

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, December 16, 2019
5:37 p.m. - 6:31 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
William Schwarz
Thomas Connor
Rusty Jebbia
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 CHAIRMAN MAUCK: The next item on the agenda,
3 GC&P Development, LLC, requesting a Special Area Plan. That
4 was tabled in the October meeting if I remember correctly.

5 Tonight what we will do is lift it from the table
6 and have a brief discussion on it. So the chair will
7 entertain a motion to lift the request from the table.

8 COMMISSIONER WRIGHT: Have we received the
9 information that we requested?

10 MS. HUMWAY-WARMUTH: Procedurally, if we would lift
11 it from the table, discussion can then be pursued as to what
12 the status of the case is. Procedurally, before discussing
13 it, it would need to be lifted from the table for such
14 discussion.

15 COMMISSIONER SCHESSLER: I guess I'm just wondering
16 if we have anything new to discuss. We've not received the
17 materials.

18 MS. HUMWAY-WARMUTH: well, if it's not lifted from
19 the table -- if there is a motion to lift it from the table,
20 then it would be discussed if it's agreed to. If there's no
21 motion to lift it from the table, then the matter dies
22 tonight, because it has to either progress or pass.

23 CHAIRMAN MAUCK: The chair will entertain a motion
24 to lift from the table.

1 permits and review processes from state agencies with
2 authority over the preferred development, and then also
3 respond to the geological concerns raised in the attached
4 correspondence in reference to the attached report. As of
5 tonight, nothing has been received.

6 CHAIRMAN MAUCK: Again, staff recommends referring
7 the application to the Zoning Committee to allow additional
8 time for those things he just outlined to be provided to this
9 Commission.

10 COMMISSIONER SCHWARZ: Just a question for
11 Mr. Connelly.

12 Mr. Connelly, do you know if the applicant intends
13 to provide the information that we're requesting?

14 MR. CONNELLY: I do not know that. That's why I
15 reached out to the different agencies the first week of
16 December just to gauge where things are. The e-mails were
17 included, the e-mail exchange between myself and the
18 different entities.

19 I don't believe the Department of Environmental
20 Protection has been contacted since this process started in
21 August.

22 I believe the Department of Highways was contacted
23 in early October, but there has been no follow-up. So I
24 don't know if there has been any other --

1 COMMISSIONER WRIGHT: So from the DEP, as you
2 pointed out, starting in August -- so it has been August,
3 September, October, November. Now we're in December,
4 five months.

5 what about the Traffic Impact Study? How long has
6 that been hanging out there?

7 MR. CONNELLY: Well, since August. I mean,
8 formally probably the October meeting when it was requested.
9 I believe in October we recommended they bring a lot of
10 information to the Commission. I don't specifically remember
11 whether a Traffic Impact Study -- I would have to go back and
12 look to see if specifically there was a request for a Traffic
13 Impact Study or if it was contacting the different
14 governmental agencies for a list of permits and procedures
15 and those types of things.

16 As I mentioned, the applicant and this Commission
17 -- this kind of list has been discussed for a number of
18 years. Knowing that a development of a site that hasn't been
19 developed is going to have an impact on a road network, it's
20 going to be good to know if that road network can accommodate
21 that or handle the proposed development.

22 Similar to the Environmental Protection comment, if
23 it has been designated for conservation development, steep
24 slope, other types of identifiers, in order to change that

1 designation, this Commission should have as much information
2 available to make that -- those are the reasons to request
3 that information, to help -- especially when it gets to the
4 phase of a public hearing, knowing what the main concerns of
5 the site are. Not having that information to move forward
6 would leave the Commission at a disadvantage.

7 COMMISSIONER WRIGHT: Does the applicant offer any
8 updates as to where they are in getting these materials
9 together?

10 MR. CONNELLY: About a month ago, they had asked
11 for the name of a traffic engineering firm, and that's the
12 last I've heard.

13 COMMISSIONER SCATTERDAY: Mr. Connelly, you
14 mentioned the word "years." Could you sort of enlighten all
15 of us sort of what you're referencing about the information
16 and the timeline?

17 MR. CONNELLY: well, I think it was either 2015 or
18 2016 when any work on the property stopped. The request of
19 explaining what the procedures moving forward would be --
20 that's where we outlined -- you need a comprehensive plan
21 amendment, you need a zone change, and you need a site plan.
22 It was always recommended that they kind of vet or do due
23 diligence at different levels so when it finally did come
24 back to the City, knowing it would come back in the future,

1 that information would be available for consideration to help
2 the process move along.

3 So it did start here in August, but prior to that,
4 Mr. Hooper and other representatives prior to that have
5 always been encouraged to contact, whether it's the State
6 conservation office or the Department of Highways or the
7 Department of Environmental Protection, reach out to those
8 entities because at some point that information is going to
9 be helpful.

10 So officially in this capacity, the application
11 pending, August is when that would have started. But prior
12 to that, just communications back and forth in various
13 meetings requesting to have that information.

14 COMMISSIONER SCATTERDAY: Since 2016?

15 MR. CONNELLY: Yeah, 2015 or 2016. I don't know
16 the exact year. It wasn't recurring, but every now and then,
17 whenever I would get an inquiry into what they need to do to
18 move forward -- it may be twice a year, three times a year --
19 I had to reiterate those same pieces of information.

