

BEFORE CONCORD TOWNSHIP COUNCIL
DELAWARE COUNTY, PENNSYLVANIA

- - -

IN RE: Concord Ventures, LP
U.S. Route 202 and Watkin Avenue
Tax Folios 13-00-0968-95; 13-00-00971-00;
13-00-00103-00 (portion); 13-00-00963-00;
13-00-00964-00; 13-00-00968-00; 13-00-00102-00
(portion); 13-00-00980-00

- - -

Evidentiary hearing in the above matter held pursuant to notice on Tuesday, May 25, 2021, at the Concord Township Municipal Building, 43 Thornton Road, Glen Mills, Pennsylvania, commencing at 2:05 p.m., before Norma Gerrity, Registered Professional Reporter.

- - -

BEFORE: RET. JUDGE JAMES F. PROUD, Solicitor
for Concord Township Council

APPEARANCES: MARC B. KAPLIN, ESQUIRE,
for the Applicant

MARC D. JONAS, ESQUIRE,
MICHAEL E. PETERS, ESQUIRE,
for the Objectors

HUGH A. DONAGHUE, ESQUIRE,
for Concord Township

- - -

NORMA GERRITY
Registered Professional Reporter
355 E. King Street, Unit 420
Malvern, PA 19355
(610) 246-2362

I N D E X

EXHIBITS

APPLICANT'S

1 - 21

MARKED RECD

14 14

RESPONDENT'S

R-16R
R-1R - R-15R

MARKED RECD

7 14
7 14

1 JUDGE PROUD: Good afternoon,
2 everyone. We're here in the matter of the
3 appeal of Concord Ventures, LP from the
4 decision of the Concord Township Council
5 dated November 26th of 2019.

6 We're also here pursuant to an order
7 of Judge John J. Whelan of the Court of
8 Common Pleas of Delaware County dated the
9 20th of October 2020.

10 We're here for the purpose of, as
11 explained in Judge Whelan's order, we're
12 here for the purpose of receiving comment
13 and/or offers with regard to additional
14 evidence to be entered into the record in
15 this matter.

16 Mr. Kaplin, I think you're paddling
17 the canoe here.

18 MR. KAPLIN: Well, first of all, we
19 have a second order. We have Judge
20 Whelan's April 6th, 2021, order.

21 MR. DONAGHUE: Correct. Marc, do you
22 mind if I say just a few things just to
23 clear the record up?

24 MR. KAPLIN: Go ahead. Go ahead.

1 MR. DONAGHUE: Okay. So, judge, if I
2 may, please be advised that pursuant to
3 Judge Whelan's order of April 6th, 2021 --

4 JUDGE PROUD: I didn't get a copy of
5 that order.

6 MR. DONAGHUE: I'll be more than happy
7 to hand that order up.

8 MR. KAPLIN: I'll give it to you.

9 MR. DONAGHUE: Concord Council has
10 been made aware of the court's order and
11 has indicated unanimously that you, Judge
12 Proud, should preside over this evidentiary
13 matter, and that has been agreed to.

14 Also let the record reflect that in
15 addition to counsel, Marc Kaplin, on behalf
16 of Concord Ventures, Mr. Jonas and Mr.
17 Peters are also present on behalf of their
18 client.

19 And then I see three individuals in
20 the back of the room who were notified of
21 today's hearing, and they were record
22 parties at the original hearings that were
23 held before council.

24 And, gentlemen, if you'd identify

1 yourselves for the record.

2 MR. DONNELLY: Chris Donnelly.

3 MR. MARKLAND: Thomas Markland.

4 MR. DOWLING: Jerry Dowling.

5 JUDGE PROUD: And I recognize the
6 three gentlemen, as well as counsel for the
7 other neighbors in this matter.

8 MR. DONAGHUE: And, Your Honor, and
9 counsel can correct me if I'm wrong, but we
10 have discussed procedurally how we should
11 maybe proceed or what fashion we should
12 proceed today that was sort of suggested
13 and agreed to that the various parties
14 would state whatever objections they had to
15 this proceeding on the record so as not to
16 waive any future appeal rights.

17 But having said that, I think there's
18 an agreement upon what records are going to
19 be placed into evidence at today's
20 proceeding.

21 Is that correct, Mr. Kaplin?

22 MR. KAPLIN: Yes. Your e-mail is
23 definitive, and we've agreed to it. I
24 think there is an agreement as to what

1 we're going to do.

2 MR. DONAGHUE: And I agree to that
3 agreement. Okay?

4 So with that, I'm going to, if it's
5 okay with Judge Proud, I'm going to hand it
6 over to Mr. Peters, because I hold the same
7 position he has with respect to the
8 objections, the township would feel the
9 same way, and then I'm sure Mr. Kaplin will
10 have something to say, and then we'll move
11 the various documents.

12 JUDGE PROUD: That's fine. I was
13 going to introduce the counsel in turn as
14 it was their turn to speak, but it's great
15 to have everyone identified at the
16 beginning.

