

**PLEASANT PRAIRIE PLAN COMMISSION MEETING  
VILLAGE HALL AUDITORIUM  
9915 39TH AVENUE  
PLEASANT PRAIRIE, WISCONSIN  
6:00 P.M.  
June 12, 2017**

A regular meeting for the Pleasant Prairie Plan Commission convened at 6:00 p.m. on June 12, 2017. Those in attendance were Thomas Terwall; Michael Serpe; Wayne Koessl; Jim Bandura; Judy Juliana; Bill Stoebig; John Skalbeck (Alternative #1); and Brock Williamson (Alternate #2). Deb Skarda was excused. Also in attendance were Tom Shircel, Interim Village Administrator; Jean Werbie-Harris, Community Development Director; Peggy Herrick, Assistant Village Planner and Zoning Administrator, and Kristina Tranel, Community Development Department.

- 1. CALL TO ORDER.**
- 2. ROLL CALL.**
- 3. CONSIDER APPROVAL OF THE MAY 8 AND MAY 22, 2017 PLAN COMMISSION MEETING MINUTES.**

Jim Bandura:

So moved.

Judy Juliana:

Second.

Tom Terwall:

**Moved by Jim Bandura and seconded by Judy Juliana to approve the May 8th and May 22, 2017 Plan Commission meeting minutes as presented in written form. All in favor signify by saying aye.**

Voices:

Aye.

Tom Terwall:

Opposed? So ordered.

- 4. CORRESPONDENCE.**
- 5. CITIZEN COMMENTS.**

Tom Terwall:

If you're here for Item 6A, since that's a matter for public hearing, we would ask that you hold your comments to include them as a part of the official record. However, if you're wishing to speak on any other issue now would be your opportunity and step to the microphone by giving us your name and address. Is there anybody wishing to speak?

**6. NEW BUSINESS:**

- A. PUBLIC HEARING AND CONSIDERATION OF THE 5th AMENDMENT TO CONDITIONAL USE PERMIT #13-03 for the request of Dixit Patel on behalf of VIDHYA Corp, VIII, Inc., the property owner, for re-approval of the conditional use permit extension and to remove condition #54 and allow the BP Amoco gasoline station and convenience store located at 10477 120th Avenue to remain open after June 14, 2017 without having to obtain a yearly Conditional Use Permit, subject to the terms and conditions of the existing Conditional Use Permit and the Settlement Agreement and related Amendments between the Village and the property owners.**

Jean Werbie-Harris:

I will read Item A. The petitioner is not here, but their CUP expires on Wednesday. So we can start the public hearing and go through the items that I have for the public hearing record. And then we need to make a decision as to whether or not we grant a temporary extension for two weeks or what we decide to do just because of the fact that the applicant is not here.

Item A is public hearing and consideration of the 5th amendment to Conditional Use Permit #13-03. And this is for the request of Dixit Patel on behalf of VIDHYA Corp, VIII, Inc., the property owner, for re-approval of the Conditional Use Permit extension and to remove condition #54 and allow the BP Amoco gasoline station and convenience store located at 10477 120th Avenue to remain open after June 14, 2017 without having to obtain a yearly Conditional Use Permit, subject to the terms and conditions of the existing Conditional Use Permit and the Settlement Agreement and related amendments between the Village and the property owners.

So as part of a Conditional Use Permit I have public hearing comments that I'll read for the record. As a part of the hearing record, the Village staff has compiled a listing of findings, exhibits and conclusions regarding the petitioner's request as presented and described below:

**Findings of Fact**

1. The petitioner is requesting a 5th Amendment to the Conditional Use Permit #13-03 to allow the BP Amoco gasoline and convenience store located at 10477 120th Avenue to remain open past June 14, 2017. Information provided as Exhibit 1.
2. The subject property is known as Lot 14 of CSM 1489 located in a part of U.S. Public Land Survey Section 30, Township 1 North, Range 22 East in the Village of Pleasant Prairie and is further identified as Tax Parcel Number 92-4-122-302-0130.