20 COMMISSIONER SCATTERDAY: The similar information
21 that you reiterated is now the same information we're asking
22 for now or generally the same?

23 MR. CONNELLY: It's the same information from
24 October that we're still awaiting.

1 COMMISSIONER SCATTERDAY: Thank you.

2 CHAIRMAN MAUCK: The chair will entertain a motion.

3 COMMISSIONER SCATTERDAY: I do see that
4 Mr. Connelly does offer an alternative regarding scheduling a
5 public hearing. I guess I would like to understand the pros
6 and cons of the alternatives that you're suggesting,
7 Mr. Connelly.

8 MR. CONNELLY: well, any amendment request, there
9 is a public hearing component to it. So what I was
10 attempting to do is just get as much information available
11 prior to the public hearing so that any questions that would
12 come up could be answered or researched.

13 If you're able to get that level of information,
14 then the Commission could move forward with a public hearing
15 and use the best information available to make a
16 recommendation off that to City Council.

17 MS. HUMWAY-WARMUTH: If I might add, if it would
18 assist in making that decision and recommendation, although
19 it's not a public hearing, Mr. Hooper, who has represented
20 the developer, I noticed, is in the rear of the room, and
21 perhaps within a limited period of time and with specific
22 questions of the Commission, if that would be helpful, that
23 is available to you. If you wish to have him answer any
24 questions in regard to those that have been raised, that's

1 available to you if you wish.

2 COMMISSIONER SCATTERDAY: Thank you.

3 Mr. Connelly, could you outline for us then, if we
4 were referring this to the Zoning Committee, what would the
5 expectations be about timeline and receiving material?
6 what's that look like?

7 MR. CONNELLY: well, the next meeting that we could
8 schedule a public hearing for and have a 30-day notice would
9 be February 3rd. We would have to notify the newspaper by
10 December 30th. Then that would publish on January 3rd. In
11 that legal ad, it would inform the public of the date, time
12 and purpose of the hearing, and for more information, to
13 visit our office.

14 So by January 3rd then, the public file would be
15 complete so anyone that would come to the meeting January 3rd
16 would have access to the same information for that 30-day
17 period for review, and then the public hearing would then be
18 held on February 3rd, 2020.

19 COMMISSIONER WRIGHT: So they would only have until
20 January 3rd to put together the materials from a Traffic
21 Impact Study or the DEP ruling on the quarry permit? Is that
22 what I'm understanding? Because those materials would have
23 to be available before a February 3rd hearing.

24 MR. CONNELLY: In order to have -- so if you

1 advertise a public hearing and you invite the public in to
2 review the file but then everything isn't submitted until the
3 day before the hearing, then the whole purpose --

4 COMMISSIONER WRIGHT: I just want to clarify what
5 it is. If it's referred to the Zoning Committee, then they
6 are going to come back on the 6th, and they will make a
7 recommendation?

8 MR. CONNELLY: If it's referred to the Zoning
9 Committee, the Zoning Committee meets, and they hear from the
10 applicant who may have intentions -- maybe they are waiting
11 on results. Then the Zoning Committee would at least have
12 had an opportunity to engage and determine where things are
13 in terms of getting that information and then make a
14 recommendation.

15 COMMISSIONER WRIGHT: The Zoning Committee is
16 actually scheduled for December 30th?

17 MR. CONNELLY: That's correct.

18 COMMISSIONER WRIGHT: So the applicant has actually
19 less time to get materials together for consideration by the
20 Zoning Committee?

21 MR. CONNELLY: That's exactly the same time --
22 December 30th is the deadline for when they have to submit to
23 the City, and it's also the Zoning Committee meeting. It
24 actually works out where that date -- they would move forward

1 if they want to.

2 CHAIRMAN MAUCK: How many months could it stay in
3 the Zoning Committee to allow them time to get the
4 information in as opposed to scheduling a public hearing for
5 February 3rd?

6 COMMISSIONER SCATTERDAY: That was actually my
7 question. I'm trying to understand the Zoning Committee work
8 and timeline. If it's referred over to the Zoning Committee,
9 then what is that timing and schedule and procedure?

10 COMMISSIONER WRIGHT: I believe the Zoning
11 Committee could meet more than once on the materials, then be
12 prepared to make their recommendation at the --

13 MR. CONNELLY: That's right. They don't have to
14 meet one time. If they meet and they work through things and
15 receive maybe one piece of information but the other is still
16 pending, it could stay active with the Zoning Committee for
17 -- I think until the Zoning Committee determines they've
18 gotten to a point where they are ready to make a
19 recommendation.

20 COMMISSIONER SCATTERDAY: So the tabling issue does
21 not apply --

22 MS. HUMWAY-WARMUTH: We attempted to see if we can
23 do it within the same period of time. If the Zoning
24 Committee takes longer, which they have on a few occasions --

1 one, in particular, comes to mind, which took a long time to
2 work through for various reasons. They can have more
3 meetings actually, but I can't remember if that took longer
4 than the two tablings, if you will. We attempt to try to
5 keep it very close and similar to the practice and procedure
6 that you do here, and we would do that in this case.

7 COMMISSIONER WRIGHT: I guess I'm just a little
8 puzzled and a little frustrated and feel there is some
9 reluctance to provide this.

