

# RECORD OF PROCEEDINGS

Minutes of

Special Planning Commission

Meeting

Held September 12, 2022

The September 12, 2022 special meeting of the Planning Commission was called to order at 6:00 p.m. at the Waterville Primary School Community Room.

**Members present:** Dennis Birkemeier, Dave Kerscher, John Wasserman, Doug Parrish and Will Burns.

**Staff present:** Jon Gochenour, Administrator, Phil Dombey, Law Director and Shellie McCann, Recording Secretary.

**Others present:** Due to the large number of residents in attendance at this evening's meeting, a sign in sheet was not provided.

### **Minutes**

Mr. Burns made a motion to approve the minutes of the August 15, 2022 meeting. Mr. Parrish seconded the motion.

Roll Call: Mr. Birkemeier – yes, Mr. Kerscher – yes, Mr. Wasserman – yes, Mr. Parrish – yes, Mr. Burns – yes. The motion passed unanimously.

### **3. A Conditional Use Permit Application for an Outdoor Entertainment Facility for a Property Located in the 600 Block of Pray Boulevard – Recommendation to City Council**

Phil Dombey, Law Director of the City of Waterville, started the meeting by providing a short review of the legal process involved in the consideration of a Conditional Use Permit request by the City. Having taken public comments at the last Planning Commission meeting, the Commission will hear additional testimony from the Applicant and the Applicant will answer additional questions from the Planning Commission. If a recommendation is provided by the Planning Commission to Council, Council is required to hold three readings on this issue. At the third reading, a public hearing will be held by Council. The public hearing is the place and time to hear all evidence as it relates to this matter. The Planning Commission is not a deciding body, they are a recommending body. Council is going to make an administrative decision on this issue after the third reading. The first reading is tonight September 12, 2022, second reading is scheduled for September 26, 2022 and the third reading and public hearing is scheduled for October 10, 2022. All testimony will be given under oath. Persons giving testimony must be residents of the City of Waterville and provide their name and address. A court reporter will be present to make a complete transcript of this matter. All testimony must present evidence which is probative and admissible in order for City Council to make a determination of the facts. There will be no voices in the audience testimony.

Mr. Dombey also commented on a question asked at the last meeting regarding the "Community Bill of Rights" which is in the Waterville City Charter. Although it was put in the Charter after its approval by voters to regulate the NEXUS pipeline, it has been found by several courts to be unconstitutional and unenforceable. Tonight, is a question and answer period for the Planning Commission to make a recommendation to City Council.

#### **A. Additional Information by the Applicant**

#### **B. Additional Questions from Members of the Planning Commission**

John Henry, owner of Third St. Cigar and co-Applicant, provided the members of the Planning Commission with a brief overview of the project. He grew up in the Waterville Area and has lived here his whole life. Mr. Henry stated that they have reviewed the staff report of the project provided by the City and have provided a response to the City's report. DGL Engineers, our consulting engineer, has provided the City with an initial

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Traffic Impact Study, dated June 27, 2022, and provided an updated study to the City dated September 8, 2022. Mr. Henry also stated that their engineers, contractors, architects and other staff members are also here to answer any further questions about this project. Chairman John Wasserman indicated that all of the Applicant's submissions would be marked as exhibits and would be submitted to City Council as part of the record. The project "Applicants" include DFG Waterville Landings LLC/Devonshire REIT II, property owner, and HB Concerts, the operator of the proposed amphitheater facility. Mr. Wasserman asked about a comment made at the last meeting by the Applicant about restoring the old Waterville Bridge. Mr. Henry stated that the amphitheater supports the rich history of Waterville and would support efforts to continue to preserve its history. They have no definitive plans for the old bridge.

