

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, March 2, 2020
5:19 p.m. - 5:46 p.m.

City-County Building
1500 Chapline Street
City Council Chambers
Wheeling, West Virginia

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 Connelly, AICP
Michael Hooper, Esquire

P R O C E E D I N G S

1
2 CHAIRPERSON MAUCK: Unfinished business, Special
3 Area Plan, Amendment to the Comprehensive Plan, GC&P
4 Development.

5 Mr. Hooper, would you come forward and briefly
6 update us on any new developments?

7 MR. HOOPER: Good evening. It's good to see
8 everybody's faces today.

9 Okay. Briefly here, on the geotech report, it is
10 not done yet. It should be done by tomorrow. I'm hoping. I
11 thought for sure that we would have it today, but
12 unfortunately it just didn't happen. They just couldn't
13 finish it on time. You will have it hopefully tomorrow is
14 the plan, but it will definitely be this week. It will be
15 tomorrow.

16 With the West Virginia DOH, we have met, and we
17 have reviewed the scope of the Traffic Impact Study with
18 them. Our traffic engineering firm has discussed the
19 mixed-use village. Stahl Sheaffer Engineering, LLC, out of
20 Monroeville, PA, is the company that is doing this. They are
21 very experienced. Obviously the scope has been approved.
22 The ground work has been completed. The report is in
23 progress. As I said at the last meeting, we are on target
24 for mid March, but in the interest of specificity, I asked

1 them to give me a more specific date. The specific date I
2 was told is on or before March 23 is the date that we will
3 have the traffic study.

4 In the meantime, we're working with WVDOH on the
5 development agreement. That is a work in progress. Again,
6 until we have the TIS in hand and we know where we're headed
7 from this body and from the City, we're just at a standstill.
8 That takes care of that.

9 With the West Virginia DEP, we've met with them and
10 discussed our options. In essence, it comes down to two
11 options. The one, as we spoke before, for temporary site
12 grading is the exemption standpoint, but that still requires
13 a storm water permit. To do it that way, the downside is no
14 tax revenue to the City. Material would be moved out of
15 state and sold from there. That is not what my clients want
16 to have happen. So we are, in fact, discussing the quarry
17 permit with DOH. The same idea. That is a little bit
18 quicker path. The benefit to that, again, is the revenue
19 that comes to the City. So there would be taxes for the
20 City, taxes for the State. So that's where we are in terms
21 of the temporary site grading project. Again, the West
22 Virginia DEP has made it pretty clear that those are the only
23 two choices, and that has to be finalized as well.

24 That's all I have.

1 COMMISSIONER MONROE: That is a choice that your
2 clients will make?

3 MR. HOOPER: Yes. Correct. Our engineer,
4 Thrasher, is comfortable on the storm water permit. They are
5 not comfortable with the quarry permit path. So we are
6 interviewing and have sent out requests for information with
7 other engineering firms that specialize in doing that as
8 well. Hopefully we can have that in the week or so, and then
9 we can make our decision and move forward.

10 CHAIRPERSON MAUCK: So you anticipate that you will
11 be ready to present these items at the April 6th meeting in
12 total?

13 MR. HOOPER: I'm hoping so. I also thought that I
14 would have the geotech report before this meeting, but
15 unfortunately we're dealing with large professional
16 organizations that, as much as I may have hissy fits and moan
17 and whine, I can't force them to finalize reports, but that's
18 what we're trying to do. So that's where we are. We are
19 doing our best. March 23rd, as I said, is when we should
20 that have that, the Traffic Impact Study. That's probably
21 the keystone for what this body is looking for.

