

**PLEASANT PRAIRIE PLAN COMMISSION MEETING
VILLAGE HALL AUDITORIUM
9915 39TH AVENUE
PLEASANT PRAIRIE, WISCONSIN
6:00 P.M.
June 8, 2015**

A regular meeting for the Pleasant Prairie Plan Commission convened at 6:00 p.m. on June 8, 2015. Those in attendance were Thomas Terwall; Michael Serpe; Wayne Koessler; Deb Skarda (Alternate #2); Jim Bandura; John Braig; Judy Juliana; and Bill Stoebig (Alternate #1). Donald Hackbarth was excused. Also in attendance were Michael Pollocoff, Village Administrator; Tom Shircel, Assistant Administrator; Jean Werbie-Harris, Community Development Director; and Peggy Herrick, Assistant Zoning Administrator.

- 1. CALL TO ORDER.**
- 2. ROLL CALL.**
- 3. CORRESPONDENCE.**
- 4. CITIZEN COMMENTS.**

Tom Terwall:

If you're here tonight for an item that appears as a public hearing, we would ask that you hold your comments until the public hearing is held so we can incorporate your comments as a part of the official record. However, if you're here for an item that's not a matter for public hearing, or you want to raise an issue that's not on the agenda, now would be your opportunity to do so. We would ask you to step to the microphone and begin by giving your name and address. Anybody wishing to speak under citizens' comments?

5. OLD BUSINESS

Tom Terwall:

We have a request we're going to modify the sequence on the agenda, and I'm going to need a motion to do that. We want to do A and B under old business first. Then we'll drop down to Item B under new business, then go back and combine A under new business and C under old business, and then go back to the regular agenda. Is there a motion to that effect?

Wayne Koessler:

So moved, Chairman.

John Braig:

Second.

Tom Terwall:

IT'S BEEN MOVED BY WAYNE KOESSL AND SECONDED BY JOHN BRAIG. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Tom Terwall:

Opposed? So ordered.

- A. TABLED PUBLIC HEARING AND CONSIDERATION OF A FLOODPLAIN BOUNDARY ADJUSTMENT for the request of Matt Carey with Pinnacle Engineering Group, agent for Route 165, LLC owner of the property located at 12575 Uline Drive to remove 2,226 cubic yards from the 100-year floodplain and to create 3,795 cubic yards of 100-year floodplain to compensate for the 100-floodplain begin filled for the purpose of constructing a conference center between the Uline Corporate Office building and the easternmost warehouse building on the property.**
- B. Consider the tabled request of Matt Carey with Pinnacle Engineering Group, agent for Route 165, LLC owner of the property located at 12575 Uline Drive for approval of Preliminary Site and Operational Plans for the grading of a portion of the property for the construction of a conference center between the Uline Corporate Office building and the easternmost warehouse building on the property.**

Jean Werbie-Harris:

So Item A under old business is a tabled public hearing and consideration of a floodplain boundary adjustment for the request of Matt Carey with Pinnacle Engineering Group, agent for Route 165, LLC owner of the property located at 12575 Uline Drive to remove 2,226 cubic yards from the 100-year floodplain and to create 3,795 cubic yards of 100-year floodplain to compensate for the floodplain being filled for the purpose of constructing a conference center between the Uline Corporate Office building and the easternmost warehouse building on the property.

And Item B, consider the request of Matt Carey with Pinnacle Engineering Group, agent for Route 165, LLC owner of the property located at 12575 Uline Drive for approval of Preliminary Site and Operational Plans for the grading of a portion of the property for the future construction of a conference center between the Uline Corporate Office building and the easternmost warehouse building on the property.

These items are related and will be discussed at the same time, however separate action is needed by the Plan Commission.

The petitioner is requesting approval of a floodplain boundary adjustment to remove 2,226 cubic yards from the 100-year floodplain and to create 3,795 cubic yards of 100-year floodplain. This is to compensate for the floodplain being filled for the purpose of constructing a conference center to be located between the Uline Corporate Office building and the easternmost warehouse

building on the property. In addition, the petitioner is requesting Preliminary Site and Operational Plans to begin mass grading for the proposed Conference Center Building after obtaining all of the required permits and approvals.

The petitioner is requesting approval to place fill within the current 100-year floodplain limits along the northwest corner of the retention facility and to create additional 100-year floodplain storage in the southern portion of the retention facility. The floodplain will be impacted within the interior of the detention pond or the retention basin. Proposed mitigation is proposed at the south end of the pond to provide additional storage to maintain current floodplain elevations. Floodplain will be contained on the Uline property and will not impact any adjacent properties.