Mr. Parrish asked the Applicant questions about the traffic impact studies and if they have seen the comments of the City Engineer, Thomas Yurysta, regarding these studies. Josh O'Neil, of DGL Engineers, consulting engineer for the Applicant, stated that they have seen the City Engineer's comments regarding the June 27 study, but have not seen any recent comments for the September 8 study. Mr. O'Neil provided an overview of the "maintenance of traffic plan" outlined in each study. The plan involves the use of signage, traffic cones and law enforcement personnel to manage the flow of traffic on St. Rt. 64 and Pray Boulevard. The main component of this plan involves using the center turn lane on St. Rt. 64 and Pray Boulevard at specific points as an additional vehicle lane to allow two lanes of traffic to flow into and out of the facility. Traffic cones would be used to delineate the new center through lane from on coming, opposing traffic. The traffic study is not recommending any permanent roadway improvements to the existing Pray Boulevard/ St. Rt. 64 Intersection or to St. Rt. 64.

Mr. Gochenour commented that the main difference between the two studies is that the initial study is based on a ratio of 2.5 tickets per vehicle which is used as the standard in determining the number of vehicle trips entering the site while the revised study utilizes a ratio of 3.0 tickets holders per vehicle. Regardless of which ratio is used, the site plan indicates that only 2,533 parking spaces are being provided at the facility. Based on the facility's stated maximum capacity of 9,375, using a ratio of 2.5 tickets per vehicle, would leave a shortage of 1,217 parking spaces, while using a ratio of 3 tickets per vehicle results in a shortage of 592 parking spaces. In addition, no parking is designated for the 130 to 150 employees that are expected to work at the facility. The bottom line is that the proposed site does not have enough parking based on its maximum capacity of 9,375 people. This fact is also mentioned in the comments provided by the City Engineer. Mr. O'Neil stated that the Applicant is working on purchasing more property to accommodate more parking.

Mr. Gochenour also cited the letter dated July 26 from the City Engineer, Tom Yurysta, referencing his comments regarding the Traffic Impact Study. Mr. Yurysta strongly disagrees to the maintenance of traffic plan on SR 64. Reversing lanes for an event will cause too much confusion for both event goers and non-attendees. Due to the extreme amount of traffic exiting an event, it is also the recommendation of the City Engineer that the Applicant add a second, dedicated westbound lane on the north side of St. Rt. 64 between Pray Boulevard and U.S. 24, a distance of approximately 1,100 feet, to alleviate traffic congestion at this location. This section of St. Rt. 64 already has an eight foot shoulder with the required full depth of pavement which would require the addition of only 4 feet of additional pavement and 2.5 feet for curb and gutter. The "Highway Capacity Software (HCS)" used in the original traffic impact study indicates that this type of permanent roadway improvement at this location would mitigate this additional traffic.

Mr. Burns mentioned that the Applicant has provided examples from different venues of the number of ticket holders per vehicle ranging from 2.7 to 3.5 per car, but no detailed information on any of these studies has been provided. Hunter Bucks, President of HB Concerts, stated that he has been in business for 42 years, designing and building six

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amphitheaters around the country as well as in Prince Edward Island, Canada. He reviewed the ticket to vehicle ratios of several similar venues from around the county, such as the Walmart Amphitheater, Pine Knob Music Center and Soaring Engle Casino. He also mentioned that the Applicant is looking for more land to accommodate more vehicles.

Mr. Wasserman asked the Applicant about the information contained in the staff recommendation. Mr. Gochenour reviewed the staff recommendation and stated that it was provided to the Applicant before the last Planning Commission meeting on August 15, 2002. DFG Waterville Landings provided a written response to the City's Staff recommendation which was provided to members of the Planning Commission. Chris Carry, of Mosser Construction, stated that the final site plan would address all of the concerns mentioned in the staff report regarding lighting, landscaping and noise mitigation. He stated that the landscaping plan would be developed in response to the results of the sound/noise mitigation plan. The noise plan should be ready to provide to City Council before the upcoming public hearing. Mr. Wasserman asked whether you are in substantial agreement with the issues raised in the staff recommendation. Mr. Carry stated that he did not think there were any items in the staff report which were unreasonable and we should be able to work through any differences. He mentioned that the proposed right turn lane on St. Rt. 64 would also require the approval of not just the City but the Ohio Department of Transportation (ODOT). Mr. Wasserman asked, so are you in substantial agreement with the staff recommendation then? Mr. Carry responded, correct.