22 COMMISSIONER MONROE: When you get that, you will
23 get it to us immediately?

24 MR. HOOPER: As soon as we have it.

1 COMMISSIONER MONROE: Assuming you get it the 23rd,
2 we will get it the 24th?

3 MR. HOOPER: Yes.

4 MS. HUMWAY-WARMUTH: Mr. Hooper, on behalf the
5 Planning Commission, the legal department would have like to
6 have provided, if not tonight, if you can send me an e-mail
7 in the morning, as to the persons with the West Virginia
8 Department of Environmental Protection that you are having
9 discussions with in regard to the options so I can make an
10 appropriate FOIA request or have the information relayed from
11 the Commission as to the concerns that have been raised
12 during the portions of these meetings.

13 MR. HOOPER: Certainly. Again, I have not met with
14 them personally. So I'll find that out and get it to you.

15 MS. HUMWAY-WARMUTH: Okay. That shouldn't be that
16 difficult, but I hope that you can let me know tomorrow.
17 Thank you.

18 MR. HOOPER: Absolutely.

19 COMMISSIONER SCATTERDAY: Mr. Hooper, the
20 consultants that you referred to and prefaced with the word
21 "unfortunately" in reference to them meeting deadlines, your
22 client, are they not paying these consultants to work for
23 them and are they not their client? The client sets
24 deadlines, and your consultants aren't able to meet the

1 deadlines of their clients?

2 MR. HOOPER: Ms. Scatterday, I'm not going to argue
3 with you. We're trying our best to get it. We've asked for
4 a lot of information, a lot of complex and very extensive
5 information. Given the complexity, it takes time. So we're
6 trying to get it as quickly as we possibly can. We want to
7 get done with this and move on as quickly as you do, but we
8 also want to be complete. We also want to address your
9 concerns that you have raised repeatedly, and that's where we
10 are.

11 COMMISSIONER SCATTERDAY: Respectfully, sir, I'm
12 not arguing with you. I was asking a question about your
13 consulting firm's meeting your client's deadline
14 requirements. I just asked for clarity on that. It's not an
15 argument. I have clients, and I have to meet the deadline
16 that they give me. The context that I'm working within, I
17 assume, is the same as yours, but --

18 MR. HOOPER: God bless you if you've never been
19 late on a deadline, but we're trying.

20 COMMISSIONER MONROE: Mr. Hooper, have you seen the
21 report from the consultant for the Wheeling Pollution Control
22 Department?

23 MR. HOOPER: I have sent that off to our engineer
24 to be looked at and evaluated. That's beyond the scope of my

1 ability to coordinate. I have not seen -- Mr. Connelly
2 referenced something that came in today from them as well,
3 some sort of --

4 MR. CONNELLY: No. That was the prior hearing.
5 That was the only communication we had.

6 MR. HOOPER: One neighbor that wrote in and I
7 thought there was one other --

8 MR. CONNELLY: This came later.

9 MR. HOOPER: I don't have any comment on it one way
10 or the other.

11 COMMISSIONER SCATTERDAY: Mr. Connelly, can you
12 talk about the information that you have from the Department
13 of Mining and the correspondence that you have with them
14 about that exemption to termination and what they've conveyed
15 to you about their jurisdiction about making that decision?

16 MR. CONNELLY: The most recent correspondence that
17 I've had from them regarding that was probably in September
18 when they said they could only make that determination once
19 the application has been filed, and then I believe starting
20 in December, just advising them when the next meeting is, if
21 there's any communication or correspondence that's been
22 issued from their office to the applicant. The Philippi
23 office I think at one point was designated as the local
24 office that would be reviewing this type of project. They

1 don't have any updates or information that has been
2 presented. So when the City is closer, contact me and I will
3 be able to follow up in greater detail.

4 COMMISSIONER SCATTERDAY: I had in my memory that
5 they had conveyed that it was, in fact, their purview and
6 jurisdiction that they make the determination on the
7 qualifier of whether it is or isn't exempt?

8 MR. CONNELLY: That's correct. That was back in, I
9 think, September.

10 COMMISSIONER SCATTERDAY: So that West Virginia
11 state agency is who makes the determination of exemption or
12 not?

13 MR. CONNELLY: That's right. They are the ones who
14 decide if there is a permit needed, what type of permit is
15 needed, yes.