10 CHAIRMAN MAUCK: Would you like Mr. Hooper to
11 answer that question?

12 COMMISSIONER WRIGHT: Well, the applicant informs
13 us that they wouldn't, in fact, need a DEP quarry permit,
14 which may or may not be true, but that's up to DEP. So I
15 kind of don't understand why that's happened, but I guess we
16 can refer that to Zoning and give them another opportunity to
17 get this --

18 COMMISSIONER SCHWARTZ: Why don't we ask Mr. Hooper
19 while he's here? The offer has been made to --

20 COMMISSIONER WRIGHT: Is it appropriate outside of
21 the hearing?

22 MS. HUMWAY-WARMUTH: It would be appropriate
23 because it's not a hearing, and he is available to provide
24 that information to you. I think Mr. Connelly has presented

1 the position of staff as to what has been provided and what
2 has not. If Mr. Hooper wishes to address those pointed
3 questions, that would be appropriate.

4 COMMISSIONER WRIGHT: I guess my question is how
5 much time does he think he actually needs?

6 MS. HUMWAY-WARMUTH: I would keep it to the minimum
7 as to those pointed questions.

8 Also, procedurally, this body could send it to the
9 Zoning Committee with a dictate or a requirement that they be
10 completed with -- they bring it back to this body at a
11 certain date and time so it does not linger on for many
12 months.

13 COMMISSIONER WRIGHT: Okay.

14 MS. HUMWAY-WARMUTH: In regard to your concern,
15 it's totally appropriate.

16 CHAIRMAN MAUCK: Mr. Hooper, you're already on the
17 record. would you like the question repeated?

18 MR. HOOPER: Yeah, why don't you repeat the
19 question.

20 I apologize for the creator of the record for my
21 voice being so gross, but I'll do my best.

22 The question was the timeframes, where we are?
23 Again, let's --

24 COMMISSIONER WRIGHT: How much additional time do

1 you feel that you would need in order to be able to answer
2 basically the three listed items? How long would it take
3 you, do you feel, to be able to provide complete information
4 to a Zoning Committee?

5 MR. HOOPER: well, what's going to take the longest
6 in our opinion is the traffic study, which is going to be
7 completed on or before mid March.

8 The other aspects, the geotech questions that have
9 been asked, we are working with our engineers and the
10 appropriate geotech to answer each and every question that
11 has been asked in that regard, but it takes time.

12 Again, you're having us assume -- it's the
13 preferred plan, but you're asking us to assume things that
14 don't technically exist. We don't have all of those details.
15 We don't the weights and those sorts of things. So those all
16 have to be created to do that. So it's a complicated
17 question that takes time to do, but we are moving forward.

18 Again, I mentioned what I said before. This is a
19 unique situation. Usually what you have asked us to provide
20 is not done at this level. It's done three steps down the
21 road on the site plan.

22 So traffic study by mid March.

23 We are indeed working with the West Virginia DEP on
24 the issue of the permit. Again, I submit that it's not a

1 quarry permit, but rather it's a site improvement plan in
2 which we're talking about the settlement of materials.
3 That's what we're asking for guidance from the DEP, to make a
4 determination there. That, likewise, will be done before the
5 traffic study more than likely. So that's the DEP.

6 Division of Highways, again, we've been working
7 with them, and they want the traffic study as well. That's
8 why we need to have the mid March deadline for that, because
9 there will be some interplay and discussion with them to make
10 sure that is acceptable from their perspective.

11 So the list of permits, I actually received that in
12 my e-mail this morning, but it was too late to submit it
13 based on the timeframes. So I will have the comprehensive
14 list of all of those permits ready within the next day or
15 two. So we'll go from there.

16 I think those are each and every one of your
17 requests. Each and every one will be answered. Each and
18 every one will be as specific as we possibly can.

19 COMMISSIONER WRIGHT: So the latest you're saying
20 is mid March for the last piece of information?

21 MR. HOOPER: Correct.

22 COMMISSIONER WRIGHT: We should have that in our
23 hand.

24 MR. HOOPER: Correct. We're planning to have

1 everything else before that, but I will call it on or before
2 for anything.

3 CHAIRMAN MAUCK: Realize that not only do we want
4 GC&P Development to do the traffic study, we want the State
5 office to respond or comment on. So that could take longer.

6 COMMISSIONER SCHWARZ: Maybe just a comment to the
7 group. My thoughts are -- and I'm sure many others are --
8 regarding these applications and applying, for example, for
9 the quarry permit, one of the communications that
10 Mr. Connelly had with the DEP was regarding the concerns that
11 one of the local residents has with the geological stability
12 and undermining and coal seams and so forth. In the e-mail
13 from the DEP to Mr. Connelly from September 10th, they said
14 -- Mr. Connelly, I believe, asked about those concerns that
15 the resident had. The DEP stated that until we see an
16 application for proposed activity, it would be premature to
17 offer any specific comments, meaning comments on the
18 geological concerns.

19 He also mentions -- and this is, I think, key at
20 least for me -- "However, I assure you that the question
21 raised in the letter are items that would be addressed by my
22 review staff should an application be submitted."