Mr. Kerscher asked several questions about the design of the storm water management plan. Mr. O'Neil reviewed the storm water management plan, the location of the detention ponds, explained that the plan would have to be approved by the Ohio EPA and that the City Engineer has reviewed the proposed storm water management plan. The City Engineer's comments on the plan were provided to the Applicant and members of the Planning Commission.

Mr. Wasserman asked about the legal relationship between the landlord and the tenant. Gary Yunker, of DFG Waterville Landings/Devonshire REIT, the owner of the property, stated they are still in negotiations since the lease agreement will be finalized after all of the required approvals are received. A "Triple Net Lease" is being proposed which would make the tenant responsible for all maintenance of the facility and give the landlord the authority to enforce the terms of the lease. Tenant/operator will be offered to purchase the property after 3 to 5 years. Mr. Yunker mentioned that Devonshire RBIT was founded 13 years ago and has extensive experience owning and managing real estate. At one time, Devonshire REIT owned 46 shopping centers which have been sold.

Mr. Bucks introduced Mr. Stephan Hyman of HB Concerts, who will be the General Manager of the Waterville Landings Amphitheater. Mr. Hyman discussed his past experience managing similar facilities over the last 30 years and was most recently involved in the management of the Stranahan Theater in Toledo.

Mr. Burns asked again about the concerns of the City Engineer in regard to "reversing lanes" on St. Rt. 64 in the Traffic Impact Study. Tom Yurysta stated that reversing lanes can be very confusing to drivers traveling in the opposite direction. Residents who are expecting a left turn lane on St. Rt. 64 to turn onto U.S. 24 find out that on the day of a concert, the left turn lane is no longer a left turn lane and that traffic is coming in the opposite direction. He feels that the traffic pattern can be worked out without reversing lanes on St. Rt. 64. Mr. Yurysta stated that he does recommend the installation of a dedicated right turn lane between Pray Boulevard and U.S. 24 that Mr. Gochenour mentioned. He agreed with Mr. Carry that ODOT will have to approve the turn lane installation on St. Rt 64, but a similar right turn lane already exists on the Whitehouse side of the interchange. The proposed extension of Pray Boulevard to Neapolis-Waterville

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Road is ok, but the proposed right turn lane on St. Rt. 64 will be far more beneficial. After reviewing information from ODOT, Mr. Yurysta confirmed that there is enough right-of-way on the north side of St. Rt. 64 for the installation of a right turn lane without the need to acquire any additional right-of-way. Mr. Carry, of Mosser Construction, stated that embankment and ditch issues near the northbound on ramp would add to the difficulty of installing a right turn lane.

Mr. Parrish asked the Applicant if they agreed with the 2.5 ticket holders per vehicle. Mr. Yurysta stated that the number of ticket holders per vehicle will also depend on the type of event and age of people who attend, but if you planned for a worst case scenario, 2.5 ticket holders per car should be used. Mr. Yunker again mentioned that they are in negotiations to acquire more land for parking that could meet the 3.0 ticket holders per car ratio. Mr. O'Neil again reviewed the options for vehicles to leave the facility in the traffic study which includes the use of the new roadway extension to turn left or right on Neapolis Waterville Road and right turns from Pray Boulevard east into the City of Waterville. Mr. Gochenour stated that it is the City's recommendation that only left turns from Pray Boulevard be permitted onto St. Rt. 64 and all traffic be directed onto north or south bound U.S. 24 to facilitate the safe and efficient movement of vehicles out of this site as quickly as possible. Moreover, since 80% of concert goers will arrive at the facility from U.S. 24, they will more than likely want to leave that way as well. It also eliminates the potential problem of large numbers of out of town vehicles haphazardly exiting the amphitheater and getting lost on overloaded City secondary streets late at night. Allowing more than left turns out of the venue will also increase the amount of time it takes everyone to exit the facility prolonging traffic and noise issues for residents.