16 COMMISSIONER SCATTERDAY: So it's their decision.
17 Thank you.

18 CHAIRPERSON MAUCK: Any other comments or questions
19 of Mr. Hooper?

20 Mr. Hooper, we're going to meet April 6th, and
21 we're anticipating that the information we have requested
22 will be available for perusal and comment.

23 MR. HOOPER: All right. Prior to that.

24 CHAIRPERSON MAUCK: Well, yes, actually prior.

1 COMMISSIONER MONROE: As prior as it can be.

2 MR. HOOPER: Yes. I will do my very best. I
3 understand completely.

4 CHAIRPERSON MAUCK: Thank you for your time.

5 MR. HOOPER: Thank you, all.

6 CHAIRPERSON MAUCK: Commissioners, we need to
7 charge Mr. Connelly with setting up a public hearing on the
8 Comprehensive Plan Amendment, and after Mr. Hooper presents
9 his client's information, the next available date is the 11th
10 of May. That is the second Monday.

11 COMMISSIONER MONROE: We are back to our regularly
12 scheduled meetings.

13 MR. CONNELLY: April 6th -- actually, the Planning
14 Commission could instruct, on April 6th, the schedule for the
15 next Planning Commission meeting, and that would give us the
16 necessary time. So you can either make a decision tonight
17 given the instructions or you could actually wait until
18 April 6th, and we would have just enough time to have the
19 newspaper ad run later that week advertising a public hearing
20 May 11th.

21 CHAIRPERSON MAUCK: So you say that on the night of
22 the 6th, we could charge you -- we could wait and charge you
23 to set up a public hearing on the amendment to the
24 Comprehensive Plan, and you would have enough time to get

1 that out 30 days prior to the May meeting?

2 MR. CONNELLY: That's correct. Again, it doesn't
3 have to be tied to the Planning Commission meeting date. So
4 if tonight you decide you want to do it some other date,
5 that's also an option.

6 COMMISSIONER MONROE: Is there any reason that we
7 could not do it at the April meeting?

8 MR. CONNELLY: We need 30 days notice. By the time
9 the ad runs in the newspaper, the April 6th meeting -- today
10 is March 2nd. When we advertise the 30-day notice, we invite
11 people to stop in the development office to review all
12 submitted materials. We don't have those materials. We're
13 anticipating having the highway study for people to look at.
14 We're anticipating having the geotech study for people to
15 look at. If we advertise the hearing to occur on April 6th,
16 and that information isn't presented until March 23rd and
17 tomorrow or the next day, you're actually only giving the
18 public maybe two weeks to look over some of those materials.

19 COMMISSIONER MONROE: Let me talk this out in my
20 own mind for a second. I hear the concerns of the citizens,
21 that they want to have an opportunity to speak to this, and I
22 think we have a responsibility here directly, and certainly
23 with several batches of letters, we're getting plenty of
24 input. As a Commissioner, I would like to get public input

1 now at this stage of the game as quickly as possible. That
2 does not mean that I would be in a position to vote
3 immediately following the April public hearing. I don't know
4 how concerned -- I don't know how big a difference it would
5 make to the public to have or not have those items that we're
6 talking about in the file at that point. For me as a
7 Commissioner, I can take the information to the public on
8 April 6th. If Mr. Hooper is not able to make the deadlines
9 at the appropriate time, I can review those later. I'm just
10 trying to now say maybe this is the time to hear what the
11 public has to say.

12 MR. CONNELLY: We're in the same spot now that we
13 were in December. That's the line of thought. We could have
14 the hearing, December, January, February. The whole idea was
15 to have as much information as possible so that people that
16 have an opinion and want to speak on it, the facts that we're
17 waiting on, the highway network and the permitting processes,
18 that might make for a lengthy public hearing or it make for a
19 short public hearing based on getting the amount of
20 information out there. That's my only thought. Why we
21 waited this long was to try to get as much information to
22 conduct a thorough public hearing. I think there will still
23 be a lot of unknowns if we have a public hearing April 6th,
24 if all that information hasn't been -- that's my thought.