23 In this case, not only is Mr. Hooper's engineering
24 firm going to be looking at the geological implications, but

1 the DEP, according to this e-mail, is also going to do that.
2 So in my opinion, that's a valuable product of applying for
3 the quarry permit.

4 The same goes, I believe, for the traffic study. I
5 don't have the particular communication, but I believe that
6 the Department of Highways, once the Traffic Impact Study is
7 done, they will comment on the feasibility or practicality of
8 any roadway changes or additions that would need to be made
9 to accommodate the added traffic.

10 Personally, I would like to see those government
11 bodies' comments on these issues prior to moving forward. I
12 think probably the Zoning Committee would want to see that,
13 too. I don't know. I'm thinking we need to see that
14 information before we can really -- even the Zoning Committee
15 can really make any meaningful judgments on the concerns that
16 have been raised. To me, mainly the main concerns are
17 traffic and geological issues.

18 COMMISSIONER SCATTERDAY: Mr. Connelly, is there an
19 additional option available to us which would be -- because
20 of the date of the upcoming Zoning Committee concerning the
21 close timeframe, could we not simply table this, not make a
22 referral because of the timeframe, table it out of the body,
23 do what we've already done since there is sort of this timing
24 thing with the Zoning Committee?

1 I guess my point is, there is no work that's going
2 to happen on December 30th for the Zoning Committee either if
3 we're accepting the timeframe outlined with these other
4 materials.

5 MS. HUMWAY-WARMUTH: Procedurally, I believe that
6 -- the legal department believes that you could refer it to a
7 January Zoning Committee. Well, you would table it at this
8 time and then refer it to, say, a January Zoning Committee.
9 Tom?

10 MR. CONNELLY: December 30th is the next Zoning
11 Committee.

12 MS. HUMWAY-WARMUTH: So when would the next
13 scheduled Zoning Committee be?

14 MR. CONNELLY: Monday, January 30th. That's the
15 week before the February meeting. So January 30th, the
16 Zoning Committee would meet.

17 COMMISSIONER SCATTERDAY: So if we tabled tonight
18 for the sake of the timing issues, it would then need to be
19 picked back up, revisited during January. We could make a
20 referral at that point, and then the time could move forward
21 from that?

22 MS. HUMWAY-WARMUTH: That's correct. It's already
23 picked up off the table at this point in time. It could be
24 tabled, picked up the next time.

1 COMMISSIONER SCATTERDAY: January and February.

2 MS. HUMWAY-WARMUTH: January and February. But
3 then if the thought is clearing that path to go to the Zoning
4 Committee, then with everybody in line and Mr. Hooper being
5 here to advise, that it may well -- the inclination would be
6 to pick it up, table it, pick it up in January, and then make
7 arrangements for it to go to Zoning for the first time at the
8 end of January, which gives some time also -- a good deal of
9 leeway, and hopefully it won't languish in the Zoning
10 Committee.

11 COMMISSIONER SCATTERDAY: I mean, I'm not saying
12 it's necessarily the best idea, but it's an idea.

13 MS. HUMWAY-WARMUTH: Right.

14 COMMISSIONER SCATTERDAY: I'm also thinking in
15 terms of accountability and keeping guideposts and
16 measurements and points on a calendar so if there's
17 additional information that is not necessarily dependent on
18 the March -- there is other information that could be
19 considered in January or February.

20 MS. HUMWAY-WARMUTH: Commissioner, also then if
21 it's the desire of the Commission to send it to the Zoning
22 Committee to flush this out further, it could simply be
23 referred this evening, and it would be -- if on December 30th
24 there is nothing new to report, then one moves on, and then

1 they are in the end of January 30th Zoning Committee loop
2 already. Perhaps cleaner.

3 COMMISSIONER SCATTERDAY: Okay.

4 MS. HUMWAY-WARMUTH: I'm just saying there may not
5 be a lot by December 30th, but one always has Christmas hope.
6 Mr. Hooper may have some other studies come forward,
7 geological, et cetera. But even if not, then it has
8 progressed to the Zoning Committee, and it could be carried
9 over, and that could be reported back to the Planning
10 Commission. Then we could see how far it's moving through
11 that March deadline or where you are and report it back via
12 the Zoning Committee.

13 COMMISSIONER SCATTERDAY: Hope springs eternal.

14 COMMISSIONER SCHWARZ: I have a question. Does it
15 have to go through the zoning subcommittee to be held off
16 until the information is received from the applicant that
17 we're looking for?

18 MS. HUMWAY-WARMUTH: You could simply table it.
19 It's off the table now. You could table it again, and then
20 it's alive for two, and then go to zoning. So those are your
21 -- procedurally, you have a few choices. I'm not sure -- you
22 know, really whatever your pleasure is.

23 COMMISSIONER SCHWARZ: The next step really isn't
24 directly for the Zoning Committee to decide, right? The next

1 step is to determine whether the Special Area Plan can move
2 forward. Really, to me, that's not a strict Zoning Committee
3 issue.

4 MR. CONNELLY: No. It was just a recommendation.
5 If the applicant was close to having information available,
6 that was an option, but if we're months away, it makes no
7 sense to refer it to a committee that meets in two weeks.

8 COMMISSIONER SCHWARZ: That's just my thought, just
9 table it again, and once the information is in, we, as the
10 Planning Commission, can revisit everything rather than just
11 have the three members of the Zoning Committee only hash it.

