CITY OF GROVE CITY, OHIO
PLANNING COMMISSION MINUTES

SPECIAL MEETING **March 15, 2012**

The meeting was called to order at 3:01 p.m.

Chair Holt began the meeting with a moment of silence and the Pledge of Allegiance. Roll call was taken with the following members present: Mr. Marv Holt, Chair, Mr. Gary Leasure and Mr. Chuck Boso. Others present: Donald Plank, special legal counsel for this item; Kim Dooley, Planning/GIS Specialist; Mike Boso, Chief Building Official; Tami Kelly, Clerk of Council; Bill Vedra, Deputy City Administrator; Capt. Jeff Pearson, Police Department, Lt. Bill Dolby, Jackson Twp. Fire; Melissa Albright, Council Member; and Molly Frasher, Secretary.

Chair Holt noted a quorum was present. Being a special meeting, there were no minutes to approve.

ITEM #1 Use Approval, pursuant to Zoning Code Section 1135.09
65 Sunshine Drive, City of Grove City

Mr. Plank, Special Counsel for the City, spoke on the item and clarified that there will be no presentation by an applicant for this item. Mr. Plank began the presentation by reviewing the report received by Commission members. He noted a slight modification to the presented report and explained that the front page of the report initially showed four properties; however there are five properties. There was a discrepancy between the zoning map that is online and the official map that is in the Clerk's office. Mr. Plank stated that he worked with the Clerk to clarify the issue. (Mr. Mike Linder entered the meeting) There are five parcels that are all zoned SD-4 and all are subject to the process being discussing at today's meeting. Page two of the report includes revisions based on discussions with staff and from a meeting with an adjacent property owner.

Mr. Plank explained the process of how we arrived at this special meeting. The property owner approached the City about a particular use at this property. The City's Chief Zoning and Building Official asked the owner to provide information about the proposed use to determine if the zoning would be appropriate. Based on the information that was provided on January 11, the Chief Building and Zoning Official made the determination that parts of this particular use did not meet the SD-4 zoning classification. This determination was appealed, at which point Mr. Plank was hired to review the opinion of the Building Official and concurred with the opinion of the Building Official.

Mr. Plank read the last sentence of Section 1135.09, "All uses not shown herein shall be considered by the Planning Commission, and shall thereafter recommend approval or disapproval of the use to Council for final action." Mr. Plank explained to the Commission that the recited language is the only language they have in making a determination regarding the proposed use. He further stated that in making a determination, it is important to look at the context of what is permitted in the current SD-4 classification. Mr. Plank noted that Commission members were provided the zoning provisions by reference to the Standard Industrial Code in the Grove City Zoning Code of what can be permitted at that site and provided examples of other uses to examine in order to make a determination on the proposed use. He cited adhesives as an example of a permitted use in the SD-4 zoning classification; a provision under section 2891 of the Standard Industrial Code (SIC). Carbon black, a product of the proposed process, is listed in the SIC under 2895. The adhesive use is very similar to the carbon black production, in the same sub SIC category. Mr. Plank noted that the other aspects of the proposed use would be permitted in the SD-4 classification and that carbon black is the only use in question with this meeting.

Mr. Plank also pointed out there could be more intense uses permitted in the SD-4 classification. SD-4 seems to be a "hodge-podge" of uses, including offensive uses, such as sanitation and sewage processing and collection of refuse and recyclables. Mr. Plank stated that he felt that these permitted uses are more intense and more offensive than the proposed use. The City of Grove City has a difficult time keeping up with zoning codes in today's fast-growing technology; the zoning codes just don't evolve as quickly as the land-uses need them to. Code 1135.09 is flexible enough to allow several uses that don't fit into existing zoning classifications.

Mr. Plank noted that the summary in the submitted report was reviewed and approved by the property owner and will be a part of the approving legislation and will become the terms of the use.

Chair Holt noted that electric and gas were permitted under 1135.09 but carbon black is not. Mr. Plank added that this is why the process is before the Commission. If carbon black was permitted in an industrial zone, the property would need to be rezoned. However, carbon black is excluded from the code, which is why we're at this process.