1 It's also to my benefit to be able to have that information
2 in advance of the public hearing.

3 I understand also you're wanting -- and that's part
4 of why the e-mail system was there, just to get the general
5 thoughts without having the facts on some of these things
6 we're waiting on.

7 As Commissioner Scatterday mentioned at the last
8 meeting, they've been patiently waiting to address this full
9 Commission in person, but nothing has changed since October.

10 MS. HUMWAY-WARMUTH: Mr. Connelly, we did look at
11 the calendar. We discussed earlier today about some possible
12 other dates, although it may only move it by a week or so.
13 But given -- at least one date that Mr. Hooper gave us was
14 mid March, March 23rd for the traffic study, then if we
15 didn't receive that geotech this week at the very least, then
16 30 days past the 23rd would put us at April 24th. What were
17 the other days that we could supply the Commission if they
18 wanted to do a different date earlier than May 11th?

19 MR. CONNELLY: I did run a calendar. If everything
20 was submitted by March 16th and a legal ad was run
21 March 21st, we could have had a public hearing April 27th.
22 If we move that forward a week to March 23rd, then May 4th is
23 when we could have a public hearing.

24 MS. HUMWAY-WARMUTH: That would be the first

1 Monday --

2 MR. CONNELLY: The first Monday of May.

3 COMMISSIONER WRIGHT: Tom, are you considering
4 moving the public hearing to accommodate the number of
5 participants?

6 MR. CONNELLY: I contacted Northern for the use of
7 their auditorium, and their auditorium is available
8 April 27th, May 4th and May 11th. So those three dates are
9 in line with how this might move forward if we are able to
10 use it.

11 CHAIRPERSON MAUCK: what are those days again?

12 MR. CONNELLY: April 27th, that was assuming that
13 the information was submitted by March 16th. Then I would
14 run a legal ad on March 21st, but I think if things now
15 aren't going to be submitted until March 23rd, then we would
16 be looking at May 4th or May 11th, May 4th at the earliest at
17 least, I believe.

18 COMMISSIONER SCATTERDAY: Those are all Monday
19 dates?

20 MR. CONNELLY: That's correct.

21 COMMISSIONER SCATTERDAY: If we varied from Monday,
22 were there any other available --

23 MR. CONNELLY: I didn't ask that.

24 COMMISSIONER SCATTERDAY: We don't know that.

1 Just so I understand your timeframe, if we have all
2 the information on the 23rd and the legal ad can be provided,
3 April 23rd isn't eligible?

4 MR. CONNELLY: That's right.

5 COMMISSIONER SCATTERDAY: You need more than
6 30 days?

7 MR. CONNELLY: That's right, 30 days. Usually
8 about four days from when I receive e-mail, the newspaper --
9 they create space, there is a four-day lead time on that.
10 Generally, like for time for a public hearing, I would have
11 e-mailed them on a Tuesday for it to run in Saturday's
12 newspaper.

13 COMMISSIONER MONROE: Even assuming that the
14 reports would be in as Mr. Hooper suggested, the 23rd-ish, I
15 don't think I would be ready for a vote on anything April
16 6th. My suggestion is that we schedule input at that point.
17 Hearing the concerns raised here -- and I think you raised
18 legitimate ones -- they might want to see these traffic
19 studies and so on. Unless someone doesn't want to do this, I
20 would recommend to set May 11th as the public hearing date.
21 I suggest we move it to the community college.

22 CHAIRPERSON MAUCK: Is that a motion?

23 COMMISSIONER MONROE: It is.

24 CHAIRPERSON MAUCK: Commissioner Monroe moves to

1 set the public hearing date for the GC&P Development
2 Comprehensive Plan Amendment May 11th. Is there a second to
3 that?