12 COMMISSIONER SCATTERDAY: I do have a question for
13 Mr. Connelly, if he could comment. Perhaps not. Is there an
14 occasion -- any prior set of applications for other things
15 that have come before the Commission over the years that have
16 been incomplete applications?

17 I mean, have we had circumstances that are similar
18 in concept only in terms of someone brought forth an
19 application and all the information that was needed wasn't
20 part of that application? So how has that -- and maybe that
21 hasn't ever happened before. I don't know, but I'm asking.

22 MS. HUMWAY-WARMUTH: Mr. Connelly, correct me if
23 I'm wrong. I know on several projects, they have been tabled
24 to provide extra time. They have been tabled one meeting and

1 maybe tabled a second time, lifted off and brought back. I
2 do believe that most have resolved within the time that they
3 were tabled. I don't quite recall a project that was tabled
4 and then revived and then tabled again. That's a two-decade
5 timeframe.

6 COMMISSIONER WRIGHT: I have to ask: Did the
7 applicant not like have a start date in mind? What was the
8 intended start date? I mean, if he could have his choice of
9 when the start date was going to be, when was the first truck
10 going to move dirt?

11 MR. HOOPER: I think as soon as it's approved.

12 MS. HUMWAY-WARMUTH: Mr. Connelly, for the record,
13 though, that's my thoughts sitting as counsel, but do you
14 have any comments about the tabling just so it's clear from
15 your perspective?

16 MR. CONNELLY: No. I mean, it's a nine-member
17 Commission. Just as the zoning change happened earlier
18 tonight, some commissioners want much more information before
19 they are ready to make a vote and others seem like they are
20 ready to vote on it tonight.

21 In my opinion, I'm going to be the one making a
22 staff recommendation to the Planning Commission on this
23 amendment. That's why I requested the Commission request
24 this information, because you're going to make a

1 recommendation to City Council. You may feel like you have
2 enough information in front of you tonight to not table or
3 refer it at all. I'm trying to put myself and this
4 Commission in the best position to make an informed
5 recommendation, have an informed public hearing.

6 But this is unique. We sent the zoning change
7 request (inaudible) a few pieces of information. I fully
8 anticipate him coming back with that information. If not,
9 the Commission will probably say "thank you for your time,
10 here's our recommendation" and move on with it. I don't know
11 that they would just keep kind of extending things for months
12 on end.

13 Understanding also some of the things that are
14 being asked take time to generate and take time to get and
15 take time to comment on it, but it's been five months since
16 this process started.

17 COMMISSIONER WRIGHT: I apologize for my
18 impatience, but I guess I didn't understand.

19 MR. HOOPER: Remember, again, it was the October
20 meeting that we finalized on what we were doing the geotech
21 on. The weights and the loads all depend on which plan we
22 are talking about. Now, for whatever reason, October was our
23 start date for that. That affects the traffic flow. That
24 affects the geotech. That affects all our permits as to how

1 we're doing it and what we're doing.

2 Again, we are doing what is usually done at the
3 third and final stage. Now, the site plan approval, that's
4 when usually those sorts of things are being done. So we are
5 expediting them. It takes a little bit of time, especially
6 this time of year, to retain the experts that we have.

7 From our perspective, as I said, mid March is our
8 deadline for having everything in. We hope to have
9 everything in before -- we definitely hope to have the
10 traffic study and the permitting and deal with the DEP issues
11 before that. Mid March is the interaction with the DOH and
12 the traffic study.

13 MS. HUMWAY-WARMUTH: For points of clarification,
14 Commissioner Scatterday, to your question about whether this
15 is to be tabled, et cetera, Tom Connelly's point is that this
16 is not a mere zone change. It's a Comprehensive Plan
17 amendment. When I talk about for the past 20-plus years that
18 I'm aware of the actions of this body -- this is unique.
19 Correct, Mr. Connelly?

20 MR. CONNELLY: Correct.

21 MS. HUMWAY-WARMUTH: The process is different --
22 with all due respect to Mr. Hooper, the process is different
23 than a zoning change as far as that goes as to site plans and
24 traffic studies and things like that work.

1 So in that light, I believe it's back to the desire
2 of the Commission. It could be tabled this evening again.
3 It has been discussed at length. Any directives that you
4 want to place upon the applicant or staff, et cetera, it
5 could be brought up again at the next meeting, and then you
6 see where you're going from there and then potentially to be
7 tabled another time, tabled twice.

8 MR. CONNELLY: I just have a follow-up comment to
9 Mr. Hooper. He said a couple of times how this is usually
10 the third step of the process at the site plan stage, but I
11 disagree. We're at the point where we're a making a
12 determination on whether a 100-acre piece of property should
13 be developed in some capacity. I don't think you change the
14 future land use code without knowing if the road network
15 could handle that or if there are overarching environmental
16 concerns to that.

17 Our current zoning code talks about existing
18 topography remaining the same. The different zoning
19 classifications indicate why a piece of property is zoned
20 (inaudible) because it's on a major arterial highway.