Mr. Plank noted that there is some argument about what carbon black is. He stated that the property owner's representatives have indicated that the process utilized on the site would be different from the process that in the past has produced carbon black. The new process is done by microwave as opposed to fire and combustion. We're trying to have the zoning code fit new technology.

Mr. Leasure asked if there were any facilities like the proposed around the country; if they have been successful and any "pros and cons" of these operations. Mr. Plank responded that he was not aware of any other facility like the proposed. He added that it is not the city's role to examine if the business will be successful or not, but whether or not the land use is appropriate for that zoning classification. Chair Holt asked that if carbon black was not involved in this process, if we could move forward because the other things that they are producing, would be permitted. Mr. Plank stated that that was correct and that the carbon black is the only issue. Chair Holt asked Mr. Chuck Boso if the Commission was to approve this request, what would come before either the Planning Commission or Council in the future for them to operate on the property; and clarified that they would not need a special use permit or a development plan because it is already zoned appropriately. Mr. Boso replied that was correct and that they would have to obtain building permits and adhere to EPA requirements, as well as Fire Code regulations.

Mr. Boso requested that Mr. Plank read what would be contained in the legislation that would be presented to Council.

Mr. Plank read the summary from the submitted report:

> The proposed use of the property, as represented by representatives of the persons/entity that will be operating said use, is as follows:
>
> 1) Referred to as a "Green Technology" refuse processing facility.
> 2) Refuse materials, in the form of tire shreds (in approximately ¾" chunks or smaller) will be collected from off-site sources. These materials will be delivered by truck to the property. No whole tires will be delivered or stored on the property.
> 3) The refuse materials will be unloaded inside the facility, within an enclosed internal receiving area. Unprocessed materials will be stored inside the structure or stored within screened areas not visible from surrounding properties unrelated by ownership.
> 4) The refuse materials will be processed and disposed of in an enclosed system that reduces the refuse into gaseous vapors and solids through a patented reduction process. This reduction process yields several byproducts, including synthetic gas, distillate fuel, carbon and scrap steel. All materials produced at the property, including but not limited to, synthetic gas, distillate fuel, carbon and scrap steel, will either be stored in an enclosed building or in appropriate storage containers.
> 5) The byproducts of the reduction process will be disposed of in the following manner:
> - The synthetic gas ("Syn Gas") can be shipped and sold to customers or used on site to produce electricity for the facility with any surplus electricity generated being ported back to the local power grid as a Renewable Energy Resource.
> - The distillate fuel, resembling off-road #2 diesel, will be sold and shipped to customers including fuel blenders and marketers.
> - The carbon will be sold and shipped to customers.
> - The scrap steel will be sold to users of scrap metal.
> 6) Any emissions from the facility will meet all applicable laws, rules and regulations.
> 7) There will be no truck deliveries or shipments to or from the property on Sunday.

This is a summary that will be attached to the legislation and was agreed to by the property owner.

Chair Holt stated that he was concerned about how the products listed could be produced without outside emissions. Mr. Plank stated that it is a land use question and the City doesn't get involved in the process. The EPA will regulate and

enforce the emissions and this has been included in the use summary to be included in the legislation – that any emissions from the facility will meet all applicable laws, rules and regulations. Mr. Plank also discussed the relation of land use to property rights and examining the proposed use in context to what is permitted on the property by the zoning classification.

Chair Holt said he was concerned about the amount of truck traffic generated by the operation. Mr. Plank said that this has not been discussed because the property is zoned SD-4 and that uses in this district could have unlimited truck traffic. Mr. Plank further stated that the property owner has already issued a concession that there will be no truck traffic on Sunday's. When City Council zoned the property SD-4, all issues, such as truck traffic, were taken into consideration and determined to be appropriate for that location. He stated that, although it is an issue likely in the back of people's minds, it is not really an issue to be considered for this case. Chair Holt noted that he understood.

Mr. Leasure stated his concern over the volatility of carbon black and its storage and the effect on the surrounding community. Mr. Plank responded that going through this process doesn't absolve them of the obligation not to become a nuisance to area neighbors, but that the use will have to comply with the EPA, which regulates carbon black. He stated that it may be a concern, but not a land use concern.