4 COMMISSIONER WRIGHT: I'll second that.

5 MR. CONNELLY: we should establish the time of day.

6 COMMISSIONER SCATTERDAY: I would respectfully
7 request 6:00 p.m. for the sake of the folks who work and want
8 to give input.

9 CHAIRPERSON MAUCK: what time did you suggest?

10 COMMISSIONER SCATTERDAY: 6:00 p.m. at the
11 earliest.

12 MS. HUMWAY-WARMUTH: I have no objection to that.

13 CHAIRPERSON MAUCK: If there are other items of
14 business that night, we can cover those from 5:00 to 6:00,
15 and then take a break if necessary and start the public
16 hearing at 6:00.

17 COMMISSIONER MONROE: That was my thought, that our
18 meeting start at 5:00, but the public hearing would probably
19 not start -- if you want to put that -- I'll be happy to
20 amend the motion that the public hearing begin at 6:00.
21 That's fine with me.

22 COMMISSIONER WRIGHT: I have no objection. Second.

23 CHAIRPERSON MAUCK: Commissioner wright seconds.
24 Other comments?

1 I request we vote.

2 MR. CONNELLY: Okay.

3 CHAIRPERSON MAUCK: Push your buttons if you're in
4 favor, yes.

5 If you're not, no.

6 MS. HUMWAY-WARMUTH: For the record, we will note
7 that the hearing will be held at the West Virginia Northern
8 Community College in the same room that we were in
9 previously, which is in the main auditorium in the center of
10 the building.

11 CHAIRPERSON MAUCK: That's part of the record.

12 COMMISSIONER SCATTERDAY: I'm wondering
13 procedurally, Madam Solicitor, similar to the public hearing
14 that we held on other occasions when we had a large audience,
15 one of the things that we did with the sign-up sheets, we
16 tiered it off and segregated it into resident location so we
17 can give a priority to folks who were closer to the decision
18 or farther depending on their geography. Is that something
19 that we have the ability to also --

20 MS. HUMWAY-WARMUTH: This body can create
21 reasonable rules and regulations of procedure as long as
22 everybody who comes is heard. If that's something that the
23 Commission wants to do -- I could actually write up something
24 procedurally to discuss it at the next meeting so everybody

1 is heard. We can do, yes.

2 COMMISSIONER SCATTERDAY: Basically just
3 segregating based on address?

4 MS. HUMWAY-WARMUTH: We had utilized that for the
5 Human Rights Commission, and it was the City of Wheeling,
6 outside of the City of Wheeling. Actually, there were even
7 sheets if you wanted to state that you were going to be pro
8 or con or undecided.

9 COMMISSIONER SCATTERDAY: I would like to suggest
10 that we implement that here so that the folks who are closest
11 to this location would be heard first, and respectfully
12 request everyone's consideration for that deference.

13 COMMISSIONER MONROE: I'm not totally in support of
14 that concept. I'll be honest with you.

15 COMMISSIONER WRIGHT: I might not live in that
16 area, but if I have to work there and I'm traveling that road
17 a lot, then I'm just as related to the situation maybe as
18 another person, I guess.

19 COMMISSIONER SCATTERDAY: I'm just suggesting that
20 a property owner does have a higher degree of affect.

21 COMMISSIONER MONROE: I think this is an issue that
22 affects everybody in the City, and we've been getting input
23 from people outside the community as well. I guess I'm not
24 going to jump up and down and scream and holler about it, but

1 it doesn't seem like we need to that do. It seems like
2 everybody ought to have a voice.