21 If the Commission were to wait until the third and
22 final phase after they have already designated for some type
23 of mixed-use development, after they already rezoned it for
24 that mixed-use development, to then say let's see if the road

1 network could handle it or let's get comments from some of
2 the other permitting agencies with the issues of
3 environmental concerns and slope analysis, I think at that
4 point, it would be hard to go back. I think at that point
5 the questions is why did you ever designate it for
6 redevelopment? why did you ever rezone it? So that's my
7 position as to why we're going to do this now as opposed to
8 the final phase.

9 MR. HOOPER: which we agree to do.

10 I also point out that the additional submission
11 that we provided timely for this meeting was our economic
12 feasibility impact study. To the extent there are any
13 questions that this honorable body would have, we do have
14 that information. Mr. Klug, the former city finance
15 director, is here to answer any and all questions that you
16 may have in terms of the economic impact that we have
17 provided which is certainly something significant.

18 MS. HUMWAY-WARMUTH: Perhaps that is something that
19 the Commission could consider that as a part of the public
20 hearing presentation.

21 COMMISSIONER SCATTERDAY: I just have a follow-up
22 question then, which maybe I kind of stumbled through it a
23 little bit. Is there a point at which, if the information
24 that's being asked for and some of it is provided and other

1 parts aren't, is there a point in which the application is
2 considered incomplete? I'm trying to understand sort of what
3 -- do we wait forever for things? I understand sort of about
4 this idea about a March point, but there are other things
5 that maybe won't happen or whatever. When is an application
6 incomplete?

7 MR. CONNELLY: It's a complete application. The
8 process has started. Whether or not there's been enough
9 information for a favorable vote is another point. But the
10 application is clear, and it's been submitted. So the
11 application is there. Whether or not enough information to
12 have a majority vote to move forward, that's up to the
13 commissioners. If you're not comfortable voting yes or no on
14 something, that's based on how you feel with not only this
15 application but any other application that comes -- if it was
16 an incomplete application, say it didn't have the legal
17 description or the signature line, I mean, those are things
18 that can be remedied. If you don't feel like there is
19 sufficient information, I think that's different than the
20 application --

21 COMMISSIONER SCATTERDAY: Those are the words that
22 I should use.

23 COMMISSIONER WRIGHT: If we, say, refer to the
24 Zoning Committee, can we say that it can be under their

1 review for not more than 90 days?

2 MS. HUMWAY-WARMUTH: Absolutely.

3 COMMISSIONER WRIGHT: Because that would take us to
4 the end of March, and that would be the cutoff.

5 MS. HUMWAY-WARMUTH: Absolutely, and say it must be
6 brought back to this body for -- and actually if you can say
7 that and then direct Mr. Connelly to set the hearing or
8 provide a scheduling that's in the same format. You have a
9 90-day period within that, and I know Mr. Connelly then can
10 send that out and generate that, very much as he did --
11 (inaudible).

12 So you can have a clear path as to this is what's
13 being set, no more than 90 days to set -- so he has the
14 information to set the appropriate deadlines for notice to
15 the newspaper, public notice, things to be submitted, et
16 cetera, from the developer, et cetera. So then you have a
17 clear path at that point. That's the way it would go. Then
18 what might be missing or what you may or may not have at that
19 point, then it's all subject to decision-making.

20 COMMISSIONER SCATTERDAY: The reason I ask the
21 question about the timing and focus there is it's
22 December 16th. This is an item that's been in the public
23 realm for discussion, and we've heard a lot from the
24 applicant and several opportunities and processes and things

1 like that. The residents and the constituents have not had
2 their opportunity, other than e-mailing which has occurred,
3 but the feedback that I get on a regular basis on the part of
4 the folks that are most adjacent and directly affected and
5 immediate property owners, they are living in a state of
6 anxiety.

7 So to the extent that I can convey to the other
8 Commissioners -- if that's an intangible -- I don't know what
9 adjective to devote to that, but we are not actually having a
10 discussion in a bubble, and this item is not in a bubble. It
11 has real effect to real people, real lives, real property.
12 The feedback that I'm getting is that this state of anxiety
13 about what is or isn't or can or could or would or should or
14 whatever, that's part of the ongoing community discussion
15 that's at hand.

16 I'm trying to alleviate that anxiety and that
17 environment that's been created on the part of folks who are
18 direct property line, adjacent folks, and then the secondary
19 folks that are downhill on the north and south side. So I
20 could just enter that in so that the commissioners have a
21 higher level of awareness of the residents as a part of this
22 journey that we're taking to vet this.

23 CHAIRMAN MAUCK: It should be noted, Commissioner
24 Scatterday, that we are aware of that. The residents would

1 be more informed after these studies are done to express
2 their concerns or approval of this project. So that would
3 give them more insight into what this project will entail.

4 COMMISSIONER SCATTERDAY: Understood.

5 CHAIRMAN MAUCK: Because we could vote on this
6 project tonight if we so choose. We don't have to wait. But
7 as Mr. Connelly said, we will be more informed after
8 Mr. Hooper and his clients present the information we
9 requested to make a more informed judgment on the project
10 itself.

11 COMMISSIONER SCATTERDAY: I'm not advocating for
12 not following process and procedure, just so we all
13 understand. I'm just saying folks out there deserve for us
14 to be working in a very concise and timely fashion.