Chair Holt then recognized Charles L. Brown, 4695 Goodman Street at the podium. Mr. Brown stated he was not against progress but this location wasn't appropriate. He stated Grove City was the victim of outdated zoning in this residential neighborhood. Mr. Brown spoke of traffic issues and problems he has witnessed with semi-trucks on roads in the town center. He is concerned that with increased truck traffic, a person will be injured. He asked that the Commission please consider the situation fairly for the betterment of the residents of Grove City.

Mr. Robert Tolar, Pastor of the First Presbyterian Church, 4227 Broadway, stated that the church will be good neighbors but wishes there was a way around the land use. In his personal opinion, this is not the best place for such a use. There are traffic concerns and speculation over carbon black. He urged the Commission to please think carefully and keep the betterment of Grove City in mind.

Ms. Ginger Thrush, 2606 Eugene Ave, approached the podium. She believes that Mr. Brown's point was very valid and would like to know when the SD-4 zoning was put into place; since then, Grove City has changed, as has technology. Our zoning doesn't meet the technological advancements of today's world; especially for a property that abuts residential properties. When the residents in this area attempt to sell their properties, it will impact them financially. Ms. Thrush believes we should review our zoning to see if this type of facility is appropriate in the middle of this neighborhood.

Chair Holt asked for any further comments from the audience, then from Mr. Plank.

Mr. Plank stated that he appreciated the comments from the audience and they would be appropriate if this was a rezoning of the property. The property was zoned by Council and the property owner has rights based on the zoning. He understands the concerns, but that today what is being determined is if this particular use fits within the context of what can go on that property today.

Mr. Leasure stated that he still had concerns over potential hazards and the general lack of information. Mr. Plank stated that other clients of his involved in concrete salvage operation are heavily regulated by the EPA for dust and at some point you have to recognize state-wide issues and you must rely on the state to enforce those requirements. Mr. Leasure recalled an explosion a number of years ago in southern Grove City and his concern for the residents. Mr. Plank responded that the proposed use would be required to meet all standards and regulations in the Fire Code. Lt. Dolby stated that he understood that the only issue being discussed today was whether or not the use is appropriate for the zoning, but he also understands the residents' concerns. He stated that if the project moves forward, the building and fire code will come into play, which will address the hazards and whether the current building has the ability to protect those hazards. He stated that the residents should know that their concerns will be addressed at some point in this process.

Chair Holt asked if Mr. Plank knew the employee count for the proposed operation. Mr. Plank responded that he did not. Chair Holt asked the same question of Mr. Chuck Boso. Mr. Boso stated that he did not and did not want to speak for the business.

Mr. Chris Ingram, attorney with Vorys Sater Seymour & Pease, approached the podium. Mr. Ingram represents Gary Curry, property owner. He stated this is not a judiciary hearing, but that he is here at the request of the City's special counsel to voluntarily answer questions. There is no pending application and they are not presenting any evidence. Mr. Ingram stated that this hearing was unnecessary, as the proposed refuse processing facility is a permitted use under the current zoning. Mr. Ingram stated that industry classification 2895 covers establishments primarily engaged in manufacturing channel and furnace carbon black, and that is not what is going to happen at this facility. Channel black is a fine carbon black obtained as soot by impingement of small, natural gas flames on a metal surface; but there will not be any natural gas flames at this facility. Mr. Ingram continued by describing furnace black as manufactured in complete combustion by using heavy, aromatic oils as a feed stock and exposing these oils to flames from burning either natural gas or oil that then vaporizes the original feed stock into microscopic carbon particles. Mr. Ingram stressed that this is not going to be done at this facility. He stated that it is the process that determines which kind of carbon black is discussed. When referring to the carbon material, they are discussing the substance, not the process. Mr. Ingram stated that as a land use matter, the Commission is focused on the process not the final product. The combustion process relies on constant burning of natural gas or oils. The proposed patented reduction process is a microwave process that doesn't have any flames and takes place completely in an enclosed machine. Mr. Ingram stated that use 2895 has no bearing on the Commission's decision of whether or not this is a permitted use and that the Commission needs to determine what the primary activity will be at the facility. He reminded the Commission that 2895 covers establishments primarily engaged in manufacturing carbon black, but the facility will not be manufacturing furnace black or channel black; they are taking refuse in the form of tire shreds and reducing it down into byproducts, thereby completely disposing of this refuse and keeping it out of this community's landfills.