3. The property is currently zoned B-4, PUD which is a Freeway Service Business District with a Planned Unit Development Overlay District, and a gasoline station requires a Conditional Use Permit to operate in the B-4 District.
4. Previous Approvals:
  - a. On November 19, 2012, the Plan Commission approved a Conditional Use Permit #12-10, Exhibit 2, including site and operational plans to allow BP Amoco to operate a gasoline station and convenience store and to install a carbon treatment filtration system that treats existing contaminated ground water from several reported hazard substance releases at the BP site. The Conditional Use Permit approval was and is still subject to compliance with the Settlement Agreement approved by the Village Board on November 29, 2012 and the 53 additional conditions. The Conditional Use Permit was valid until May 1, 2013. A full copy of the Settlement Agreement is on file with the Village.
  - b. On May 28, 2013, the Plan Commission approved Conditional Use Permit #13-03, Exhibit 3, to allow BP to operate a gasoline station and convenience store and to install a carbon treatment filtration system that will treat existing contaminated ground water from several reported hazardous substance releases at the site. This approval was subject to compliance with the Settlement Agreement approved by the Village Board on November 29, 2012, the 1st Amendment to the Settlement Agreement approved by the Village Board on April 1, 2013 and the 53 additional conditions. The Conditional Use Permit was valid until June 10, 2014. Again, a full copy of that agreement and 1st Amendment is on file with the Village.
  - c. On January 13, 2014, the Plan Commission approved the 1st Amendment to the Conditional Use Permit #13-03, Exhibit 4, to allow BP Amoco to continue to operate the gas station and convenience store with the approval of Settlement Agreement Amendment #2 which addresses the request for modified analytical test parameters, discharge water standards and reporting requirements of the carbon treatment filtration system that will treat existing contaminated ground water from several reported hazard substance releases at the site located at 10477 120th Avenue. This approval was subject to compliance with the Settlement Agreement approved by the Village Board on November 29, 2012, the 1st Amendment to the Settlement Agreement approved by the Village Board on April 1, 2013, the 2nd Amendment to the Settlement Agreement approved by the Village Board on February 3, 2014 and the 53 additional conditions. The Conditional Use Permit was valid until June 10, 2014. And, again, a full copy of that full agreement and amendments t are on file with the Village.
  - d. On June 9, 2014, the Plan Commission approved the 2nd Amendment to Conditional Use Permit #13-03, Exhibit 5, to allow the BP Amoco to continue to operate the gasoline station and convenience store. This approval was subject to compliance with the Settlement Agreement approved by the Village Board on November 29, 2012, the 1st Amendment to that agreement approved by the Board on April 1, 2013, the 2nd Amendment to the agreement approved by the Board on February 3, 2014 and 53 additional conditions. The Conditional Use

Permit 2nd Amendment is valid until June 10, 2015. A full copy of the agreement and the amendments are on file with the Village.

- e. On June 8, 2015, the Plan Commission approved the 3rd Amendment to Conditional use Permit #13-03 identified as Exhibit 6 to allow BP Amoco to continue to operate the gasoline station and convenience store. This approval was subject to compliance with the Settlement Agreement and amendments thereto approved by the Village Board and 53 additional conditions. The CUP 3rd Amendment is valid until June 10, 2016.
  - f. On June 15, 2015, the Village Board had approved the 3rd Amendment to the Settlement Agreement, and on May 2, 2016, the Board approved the 4th Amendment to the Settlement Agreement. A full copy of the Settlement Agreement and all the amendments are on file with the Village.
  - g. On May 23, 2016, the Plan Commission approved the 4th Amendment to Conditional Use Permit #13-03 identified as Exhibit 7 to allow BP Amoco to continue to operate the gasoline station and convenience store. This approval was subject to compliance with the Settlement Agreement and the amendments thereto approved by the Village Board and the 53 additional conditions. The Conditional Use Permit 4th Amendment is valid until June 14, 2017. Note that the findings of fact and the public hearing records of the above noted approvals are included as part of this public hearing record and are available for viewing at the Village Hall.
5. Site Status: Over the past several years, VIDHYA and their consultants have taken actions in order to comply with the Settlement Agreement and aforementioned amendments to the Settlement Agreement and have made progress in addressing illicit discharges. The following broad scope items have been completed to date:
- During 2012, the BP Amoco station located at 10477 120th Avenue was ordered to stop an ongoing illicit discharge of petroleum products into a drainage ditch adjacent to the property. Station owners were also ordered to develop and implement a plan to remove the contamination from the surrounding soils and groundwater. During September of 2012, station owners presented an acceptable plan to stop the illicit discharge, remediate the contamination, and to monitor the surrounding soils and groundwater. The system operated for three years, April of 2013 to August of 2016.
  - On May 2, 2016, the Village Board approved the 4th Amendment which includes a plan for VIDHYA Corporation to shut down a groundwater pumping and treatment system, which included an outlined strategy to monitor the site the site and the system, which has been operating within the limits of a Wisconsin Pollutant Discharge Elimination System or WPDES permit.
  - In 2016 and 2017, VIDHYA's environmental consultants have been performed quarterly groundwater sampling and bi-monthly ditch inspections, while VIDHYA performed weekly ditch inspections. No illicit discharges have been

observed by VIDHYA's environmental consultants, staff, or the Village staff inspections during the past year. The groundwater sampling of nine wells show that two wells have some contamination; however these two sampling sites are showing a stable or decreasing trend over time. The owner's intent is to perform additional sampling and request site closure from the Wisconsin DNR who reviews the case.