15 MS. HUMWAY-WARMUTH: I think that everybody is on
16 that same page.

17 COMMISSIONER WRIGHT: So if we have all the
18 information in available to the Zoning Committee within 90
19 days on the date in March, you advertise the public hearing
20 like April 6th or whatever, then the public hearing is in
21 May?

22 MR. CONNELLY: whoever makes the motion -- there
23 may not be a meeting to send it to the Zoning Committee.
24 That was kind of a stall if something was coming soon. To

1 send it there now, I don't know if that's the best course of
2 action. The staff report was prepared. I haven't heard any
3 input from anyone on this matter. So if the committee meets
4 and talks with the applicant, maybe just two options. One
5 would be a short-term delay to get it to the Zoning
6 Committee, but there is nothing to present to send to the
7 Zoning Committee.

8 COMMISSIONER SCHWARZ: Can we table it for some
9 other timeframe other than two months? Can we table it until
10 we receive the documents from the applicant? Is that
11 possible?

12 MS. HUMWAY-WARMUTH: It tables meeting per meeting.
13 It could be tabled this evening for the next meeting, and
14 then if the documents are still forthcoming, it stays live,
15 what's on the table. Unless there is documents that come
16 forth for January that can be discussed, then it can be
17 discussed again, and then tabled two more times with the idea
18 that the representations made tonight, certainly within the
19 month of March, this body should have enough to move it to
20 the Zoning Committee for a very brief period or whatever at
21 that time after -- no later than, say, a 90-day period from
22 this evening from representations --

23 COMMISSIONER WRIGHT: It may not take them 90 days
24 to produce the material or the Zoning Committee be ready to

1 make a recommendation. I said that is the maximum deadline.
2 I want to be fair to the applicant, but on the other hand, as
3 we say, we've heard the back and forth on this, and I feel
4 like we need to move ahead.

5 MS. HUMWAY-WARMUTH: With the scheduling, Tom, I
6 believe that mid March would be the 15th, but isn't our
7 meeting in March the 20th or somewhere within that period?

8 MR. CONNELLY: No. It's the 2nd.

9 MS. HUMWAY-WARMUTH: Well, if it was tabled this
10 evening and things -- hopefully by March 2nd, if it's tabled,
11 brought up -- by March 2nd, you're very close to your mid
12 March -- there should be significant progress being achieved
13 by that point in time.

14 MR. HOOPER: Wouldn't you have not have to submit
15 the report how many days in advance of the March 2nd meeting?

16 MR. CONNELLY: For a public hearing, there is a
17 30-day notice, two weeks in advance for -- that would be the
18 last possible time to submit that.

19 MR. HARPER: Two weeks in advance of March 2nd is
20 when you need everything done?

21 MR. CONNELLY: Yes.

22 MR. HOOPER: As I said, the traffic study, based on
23 what I've been told by the experts, is mid March. That's
24 when it would be done.

1 MR. CONNELLY: That wouldn't take in the DOH's
2 review. It was last year at this time where the National
3 Road zone change was broached to the Planning Commission. As
4 you recall, that was done in January. The Planning
5 Commission met the 2nd of January, they went out Martin
6 Luther King Day, conducted the traffic study and were back in
7 February. Now, that was a smaller site. Possibly less
8 variables, but that didn't entail the Division of Highway's
9 review.

10 COMMISSIONER WRIGHT: I gave my 90-day mark, the
11 reason to accommodate that. In the meantime, before the
12 traffic study is done, there may be enough information that
13 maybe the Commission will see that there some portion that's
14 not feasible, and they will move ahead on that. That's why I
15 give it as sort of the drop dead of 90 days.

16 CHAIRMAN MAUCK: Our chair will entertain a motion,
17 Commissioners.

18 COMMISSIONER SCHWARZ: Can I just understand what
19 our possibilities are? If we table it tonight then, we still
20 have to wait until the middle of March. Essentially, we're
21 saying we still have to wait until the middle of March. In
22 two meetings, it has to come off the table or die, correct?

23 MS. HUMWAY-WARMUTH: Yes. It's been brought up
24 this evening, discussed. The action would be to table it.

1 So there is action tonight for tabling. So table for
2 discussion the next time.

3 COMMISSIONER SCHWARZ: Two meetings from now is
4 February?

5 COMMISSIONER SCATTERDAY: The January meeting and
6 the February meeting.

7 COMMISSIONER SCHWARZ: The February meeting, we
8 would have to do something?

9 MS. HUMWAY-WARMUTH: February it would have to come
10 to life again from the table, spring from the table to be
11 discussed, whatever, et cetera, and then you have the option
12 at that point in time: Are we going to table it one more
13 time? Where are the documents? What do we need to do, et
14 cetera? Or you can send it to the Zoning Committee.

15 COMMISSIONER SCHWARZ: We already know they are
16 promising the info in the middle of March. So we already
17 know that's not going to be ready in February. So if we
18 resurrect it and table it again in February --

19 MS. HUMWAY-WARMUTH: Then it has two more attempts,
20 two more times, and then it comes back to this body. By that
21 time, we are well past the middle of March. There should be
22 then the time for the Commission to consider -- with finite
23 plans as to where it's going to the zoning with the directive
24 -- if it's going to zoning, with the directive to bring it

1 back within no later than X time so you could then perhaps at
2 that time plan to set a hearing so that everybody has no
3 doubt about when the public hearing will be, which may in
4 itself cause to be tabled for further discussion for one or
5 two times for the Commission to make a decision.

