Will they provide us a

1 summary, or do they just approve or accept the Traffic Impact  
2 Study?

3 MR. HOOPER: Everything that was in there was based  
4 on the recommendations in the preliminary meetings between  
5 our engineering company and the DOH. I think you got the  
6 copy of it before anybody else. I don't think anyone else  
7 has it yet. In fact, I think you got it before the clients  
8 actually did. So at this point, that's all I have and that's  
9 all I know.

10 MR. CONNELLY: Okay.

11 MR. HOOPER: It's fresh.

12 CHAIRPERSON MAUCK: Before we let Mr. Hooper go, we  
13 need to discuss what to do with the public hearing. I  
14 personally would like to have that after we go over our new  
15 business and do it as the last item on the agenda rather than  
16 hold people up. We could do it now. What is your  
17 preference?

18 COMMISSIONER MONROE: I have a preference. I think  
19 we should just get it down now.

20 CHAIRPERSON MAUCK: All right. Due to social  
21 distancing, not more than 25 people can occupy a space like  
22 in the White Palace. So how do we hold a public hearing  
23 without actually being there? What are your suggestions?

24 MS. HUMWAY-WARMUTH: Can I suggest one thing?

1 Right now there appears to be a sprawling in some of the  
2 documents, and it's not to any party issues. Some of the  
3 documents -- and just getting the traffic report today, and  
4 this being May, even if there was no social distancing, it  
5 doesn't seem feasible to have the public meeting in June.  
6 That's all I'm going to say about that. Everybody is playing  
7 a lot of this by ear, but just timewise, in regard to the  
8 City getting the geotech and for review of these documents  
9 and a follow-up from the DEP and the quarrying, I think we're  
10 going to miss the mark anyway for June.

11 CHAIRPERSON MAUCK: The other thing that concerns  
12 me is having a public hearing and having these people in to  
13 explain the geotech report, the DEP process, the traffic  
14 study and the DEP comments, that in itself appears to me to  
15 be a whole evening worth of meetings without the public  
16 hearing.

17 So maybe what we should do is push the public  
18 hearing back another month before we make a determination or  
19 make a suggestion for August or September to allow us time to  
20 hear from Mike and his associates and people who are going to  
21 speak on these matters so we can digest it, and the public  
22 can hear it and they can digest it, and then we can have a  
23 public hearing.

24 Also after we see what the opening up of the



1 economy does and opening up the world to us, things may also  
2 change.

3           So I'm asking you, Mr. Connelly, can we wait  
4 another month before we determine what we want to do with the  
5 public hearing?

6           MR. CONNELLY: Yes. The June 8th meeting, we can  
7 make a decision that night and be on time to schedule for a  
8 July public hearing. So, yeah, we can wait another month.  
9 If you wanted to have more information presented on June 8th  
10 from some of these experts, that's something that you can do.

11           Looking at my calendar, our next meeting is  
12 scheduled for the second Monday in June, which is June 8th,  
13 and then the second Monday in July is the 13th. So, yeah, we  
14 can obviously push this back past June, and we can make a  
15 decision at the June meeting for July or August and go from  
16 there. So if the Commission wants to do it in that manner,  
17 that way we can have two separate meetings and hear the  
18 experts' interpretation and presentation and then allow that  
19 to resonate, and then we can have a public hearing after  
20 that.

21           CHAIRPERSON MAUCK: Okay. Howard, do you want to  
22 discuss it now?

23           COMMISSIONER MONROE: Well, I have a question. Did  
24 I understand the solicitor earlier that we would also have by

1 the June 8th meeting hopefully the independent review of the  
2 independent report? We would have that hopefully by the June  
3 meeting as well?

4 MS. HUMWAY-WARMUTH: Yes, we are hoping.

5 Tom, I'll throw that to you also, but we have  
6 stated to the engineer that time is of the essence, and we  
7 were trying to work on this June meeting as a drop-dead  
8 deadline. So I believe that they can.

9 Assistant Director Connelly, what do you think?

10 MR. CONNELLY: Yes. I'm looking over some of my  
11 notes, and they do look to submit a final letter with  
12 comments one week prior to the June 8th meeting. So, yeah,  
13 if we can get it finalized, then they can review it and then  
14 have something back to us by, it looks like, June 1st.

15 MS. HUMWAY-WARMUTH: We have also asked that --  
16 included in that, we have also asked that they would be also  
17 available for the public hearing meeting in a similar fashion  
18 as the developer has asked, that his experts, if you will,  
19 and other persons be able to comment. So we're making those  
20 arrangements as well.

21 CHAIRPERSON MAUCK: Other comments, Howard?

22 COMMISSIONER MONROE: No. I think your suggestion  
23 is actually a pretty good one, Mr. Mauck. I think that we  
24 should -- I think we should cancel the public hearing on

1 June 8th, the official public hearing, and we can feel our  
2 way through. By June 8th, we may have a better idea of when  
3 and what kind of regulations will be in effect in July. If  
4 we're still on 25 people in a room in July, we may have to  
5 revisit that, but maybe things will be different by then.