17 Mr. Peters, is there anything you want
18 to say at the beginning?

19 MR. PETERS: Judge, we will be stating
20 our objections for the record.

21 I also have, as part of the
22 proceedings before the court on appeal, we
23 submitted a chart that very succinctly sets
24 forth our objections, so I have marked that

1 as Exhibit R-16R.

2 - - -

3 (Respondent's Exhibit R-16R was marked
4 for identification.)

5 - - -

6 MR. PETERS: We have 15 documents that
7 were circulated, should this Court accept
8 Mr. Kaplin's documents into evidence as
9 we've agreed, we have 15 exhibits of our
10 own, R-1R through R-15R that we would
11 submit to rebut Mr. Kaplin's exhibits.

12 - - -

13 (Respondent's Exhibits R-1R through
14 R-15R were marked for identification.)

15 - - -

16 MR. PETERS: At this time it's my
17 understanding that Mr. Kaplin's exhibits,
18 additional exhibits are limited to those 21
19 exhibits that were introduced as part of
20 his Motion for Additional Evidence before
21 the trial court, and assuming that's
22 correct, I could at this time hand out
23 Exhibit R-16R, which sets forth our
24 objections, and then make a brief statement

1 on the record in terms of summarizing those
2 objections.

3 JUDGE PROUD: That's fine. I don't
4 know that I -- I don't know that it's
5 necessary, as long as Judge Whelan has
6 them, but do I need to have copies of Mr.
7 Kaplin's exhibits?

8 MR. KAPLIN: I have copies. What I
9 don't have is a copy of your exhibits.

10 MR. PETERS: Here you go.

11 MR. KAPLIN: Thank you.

12 MR. PETERS: So, Judge Proud, for
13 purposes of the record, there are two sets
14 of documents.

15 The first set are those exhibits that
16 were actually marked during the hearing at
17 the February 25th, 2021, meeting in this
18 matter where all of us were together over
19 Zoom.

20 We did note at that time that our only
21 objection to those exhibits previously
22 marked as applicant's exhibits were to
23 Exhibit A-9 and Exhibit A-41.

24 We would simply note for the record

1 that we maintain our objection to Exhibit
2 A-9, which was kept out of the record by
3 you, Judge Proud, during the actual
4 proceedings.

5 And then as noted on February 25th,
6 2021, Exhibit A-41 was simply skipped in
7 the numbering, so there's no big deal
8 there.

9 With respect to the second set of
10 documents, those documents that were
11 attached to Mr. Kaplin's motion before the
12 court on appeal, I'll call those the 21 new
13 documents, our objections to those
14 documents are as set forth on R-16R.

15 R-16R was the same document we
16 presented to the trial court for purposes
17 of our objection.

18 Briefly for the record, our objections
19 generally are that the 21 new documents,
20 although they were available at the outset
21 and during the hearings, were not offered
22 into evidence during any of the PRD
23 hearings before township council.

24 Again, that's an argument that we made

1 before the trial court, and we would
2 reserve and preserve that objection now and
3 for the appeal.

4 It's our position that by failing to
5 introduce those documents, the developer
6 waived its right to offer those exhibits,
7 and again that's an argument we made before
8 trial court and would reserve for appeal.

9 Section 908(6) of the Municipalities
10 Planning Code allows for the exclusion of
11 evidence that is irrelevant, immaterial, or
12 unduly repetitious.

13 In R-16R, we go through each document
14 and explain why it's our position that they
15 are irrelevant, immaterial, and/or unduly
16 repetitious.

17 It's our position that those documents
18 relate to procedural matters and/or the
19 planning commission meeting that preceded
20 the township's PRD hearings.

21 With respect to the procedural
22 matters, we addressed those matters on the
23 record before Judge Proud and township
24 council, so those are already of record.

1 The planning commission is an advisory
2 body. Their report was introduced as
3 Exhibit R-4 before township council. The
4 planning commission proceedings were public
5 and were attended by the developer.

6 So to the extent that the planning
7 commission, additional materials related to
8 the planning commission or materials
9 related to procedural matters are unduly
10 repetitious, irrelevant, and immaterial, we
11 make those arguments within R-16R for
12 purposes of the record.

13 The additional objection relates to
14 the developer's attempt to use the 21 new
15 documents to argue bad faith on behalf of
16 the township, including specifically ex
17 parte communications between residents and
18 the township.

19 It's our position, and the documents
20 speak for themselves, that not one of the
21 documents constitutes an ex parte
22 communication.

23 If anything, the documents actually
24 demonstrate how careful residents and their

1 counsel were not to engage in ex parte
2 communications and to respect the hearing
3 process.

4 And for those reasons, judge, it's our
5 position that the documents are irrelevant,
6 immaterial, and unduly repetitious, and we
7 would object and reserve our objections for
8 appeal on those bases and as set forth on
9 Exhibit R-16R.

10 I may as well address this now rather
11 than come back to it. With respect to
12 Judge Whelan's order, he did give us a
13 chance to introduce our own documents into
14 the record, so that's what I've handed up
15 as Exhibits R-1R through R-15R.

16 Those documents demonstrate the
17 developer's access to the township,
18 including one-sided ex parte access, and
19 that continued even after the hearings
20 already commenced as set forth in those
21 documents, and we're introducing those
22 documents to respond to and rebut
23 developer's allegations of bad faith.