6 Realize that that could happen, but at least then
7 the public, the developer and the Commission knows what the
8 plan is, and everybody will have a finite definite time, no
9 later than, to get the public hearing process under way. So
10 I suppose that would be possible if it's tabled. Then just
11 realize everybody is aware of how that goes. You got two
12 times, you bring it up, see where we are. At that point in
13 time, you're into February. Then if it's tabled, it could be
14 tabled until March. March, April, it could be tabled again.
15 You're past the time that you've been promised to get this
16 information. At that point, the Commission can decide.
17 Hopefully we will have it. If not, we're going to move to
18 the next level.

19 CHAIRMAN MAUCK: Does that answer your question,
20 Mr. Schwarz?

21 COMMISSIONER SCHWARZ: Yes.

22 COMMISSIONER WRIGHT: That's my only -- the attempt
23 to put some type of limitation on it for the sake of the body
24 for the people who are waiting, but to give it a fair amount

1 time for the applicant to get the materials.

2 CHAIRMAN MAUCK: The chair will entertain a motion.

3 COMMISSIONER SCHWARZ: I move we table the
4 applicant's application.

5 CHAIRMAN MAUCK: Mr. Schwarz moves the application.

6 COMMISSIONER JEBBIA: I'll second it.

7 CHAIRMAN MAUCK: Mr. Jebbia seconds it.

8 COMMISSIONER SCATTERDAY: What's the advantage over
9 tabling it over recommending to the committee with a time
10 limit?

11 CHAIRMAN MAUCK: You can express that in your vote.

12 COMMISSIONER WRIGHT: I would like there to be a
13 discussion after the motion.

14 CHAIRMAN MAUCK: Are you going --

15 COMMISSIONER WRIGHT: I've not heard any response,
16 so it's not a discussion. There is no a response yet as far
17 as I know, Mr. Mauck.

18 COMMISSIONER SCHWARZ: I was under the impression
19 that Ms. Humway said earlier that even in the zoning
20 committee, they attempt to hold to the two-meeting tabling
21 rule.

22 MS. HUMWAY-WARMUTH: We attempt to do that.

23 COMMISSIONER WRIGHT: Except it won't accommodate
24 what the applicant is asking for.

1 COMMISSIONER SCHWARZ: I don't see what the
2 difference is between tabling it and sending it to zoning.

3 COMMISSIONER WRIGHT: Because I think there is a
4 deadline. By placing a deadline, saying it may be reviewed
5 by the committee for a period of not more than 90 days, and
6 after that point, there is a hearing -- the trigger is pulled
7 for a hearing. Otherwise, you can table, retable.

8 COMMISSIONER SCHWARZ: The deadline -- we're going
9 to assume that what he's saying is correct, they are going to
10 have the documents to us by mid February -- mid March.

11 COMMISSIONER WRIGHT: If they don't, what will
12 happen?

13 COMMISSIONER SCHWARZ: We decide at that time
14 whether we vote or not.

15 COMMISSIONER SCATTERDAY: Keep it a live table.

16 COMMISSIONER SCHWARZ: The next meeting after mid
17 March will be early April. At the Planning Commission
18 meeting in early April, we will either have the information
19 or we won't.

20 COMMISSIONER WRIGHT: Well, but that would only
21 give them until the first week of March to have it done,
22 which he's already said they can't have it all in by the
23 first week of March.

24 COMMISSIONER SCHWARZ: Then in that case, it would

1 be May's meeting, given their self-imposed deadline of mid
2 March and the 30 days.

3 COMMISSIONER WRIGHT: I would rather it be not a
4 self-imposed deadline. I think, for the sake of the
5 Commission, that we impose the deadline. That's the
6 advantage of sending it to the committee with a deadline for
7 their consideration.

8 COMMISSIONER SCATTERDAY: I think if it's a live
9 item on the agenda, that gives us flexibility as time moves
10 forward. Because even if it's tabled, at any point, it can
11 be lifted off the table. So that seems like a more flexible
12 framework.

13 COMMISSIONER JEBBIA: Right now we're sort of
14 putting it on pause or hold for the next month, maybe
15 two months, and then make a decision as the next meetings
16 come up, more information becomes available, we can refer to
17 the Zoning Committee.

18 COMMISSIONER SCATTERDAY: At a later date?

19 COMMISSIONER JEBBIA: Right. As we get closer, we
20 can determine --

21 COMMISSIONER WRIGHT: I'm not saying we would give
22 them -- that would be the absolute maximum is what I'm
23 saying.

24 COMMISSIONER JEBBIA: Right. The goal right now is

1 this meeting this mid March to see where we stand.

2 COMMISSIONER WRIGHT: All right. Okay. All right.

3 CHAIRMAN MAUCK: That sounds final.

4 I assume we're ready to vote? All in favor?

5 ALL COMMISSIONERS: Aye.

6 CHAIRMAN MAUCK: Opposed, same sign?

7 (No response)

8 CHAIRMAN MAUCK: We lay this matter on the table
9 once again.

10 MR. HOOPER: Thank you.

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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 6th day of January, 2020.

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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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