6 I do think you're right. There is an awful lot of  
7 material that hopefully we're going to get soon. We've  
8 received the material, and we'll get some more information in  
9 the June meeting from the geotech and the traffic study  
10 experts and so on.

11 So it seems to me, A, we should cancel the June 8th  
12 public hearing at the moment, and, B, set that June 8th  
13 hearing as you suggested, Mr. Chairman, for review of -- for  
14 conversation with the various sundry experts who could be  
15 brought in, both from the independent review we're doing, as  
16 well as from the applicant, and then at that time, we can get  
17 a better feel for what's happening come July or August or  
18 whatever.

19 CHAIRPERSON MAUCK: Mike, you're pretty sure you  
20 can have your people available for the June 8th meeting?

21 MR. HOOPER: I will find a way.

22 CHAIRPERSON MAUCK: You'll find a way. Okay.  
23 Wendy?

24 COMMISSIONER SCATTERDAY: Is there any expectation

1 we can have regarding the West Virginia Department of  
2 Highways' review of the traffic study and their comments and  
3 whether or not we would be in receipt of DOH's comments by  
4 June 8th? Is that realistic? Can anybody speak to that?

5 MR. HOOPER: I cannot.

6 MS. HUMWAY-WARMUTH: Well, doesn't the DOH  
7 routinely review those, Tom? Isn't that something that they  
8 normally do? Has it been submitted to them -- well, listen.  
9 We just got it today.

10 Mike, has it been submitted to them for comment?

11 MR. HOOPER: No, not yet.

12 MS. HUMWAY-WARMUTH: Okay.

13 MR. HOOPER: It just came right before the meeting.

14 MS. HUMWAY-WARMUTH: Okay. Tom, within your  
15 experience, how long does it normally take for them to turn  
16 around in normal situations?

17 MR. CONNELLY: Well, this is a 900-page document.  
18 I have no idea how long it will take them.

19 I looked at the executive summary, which is  
20 three pages, and for the rest of the meeting today, I didn't  
21 have a chance to look at anything.

22 I know it was developed -- DOH approved the  
23 guidelines for the study, but they haven't looked at the  
24 results of that study yet and weighed in on them. Starting

1 tomorrow, I'll contact them to see what their input is on  
2 their review timeline.

3 MS. HUMWAY-WARMUTH: well, that's fine. The Legal  
4 Department would suggest that Counselor Hooper should assure  
5 that that is sent to the DOH and that we receive a copy of  
6 that and that appropriate people, upon their instigation,  
7 review that and forward it to the City. It's on the  
8 developer, I think.

9 CHAIRPERSON MAUCK: Are you looking, Tom?

10 MR. CONNELLY: I'm taking notes.

11 CHAIRPERSON MAUCK: You're taking notes. Okay.

12 MS. HUMWAY-WARMUTH: Mike, Counselor Hooper, can  
13 you get in touch with whomever did your study, as well as  
14 your engineer, Thrasher, et cetera, and get a review back to  
15 us?

16 MR. HOOPER: Let me contact them, and then I'll see  
17 exactly what they say and at least get back an e-mail back to  
18 you, Rose, and go from there.

19 MS. HUMWAY-WARMUTH: Thank you.

20 CHAIRPERSON MAUCK: It should be noted that Rusty  
21 is with us.

22 MR. CONNELLY: The spreadsheet, the preliminary  
23 permit summary that was provided tonight, the Traffic Impact  
24 Study for WDOH Review and Approval says the estimated time

1 for approval says four months. So I don't know if that's  
2 permit approval or traffic study review, but hopefully it's  
3 not four months.

4 MR. HOOPER: I hope not.

5 COMMISSIONER SCATTERDAY: That's why I wanted to  
6 ask.

7 CHAIRPERSON MAUCK: Anything else, Commissioners?

8 COMMISSIONER SCATTERDAY: I just had one other  
9 follow-up question for Mr. Hooper.

10 CHAIRPERSON MAUCK: Okay.

11 COMMISSIONER SCATTERDAY: The compliance letter  
12 from the DEP, is it your client's position that they are  
13 going to be appealing the compliance issue order?

14 MR. HOOPER: I can't support your position that  
15 there needs to be anything other than what's happening right  
16 now. I don't know whether the statement they are not in  
17 compliance is accurate or not. Regardless, we need to get  
18 the permit renewed if it hasn't been already. I've been told  
19 by Ascent that that is currently under way, that the process  
20 is ongoing and that it's almost complete. It's more than  
21 halfway complete. If something was submitted on the wrong  
22 form, that might be a technicality, but that would have long  
23 since been clarified.

24 COMMISSIONER SCATTERDAY: Okay. What I'm referring

1 is on page -- let's see here -- cover page 1, 2, 3, 4 -- I  
2 guess it would be the fourth page. The language that they  
3 use it is called "order for compliance." As of March 16th,  
4 2020, GC&P Development, LLC, is hereby ordered by the  
5 director as follows, and then it has point -- Item No. 1,  
6 Item No. 2, and then Item No. 3 is discussing that the  
7 effective date of the order of GP&C Development shall comply  
8 with the measures in this order and take all steps necessary  
9 to control the stormwater at the aforementioned site.  
10 Compliance with this order and the measures identified below  
11 shall continue for coverage under the February 2019  
12 (inaudible) stormwater general permit is obtained, and then  
13 it goes under Subsection A, B, C, D, E, F, G, H, I,  
14 Subsections under I. So that portion of the compliance order  
15 is talking about action steps regarding the property that is  
16 under the order of compliance.