- VIDHYA is currently in substantial compliance with the Settlement Agreement and related Amendments. That being said, the Village Engineer at this time concurs with another one year extension of the CUP. Therefore, the Village planning staff is recommending approval of the 5th Amendment to Conditional Use Permit #13-03 for a one year extension of the CUP subject to all 53 conditions with condition number 54 amended to read as follows:

54. This Conditional Use Permit #13-03 5th Amendment is valid until June 14, 2018. In order for this facility to continue to operate after June 14, 2018, an application for an extension to this Conditional Use Permit shall be reconsidered by the Plan Commission at a regularly scheduled public hearing prior to June 14, 2018.

6. There are no special assessments due on the property. However, as of May 17, 2017, there are 2016 delinquent real estate taxes due of \$37,400.02 to Pleasant Prairie; 2015 delinquent real estate taxes due of \$16,191.30 to Kenosha County; and there are outstanding invoices in the amount of \$4,097.54. Exact amounts shall be verified for additional penalties and interest. All outstanding invoices and delinquent taxes shall be paid prior to June 14, 2017. So I don't know for sure whether or not any of those have been paid. She had called my assistant Peggy to find out where and how and how much. So I'm not sure if they actually have gotten paid yet.
7. The petitioner and all of the abutting and adjacent property owners within 300 feet were notified via U.S. Mail on May 22, 2017 of this hearing. Public hearing notices were also published in the *Kenosha News* on May 29 and June 5, 2017.
8. The petitioner and the property owner were emailed a copy of this memorandum on June 9, 2017.
9. According to the Village Zoning Ordinance the Plan Commission shall not approve a Conditional Use Permit unless they find after viewing the findings of fact, the application and related materials that the project as planned will not violate the intent and purpose of the Village Ordinance and meets the minimum standards of the granting of a Conditional Use Permit. Further, the Plan Commission shall not approve any site and operational plan application without finding in the decision that the application, coupled with the satisfaction of any conditions of approval, will comply with all applicable Village ordinance requirements and all other applicable federal, state or local requirements relating to land use, buildings, development control, land division, environmental protection, sewer, water service, noise, storm water management, streets and highways and fire protection.

One other fact of finding that I just wanted to mention is that the company had come to us last fall, and they were looking to modify their Conditional Use Permit at that time because they were going to be doing a modification to the station. They were looking at that time to do a Dunkin Donuts, but they needed to work through the engineering and the plans and the designs, and they needed to work with their neighbor to the east, Culver's, and get some agreements as well as some easements from them. And my understanding is that they have just worked through some of those agreements and easements and plans, and they're intending to submit something to us sometime soon. But because we did not get any extension or modification to that CUP we are still under this CUP requirement. And this CUP does expire June 14, 2017 which is Wednesday.

I don't see the applicant here tonight. I know that their attorney was out of town. If there is not an extension or a continuance or something, a two week approval granted by by the Plan Commission, then they would be out of compliance as of Wednesday the 14th and they would need to be shut down. We are working with them obviously on their liquor license as well. And one of the conditions for BP for the liquor license from a zoning perspective is they had to have a valid CUP. And their liquor license runs through June 30, and our next Plan Commission meeting is June 26th in two weeks.

Tom Terwall:

Given the history that we had with this organization I personally cannot support an extension without them appearing before the Plan Commission. June 14th is a sacred date in my book. They've been given adequate notice. It's been published in the paper. Anybody is free to speak. And they don't seem to be concerned enough to even show up. And in good conscience I for one cannot vote for an extension without their presence here. That's just my opinion.

Brock Williamson:

How concerned are you about the money that they owe? Think you'll eventually get it, or have you had a history of trying to collect from them in the past?

Jean Werbie-Harris:

Well, this is not the first time that they'd had outstanding bills and charges and invoices to the Village. In fact, this is kind of a regular situation for them. And they typically always make that payment because they cannot get their liquor license without having all of these outstanding fees and bills and invoices. They have to be paid before the Clerk releases that license. One of the other things that they need, though, is that Conditional Use Permit. So the concern is that they're not here this evening. And we would have to shut them down. And I'm sure that they would ask for an emergency meeting of the Plan Commission if --

Jim Bandura:

Tom, I tend to agree with Mr. Terwall here. To not show up and to not pay their bills you're running a business and it needs to be up and up. So I just -- I'm not learning towards granting a two week extension. If they haven't come and paid their bills we've gone through this a number of times. So I'm not a fan of this.