24 With those comments, and preserving

1 those issues for the record and for appeal,
2 Judge Proud, that's all I have at this
3 time.

4 JUDGE PROUD: Thank you.

5 Mr. Donaghue, do you have anything in
6 addition to that?

7 MR. DONAGHUE: Nothing in addition.
8 The township adopts and advances those same
9 arguments on behalf of Concord Township.

10 JUDGE PROUD: The parties, is there
11 anything you would care to add or adopt
12 what Mr. Peters said as well?

13 - - -

14 (No response.)

15 - - -

16 JUDGE PROUD: Okay. So I take it you
17 all want to adopt what Mr. Peters has said
18 and Mr. Donaghue seconded, for want of a
19 better phrase.

20 MR. PETERS: Judge Proud, we would
21 then move for the introduction of Exhibits
22 R-1R through R-16R as part of the record
23 pursuant to the agreement of parties.

24 JUDGE PROUD: Okay. Thank you. It's

1 admitted.

2 - - -

3 (Respondent's Exhibits R-1R through
4 R-16R received in evidence.)

5 - - -

6 JUDGE PROUD: Mr. Kaplin, do you want
7 to admit the documents as part of this
8 agreement?

9 MR. KAPLIN: My 21 documents, yes, I
10 do.

11 - - -

12 (Applicant's Exhibits 1 through 21
13 were marked for identification and received
14 in evidence.)

15 - - -

16 MR. KAPLIN: I'll be much shorter. We
17 have argued in our pleadings before the
18 court, specifically a Motion to Supplement
19 the record, our response to Mr. Peters'
20 Motion for Clarification and the other -- I
21 think we filed a Motion to Quash, and then
22 we have the transcripts from the two
23 hearings before Judge Whelan.

24 It's our position that the record

1 should be supplemented with the documents
2 that we've asked to be added for the
3 reasons stated in all those documents that
4 I need not recite.

5 With regard to the additional
6 documents that Mr. Peters wants to admit,
7 have admitted, my one objection is that
8 there is a specific provision process under
9 the Municipalities Planning Code for the
10 supplementing of the record once the record
11 has been returned to the court that
12 requires a petition.

13 No such petition was filed. So to the
14 extent -- strike that. So I will preserve
15 my objection to the introduction of those
16 documents.

17 But having said that, I just want to
18 make sure that it's clear. I'm reading
19 from Hugh's e-mail to I think all of us
20 yesterday, Thursday.

21 "All counsel then agree without
22 waiving their objections that all of the
23 documents in Exhibits A and B will be
24 introduced into evidence for the purpose of

1 supplementing the certified record."

2 Mr. Peters' documents and my documents
3 go in the record. Both of them go up to
4 the court. We ought to talk about the
5 mechanics of that.

6 And Hugh has repeatedly agreed to send
7 up, I think it's A-1 through I forget what
8 the number is, the materials that were in
9 our binder that was not transmitted to the
10 court. We don't have to argue about that.
11 He's agreed to do that a number of times.

12 I guess, Hugh, I'm asking you, how are
13 we doing this? Are you going to take care
14 of getting this, the packages up to the
15 court?

16 MR. DONAGHUE: Today's package and the
17 previous package?

18 MR. KAPLIN: Yes.

19 MR. DONAGHUE: Yes. I'll attempt to
20 do so.

21 MR. KAPLIN: The other exhibits that
22 you've agreed to, plus these two, just so
23 somebody takes responsibility for that and
24 sends it to Judge Whelan or wherever it's

1 got to go, to Court Services or whatever.

2 MR. DONAGHUE: Okay. We'll take the
3 lead.

4 MR. KAPLIN: Pardon me?

5 MR. DONAGHUE: I said we'll take the
6 lead in that regard.

7 MR. KAPLIN: Thank you. That's it,
8 Your Honor. I think we're done.

9 JUDGE PROUD: Mr. Peters, anything
10 further?

11 MR. PETERS: Nothing further, Your
12 Honor. Again, with respect to the first
13 set of documents, our only specific
14 objection was to A-9, which we talked about
15 on February 25th, so nothing additional.

16 Thank you.

17 JUDGE PROUD: Great. And again, the
18 unrepresented parties, anything you would
19 care to add for the good of the cause?

20 MR. DONNELLY: No, Your Honor.

21 JUDGE PROUD: All right. Thank you
22 very much. I'll assume you join in the
23 township's response and will proceed
24 accordingly.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Anything further?

- - -

(No response.)

- - -

JUDGE PROUD: All right. We'll go off
the record at this point.

- - -

(Proceedings concluded at 2:20 p.m.)

- - -

1
2
3 CERTIFICATE OF REPORTER
4
5

6 I, Norma Gerrity, a Registered
7 Professional Reporter, do hereby certify that the
8 foregoing record is a true and accurate
9 transcript of my stenographic notes in the
10 above-captioned matter.
11
12
13

14 Norma Gerrity, RPR
15 Official Court Reporter
16
17
18
19
20
21
22
23
24