17 So I'm just asking: Does your client have a  
18 position that they are going to appeal those orders?

19 COMMISSIONER MONROE: Ms. Scatterday, what are you  
20 reading?

21 COMMISSIONER SCATTERDAY: It is the letter from the  
22 West Virginia Department of Environmental Protection that was  
23 posted.

24 COMMISSIONER MONROE: This is the one that you

1 received from a citizen?

2 COMMISSIONER SCATTERDAY: Right, but it's a public  
3 document.

4 COMMISSIONER MONROE: I'm trying to figure out.  
5 All right. I gotcha.

6 COMMISSIONER SCATTERDAY: It is the west Virginia  
7 DEP's letter which is an order of compliance letter, and then  
8 there are --

9 COMMISSIONER MONROE: Do you have a date on that?

10 COMMISSIONER SCATTERDAY: Sorry.

11 COMMISSIONER MONROE: What is the date on that?

12 COMMISSIONER SCATTERDAY: March 16th --

13 COMMISSIONER MONROE: Okay. Thank you.

14 COMMISSIONER SCATTERDAY: -- 2020.

15 COMMISSIONER MONROE: Thank you.

16 MR. HOOPER: I would have to defer to Ascent to  
17 question or comment on that. I just don't know the answer on  
18 that. As of this morning, I think the process was well over  
19 50 percent complete. That's what I was told.

20 COMMISSIONER SCATTERDAY: Okay. It's sort of two  
21 parts. It's talking about the (inaudible) submission, but  
22 it's also talking about actions to be taken on the property  
23 as a result of the compliance order. So kind of sort of  
24 saying while the paperwork is being submitted, there are



1 issues on the property, itself, that they are asking to be  
2 addressed. That's why I'm asking a question about that  
3 physical remediation that's highlighted as the compliance  
4 order states.

5 MR. HOOPER: I don't know the answer to that.

6 COMMISSIONER SCATTERDAY: Okay.

7 COMMISSIONER SCHESSLER: It has a 30-day response  
8 time, so you might want to check on it.

9 MR. HOOPER: Again, that's what Ascent is doing.

10 COMMISSIONER SCHESSLER: Okay.

11 MR. HOOPER: I will verify that in the morning.

12 COMMISSIONER SCATTERDAY: Thank you.

13 CHAIRPERSON MAUCK: Rusty Jebbia, can you hear us?

14 Rusty, can you hear us? I guess not.

15 COMMISSIONER JEBBIA: Finally.

16 CHAIRPERSON MAUCK: Okay. Thank you. We can't see  
17 you, but we know you're there.

18 Okay. Anything else, Commissioners?

19 COMMISSIONER SCATTERDAY: So do we need to make a  
20 motion for any of the actions, Mr. Chair?

21 CHAIRPERSON MAUCK: Have we requested anything we  
22 need to make a motion for?

23 COMMISSIONER MONROE: I make a motion to cancel the  
24 public hearing.

1 CHAIRPERSON MAUCK: Okay. Why don't you make that  
2 motion and Wendy can second it?

3 COMMISSIONER MONROE: I move that we cancel the  
4 public hearing, to be rescheduled at a later date.

5 COMMISSIONER SCATTERDAY: I second.

6 CHAIRPERSON MAUCK: All in favor, raise your hand.  
7 Motion passes.

8 Anything else?

9 COMMISSIONER MONROE: I sense we've got a number of  
10 things we need to deal with June 8th, which hopefully  
11 Mr. Hooper can arrange and to have some of the folks who are  
12 going to present to us there at the time, and hopefully we  
13 can have somebody from the independent review with us at the  
14 time for our regular meeting. I don't know if that requires  
15 a motion, but I think that's what we ought to be aiming  
16 towards next.

17 CHAIRPERSON MAUCK: Well, why don't you make it a  
18 motion and see what happens, Howard?

19 COMMISSIONER MONROE: I would move that at our  
20 June 8th meeting, we have a review of the various reports  
21 from the experts who are providing them and that we can ask  
22 them some questions. That would include our own independent  
23 analysis, as well those from the applicant.

24 CHAIRPERSON MAUCK: Christine, would you like to

1 second that?

2 COMMISSIONER SCHESSLER: I would. I'll second.

3 CHAIRPERSON MAUCK: All in favor, raise your hand.

4 Motion passes.

5 Anything else before we let Mr. Hooper go?

6 Okay. Seeing none, thank you very much, Mike. We

7 appreciate it.

8 MR. HOOPER: Thank you.

9 MS. HUMWAY-WARMUTH: Thank you. Okay. Moving on.

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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 date and time 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 13th day of May, 2020.

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