Michael Serpe:

I don't know what good it would have done to have him here in the first place because I've never trusted anything he had to say to us anyway. And if we hold up this conditional use permit based upon him paying the taxes and the invoices he either pays it or he doesn't open up. I don't care what he's got to say. It's as simple as that. We've been dealing with him because of his reluctance to deal with us honestly and straightforward. He had to get an attorney that had to explain his every word.

Tom Terwall:

[Inaudible] enough is enough. Go ahead, Wayne.

Wayne Koessl:

I think in the past we had votes for wanting to shut him down. The reason we didn't do it is we didn't want the Village to have a vacant service station out their hands. But I'm not for an extension. Of all the years I've been on the Plan Commission this part has not been my favorite person to deal with. I think they're dishonest, and they don't care about anyone else. If we don't extend this will the Village shut them down?

Jean Werbie-Harris:

Well, I need to get some direction from you. I can try to get him on the phone right now, or you can grant a temporary two week extension until the 26th. If you don't grant some type of extension PD will have to shut him down.

Jim Bandura:

So if we -- do we necessarily have to have an extension? Can't we just say that if the fees aren't paid by the 14th shut him down? Can't we just --

Jean Werbie-Harris:

No, because you need to renew this Conditional Use Permit. It expires on June 14th.

Jim Bandura:

Well, that's the whole problem. They're not --

Jean Werbie-Harris:

But I'm just saying they will probably come here and pay their bills. They've done that in the past. But if you don't approve at least even a two week extension it doesn't matter if they come in to pay their bills or not because they don't have a Conditional Use Permit to operate.

Tom Terwall:

I don't have a problem with that.

Wayne Koessl:

How about if we approve the extension until the bill is paid.

Jean Werbie-Harris:

I'm sorry, until when?

Wayne Koessl:

How about if we approve the CUP until they pay the bill which would be the 14th is the deadline.

Jim Bandura:

Yes, for a two day extension.

Jean Werbie-Harris:

Okay, so then what happens after the two days?

Jim Bandura:

Shut them down.

Wayne Koessl:

If they don't pay we shut them down.

Tom Terwall:

We're not their banking manager.

Jean Werbie-Harris:

Okay, but if they pay it are you then granting it for one year, is that what you're saying?

Tom Terwall:

Yes.

Jim Bandura:

We could do that, yeah.

Jean Werbie-Harris:

Okay, so our recommendation is that it be granted subject to payment of all outstanding bills and taxes and specials or whatever he has out there that's outstanding. And if they don't make that payment by June 14th --

Judy Juliana:

We shut them down.

Jean Werbie-Harris:

Yeah, we would have to start the revocation process.

--:

Did you guys ever do a six month to where he would pay his bills more on time, do a six month? Or you just always have to do a year?

--:

We tried that, didn't we?

Jim Bandura:

Yeah.

Jean Werbie-Harris:

So he will pay them all in order to get his CUP and his liquor license. And then they went delinquent again. But, again, there must have been a glitch that we weren't aware of 2015 taxes because those should have been paid last year.

Wayne Koessl:

Mr. Chairman, I'm in favor of approving the staff recommendation, but any time that they violate that CUP we can pull it can we not?

Jean Werbie-Harris:

We can bring it back, yes.

Michael Serpe:

Did he get a copy of these conditions?

Jean Werbie-Harris:

They were sent to him on June 6th -- June 9th.

Michael Serpe:

Okay, either he read them or he probably did what he normally does is nothing. But it's clearly stated in here the petitioner's -- let's see, where did I see it? Oh, that he has to pay prior to June 14th.

Jean Werbie-Harris:

And Sophia had called --

Michael Serpe:

And?

Jean Werbie-Harris:

-- today.

Peggy Herrick:

And I told her they had to be paid -- I told Sophia -- she wanted to now what the exact amounts were. So I told her she'd have to talk to our transfer department. I transferred her to Jennifer, and I reminded her that they needed to be paid by the 14th otherwise they'd be shut down.

Michael Serpe:

Okay, what's the problem.

Tom Shircel:

Just to make sure, I mean I see the memo says shall be paid prior to June 14th. So do they have until five o'clock June 13th or do they have until five o'clock June 14th.

Peggy Herrick:

Their CUP expires on June 14th.

Tom Shircel:

So I'm thinking five o'clock on June 14th Wednesday would be the termination point, is that correct?