Mr. Burns asked about the firm hired to do the noise study and if any other studies were available from this firm done for other amphitheater projects. Hunter Bucks stated that they have no information available tonight. DBA Acoustics Group, Inc. of Fort Wayne, Indiana is doing the noise study. Mr. Bucks stated that they have preliminary information from them regarding their noise study.

Mr. Parrish stated that he was struggling with this project. There is no noise study, no landscaping plan and there is not enough parking. He stated, that for the record, according to Section 1148.05 (d), the use has to have the required amount of on-site parking. He is not comfortable moving forward with this project at this time.

Mr. Bucks stated that going on the record, and due to the current time line, in all likelihood, the amphitheater would only be able to operate at 5,200 seats, which is our reserve seating, in 2023. This fact should alleviate any of the current issues in regard to parking and we will be able to meet the 2.5 to 3 people per vehicle standard. Chris Carry, of Mosser Construction, stated that operating at the 5,200 seat capacity will allow the Applicant time to figure out what the actual relationship is between ticket holders to parking spaces.

Mr. Birkemeier offered the following amendment to the proposed Condition of Approval Number One in the staff report: since the 2,533 paved parking spaces for vehicles indicated on the current site plan will not provide enough parking spaces to accommodate the amphitheater's maximum capacity of 9,375 ticket holders or the additional parking spaces required for employees, the capacity of the amphitheater will be limited to 5,200 ticket holders. If or when the Applicant obtains more land for additional parking, the capacity may be increased to a maximum capacity of 9,375 after the final review and approval of the Planning Commission and City Council.

Mr. Bucks reiterated that acoustical engineers will be brought in to figure out ways to limit the sound and buffer it with mounds and landscaping. They will comply with the noise and curfew ordinances. The gates will open at 5:30 p.m. and the shows would be finished around 10:30 p.m. with all vehicles leaving the area within an hour. Shows

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would be held Thursday through Sunday only. They expect to hire between 130 – 150 people to work the night of the show, including professional bartenders and private security as well as off-duty police officers. He then stated that a ticket tax will go to the City as well as payroll and property tax monies. Mr. Bucks stated that he wants to work with the City and will meet the recommended conditions of approval.

Mr. Gochenour clarified that Section 531.11 of the City code limits noise levels in commercial areas to 65 dbA (decibels). The sound level would be measured at the proposed amphitheater’s eastern property line.

Mr. Wasserman asked if there were any more comments or questions from the members of the Planning Commission. Mr. Wasserman stated that the Planning Commission is providing a recommendation, not a final decision, to send to City Council. Under the City Zoning Ordinance, the Planning Commission may recommend to Council “conditions of approval” on the construction, location and operation of the proposed use. Any approved conditional use shall be subject to periodic review by the Planning Commission and Council to ensure that such use continues to be compatible with the permitted uses in the zoning district. The staff has offered recommended conditions needed for potential approval. As mentioned by Mr. Dombey, City Council will hold three readings and a future public hearing on this issue.

Mr. Wasserman made a motion to recommend approval of the Conditional Use Permit Application for an Outdoor Entertainment Facility for a Property Located in the 600 Block of Pray Boulevard subject to all of the attached exhibits, including the entire recommendation of the staff, City Engineer and amended conditions of approval, to City Council. Mr. Birkemeier seconded the motion.

Roll Call: Mr. Wasserman – yes, Mr. Birkemeier- yes, Mr. Burns- no, Mr. Kerscher – yes, Mr. Parrish- no. The motion passed 3 votes to 2.

**Other Business**

None

**Next Meeting**

Monday, October 3, 2022 at 7:00 p.m.

**Adjournment:**

Mr. Wasserman made a motion to adjourn the meeting at 7:26 p.m. Mr. Parrish seconded the motion, which passed by unanimous voice vote.

Respectfully Submitted,  
Shellie McCann, Recording Secretary

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John Wasserman, Chairman

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Doug Parrish, Vice Chairman

Date: \_\_\_\_\_

Date: \_\_\_\_\_