Mr. Ingram explained that the SIC manual says to look at the primary activity and that you can only separate out each individual thing that takes place if three things happen. First: no one industry description in the classification includes such combined activities ; second, the employment in each such economic activity is significant; and third, separate reports can be prepared on the number of employees, their wages and salaries, sales or receipts, and other types of establishment data. Mr. Ingram stated that would be like looking at each byproduct of this overall process and looking at how many employees are dedicated to each one; however this process will use one single machine that takes in refuse and breaks it down into four separate things. Mr. Ingram felt that it is completely arbitrary to just pick one and say that's the use. He stated that instead, the Commission must look at the whole process, and the process squarely fits classification 4953- refuse systems. He continued by listing permitted uses including a landfill or dump, hazardous waste material disposal site, radioactive waste disposal, and an incinerator. Mr. Ingram stated that he felt it was clear that, if the land owner could burn material today, he can certainly bring in this new green technology to produce renewable energy and remove this waste material from landfills. Mr. Ingram closed by stating that there is projected to be a total of 21 employees.

Mr. Leasure asked Mr. Ingram about the carbon black and Mr. Ingram replied that in 2895, which the code is referencing is completely different and irrelevant to the proposed use, as this facility is not going to be primarily engaged in manufacturing channel or furnace black. Mr. Plank stated that he agreed with a lot of what Mr. Ingram stated; however the initial materials provided to the city referred to carbon black. He further stated that, even though 2895 is probably a more intense use than what will be conducted on the property, approving this use would allow them to do the proposed, lesser-intense use.

Mr. Robert Tolar approached the podium again. He again urged the Commission to re-examine the zoning and look for other areas that may need rezoning, so in the future, we won't have the zoning issue arise again. Mr. Leasure stated that there are possibly many districts that need to be updated. Mr. Boso stated the site has been industrial for over 50 years and the reason we're here today is because this is not a committed use and it is unrealistic to say that in the future no one will ever come before the Commission with a use the city doesn't know about. He stated that he was not sure how we bridge that gap to never have a meeting like this again. Chair Holt agreed that with the advancing technology, these meetings are likely occur in the future.

Mr. Brown asked Mr. Plank for clarification that the only thing being reviewed was carbon black. Mr. Brown has concerns that if the Commission approves this use, then the city will have no control over carbon black production on SD-4 properties. Mr. Plank was not aware of how many other properties are zoned SD-4 in the city. He further stated that just because the use is approved on this site, does not mean that it would be approved on all sites, but that he felt that was a legal question that did not need to be examined at this time. Mr. Plank stated that if someone wanted to operate a similar facility on another site zoned SD-4, they would have to go through this same process.

Mr. Linder asked Mr. Plank that if this is approved, the Commission would be approving 2895. Mr. Plank clarified that the Commission is only approving the summary, describing the use, which does not mention 2895. He pointed out that 2895 is only referenced because of its similarity with permitted uses in the district. The Commission would not be approving a 2895 use; the Commission would be approving a use as described in the summary. Only the summary will be attached to the legislation.

Chair Holt explained to the audience the Planning Commission's role as a recommending body to City Council. City Council will have the final vote to approve or not approve the land use. This issue will go to Council on April 2, 2012. Ms. Kelly noted that April 2 will be the first reading of this issue and the public hearing and vote will come before Council on April 16.

Mr. Boso made a motion to recommend approval of the use as stipulated in the summary on page two with the seven items as listed in the report prepared by special counsel; Mr. Leasure seconded. Chair Holt called for a vote: Mr. Leasure- No; Chair Holt- No; Mr. Linder- No; and Mr. Boso- Yes. Chair Holt noted the Council reading and voting dates and stated the Planning Commission will recommend they do not approve the proposed use.

Having no further business, Chair Holt adjourned the meeting at 3:55 p.m.

Molly Frasher, Secretary

Marv Holt, Chair