Tom Terwall:

I would think so.

Peggy Herrick:

That's the intent of staff's recommendation.

Michael Serpe:

Pay it or close.

Jean Werbie-Harris:

So the staff would recommend approval of the CUP subject to them making all their payments of any delinquent taxes or any other type. Here we go. There are no special assessments due on the property. As of May 17th there were 2016 delinquent real estate taxes due, 2015 delinquent real estate taxes due, and outstanding invoices. So we would need to get a current number from the finance department that they have to pay by five o'clock on Wednesday, June 14th. Exact amounts to be verified along with penalty and interest. Again, some are paid to the Village, some are paid to Kenosha County. And that would be also subject to conditions number 54 which basically states that they would be granted then a one year conditional use permit CUP that would need to be reconsidered by the Plan Commission at a regularly scheduled public hearing prior to June 14, 2018.

Wayne Koessl:

One other question. To the engineer, is the runoff clear in the ditch to date?

Matt Fineour:

Yes, it is. They shut down that system a year ago least I want to say September it was, September of October. And since then it's been clean. I check it once or twice a week myself because I drive out there all the time. And they check it weekly, and their consultant checks it twice a month. So between all of us, and like I said I go out there myself to verify that they're reporting correctly. I haven't seen any discharge.

Wayne Koessl:

Very good. And no complaints from Culver's on the runoff or that?

Matt Fineour:

No, no complaints from Culver's. Their quarterly sampling has kind of shown that the contaminants are not passing that property line.

Wayne Koessl:

Thank you.

Tom Terwall:

This is a matter for public hearing. Anybody else?

Michael Serpe:

I think they just showed up. Now we've got to go through this all over again. If they did just show up I think we make it perfectly clear what we just discussed.

Tom Shircel:

I agree. I will just keep it short and sweet and tell them that they have until five o'clock until June 14th --

Michael Serpe:

13th.

Tom Shircel:

No, 14th, five o'clock.

Michael Serpe:

I thought they had to pay it prior --

Wayne Koessl:

Can we move a motion before they get here?

Tom Terwall:

Absolutely.

Michael Serpe:

It's amazing we go from contaminated ground to not paying your bills.

Judy Juliana:

That's just been a pattern with them.

Michael Serpe:

It's one thing after another.

Judy Juliana:

They haven't really paid their bills on time at all. It's always been at the last minute.

Michael Serpe:

Let's see what she's got to say.

Sophia Sultana:

Sorry, we are coming from West Chicago [inaudible].

Jean Werbie-Harris:

Name and address for the record.

Sophia:

My name is Sophia Sultana, 1491 West Roosevelt Road, West Chicago, IL 60185.

Michael Serpe:

We already had a discussion on your property. And what we have decided if I can tell her?

Tom Terwall:

Go ahead.

Michael Serpe:

That you owe Pleasant Prairie \$37,400.02. You owe Kenosha County \$16,191.30. And you have invoices in the amount of \$4,97.54. So you're aware of that? Are you prepared to pay that prior to June 14th?

Sophia Sultana:

Yes, but one of my taxes I need a payment plan. The invoices I am ready to pay no problem, but the property tax whatever is there 15 one we are ready to pay, but the 16 one, I just need a payment plan that's all.

Michael Serpe:

I didn't hear everything she said.

Jean Werbie-Harris:

She needs to have a payment plan for the 2016 delinquent real estate taxes. And I think that's possible if, in fact, I think there was a payment in January and then one in April.

Michael Serpe:

Right.

Jean Werbie-Harris:

I don't know for a fact that one can be established if you've not made installment payments. That would be a decision of the Village Treasurer or the County Treasurer.

Michael Serpe:

If those fees are not paid your business is shut down. You're aware of that?

Sophia Sultana: Yes

Michael Serpe:

Okay, all right.

Wayne Koessl:

Mr. Chairman, I move that we approve the passage of this subject to the Village comments for the Conditional Use Permit #13-03 subject to the following conditions outlines by staff.

Michael Serpe:

I'll second it.

Tom Terwall:

It's been moved and seconded to approve the 5th Amendment subject to the terms and conditions outlined in the staff memorandum. All in favor signify by saying aye.

Voices:

Aye.

Tom Terwall:

Opposed?

Tom Terwall: Aye

Michael Serpe:

It's up to you.

## **7. ADJOURN**

Judy Juliana:

Move to adjourn.

Bill Stoebig:

Second.

Tom Terwall:

All in favor signify by saying aye.

Voices:

Aye.

Tom Terwall:

Opposed? So ordered. We stand adjourned.