3 COMMISSIONER SCATTERDAY: I'm not suggesting that
4 wouldn't be the case. I'm suggesting a prioritization.

5 MS. HUMWAY-WARMUTH: The procedures that we have in
6 place now is we are required -- we do require persons who
7 speak to give -- to provide their name and address, and that
8 does provide that -- and they could be somebody from
9 California. Let's face it. Anyone is permitted to give it.
10 But most of these residents or the public can say I live on
11 such-and-such a street, on Edge Lawn or something, which is
12 within the woodsdale community, but the address themselves
13 would identify them for purposes of the record as to -- from
14 whence they came and from where they speak, et cetera. It
15 might already be that the procedure that you already use has
16 that identifier in there if you will, but everybody's voice
17 is heard on the same plateau.

18 CHAIRPERSON MAUCK: If they sign up, it would be
19 easier for the Commission to select people to speak next,
20 rather than just have a show of hands and a fight break out
21 and so forth and so.

22 MS. HUMWAY-WARMUTH: That's absolutely true. That
23 does make it a little more orderly. Those wishing to be
24 heard, you can call their names. A sign-in sheet would be

1 good. But, again, we could address that at the next meeting.

2 It does take some time to --

3 COMMISSIONER MONROE: A sign-in sheet -- someone
4 could choose to speak if they didn't sign up?

5 MS. HUMWAY-WARMUTH: That's correct. If they
6 didn't sign up, at the very end, you could say, "Is there
7 anybody who didn't sign up that would like to speak?"
8 Absolutely. It's just another reasonable rule for order.

9 COMMISSIONER SCATTERDAY: I'm just suggesting it on
10 the fact that when we had the nondiscrimination process, we
11 had a very large audience. It was City Council's intent that
12 folks that resided within the City of Wheeling, therefore,
13 would have the most affect, that they be given the prior to
14 speak first. That's all I'm asking here, that someone lives
15 nearest would be given that priority.

16 Mostly too because if the hearing goes on for a
17 duration of time, I think we all recognize fatigue, and
18 hearing someone speak at the beginning as opposed to Hour 3,
19 there can be a gradient difference in terms of everyone's
20 wherewithal.

21 COMMISSIONER MONROE: Commissioner Scatterday, that
22 would be exactly why I would not want to have one group given
23 a higher tiering because those who are heard last should be
24 heard as much as those who speak first. I get your point.

1 It's human nature that things may progress over the course of
2 several hours. I have an objection to believing that people
3 in woodsdale should be given preference to speak. They
4 should be listened to quite carefully, but preference over
5 anybody else in the City --

6 COMMISSIONER SCATTERDAY: Obviously I have a higher
7 degree of concentration of constituents that are in that
8 immediate vicinity, and that's who I represent.

9 COMMISSIONER MONROE: I understand.

10 I would suggest, Mr. Chair, that we talk about the
11 details if we need to next time.

12 CHAIRPERSON MAUCK: I agree.

13 COMMISSIONER WRIGHT: I concur.

14 CHAIRPERSON MAUCK: On behalf of the Commission and
15 the staff, I thank you for continuing your vitality, to
16 continue coming to these meetings. We look forward to your
17 comments. As we approach the date, we also will take written
18 comments, and we hope to see you that night to make your
19 comments.

20 I would suggest this: If you could consolidate,
21 rather than take three or four minutes to speak -- if a group
22 of you got together and one person had ten minutes, that
23 might save a little time, and you could get all their
24 comments out. Being property owners and that close to the

1 site, I'm sure you want to speak your peace. We appreciate
2 that also.

3 COMMISSIONER WRIGHT: I have to respectfully
4 disagree. I do not think people should combine their
5 comments. I would like to hear individually from each
6 citizen who has the same issue. Even if it's exactly the
7 same, I want to hear how many people have that issue. I'm
8 going to eat a late lunch. I'm going to have a snack, and
9 we're all going to do it.

10 COMMISSIONER MONROE: Do we have a budget for
11 pizza?

12 CHAIRPERSON MAUCK: Unless there are any additional
13 comments, we're going to move 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 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 16th day of March, 2020.

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

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