According to the Village's Floodplain Ordinance the Village shall not permit amendments to the floodplain boundary that are inconsistent with the purposes of Section 420-131 of the Village Zoning Ordinance or that might be in conflict with the rules of the Wisconsin DNR or the Federal Emergency Management Agency. Section 420-131 of the Village Zoning Ordinance indicates that amendments to the 100-year floodplain shall comply with the following Village requirements:

- The floodplain boundary adjustment shall be consistent with 420-131 of the Village Zoning Ordinance and not in conflict with the applicable rules of the Wisconsin DNR and FEMA.
- Amendments to the floodplain boundaries shall not be permitted where the change will increase the regional flood stage elevation unless the applicant has made appropriate legal arrangements with the Village, any other affected governmental units, and any other property owners affected by the flood stage increase.
- Petitions for the floodplain amendment shall provide adjusted water surface profiles and adjusted floodplain limits to reflect the increased flood elevation.
- Any area removed from the floodplain shall be contiguous to land lying outside the floodplain.
- Whenever any volume of flood storage capacity is removed from the floodplain, as defined by the ground surface and the regional flood elevation, an equal volume of flood storage capacity shall be created within the existing or newly created floodplain boundary in the vicinity of the removal to compensate for the lost flood storage capacity. Excavation below the ordinary high water mark shall not be considered as providing any equal volume of storage capacity for compensation purposes. Any such area of compensating flood storage capacity shall drain freely to the receiving stream.
- Removal of land from the floodplain shall not be permitted unless the land has been filled to an elevation at least two feet above the elevation of the floodplain.

The petitioner intends to obtain Village and Wisconsin DNR approvals to fill the floodplain as depicted on the application on the basis that the grading will satisfy volumetric compensatory mitigation requirements for a Conditional Letter of Map Revision based on fill known as a CLOMR F and ultimately a Letter of Map Revision based on fill, LOMR F, after construction is completed.

The site is intended to be used for the construction of a 2-level 22,500 square foot Uline conference center to be generally located on the north side banks of an existing retention pond which is located on the southwest side or approximately 300 feet away of Uline's corporate office headquarters.

This new facility will be for private use and will only be used on average of once per week for corporate meetings, conferences and events with approximately 200 to 300 attendees. Events at the conference center will be held in the morning, afternoon and evenings, weekdays and weekends. The building includes a large gathering area on main level overlooking the existing pond. There is also an outdoor deck at the south end overlooking the pond. No new employees will be hired to run the conference center, and existing corporate staff will be utilized for coordinating events. Catering companies may be used as well. Parking requirements for events will be met by the existing 800 stall parking lot adjacent to the Uline office building. No new parking stalls are proposed. Detailed Final Site and Operational Plans will be submitted for Village staff and Plan Commission review and approval over the next few months.

With that I'd like to continue the public hearing. There are representatives from Uline as well as Jockey and others that would like to comment this evening. But first I'd like to introduce representatives from Uline to see if they'd like to make some further comments.

Tom Terwall:

Yes, sir?

Randy Copenharve:

How you doing? Randy Copenharve of Uline, 12575 Uline Drive back here again. So we're here again to bring forward another project, a little bit smaller, to be on our corporate campus. We're very excited about this. It's a very integral piece to our business that we found is much needed for our success for our growing business. And, as you can see, it's a little unique going over the pond. It's something that we did a trial basis of last year with a temporary tent that turned out to be a success, and we wanted to do a more permanent structure. So we're here again seeking approval from this project. We have representatives from our architect firm, contractors and myself for any questions.

Tom Terwall:

Does the architect wish to make any comments at this time? This is a public hearing. Is there anybody else wishing to speak on this matter? Yes, sir?

Michael Reese:

I'm Michael Reese. I'm one of the neighbors to the proposed building.

Tom Terwall:

Give us your address, sir.

Michael Reese:

12086 116th Street. I have no qualms about the building. The only thing I want to make sure is that the engineers took into consideration the groundwater level as it correlates to the pond level so that they equal up.

Tom Terwall:

Okay, thank you. Anybody else wishing to speak? Yes, sir?

David Barnes:

Good evening. Attorney David Barnes, 722 Sheridan Road, Kenosha, Wisconsin. I'm here on behalf of Jockey International. Can we go -- yeah. If I may --

Tom Terwall:

Take the mic with you. Take it with you.

David Barnes:

Thank you. Jockey International owns this part right in here. There's a 40 acre parcel and a 30 acre parcel and that's 70 acres. So you can see they had some concern about this, and they just wanted to know what the impact was going to be on their property. So I assisted Jockey in retaining some consultants, environmental people from Trillium. They are here this evening. They went through, did an extensive report, read hundreds of pages of documents. Went out there, did site inspections, and they came up with some concerns.

So basically we're not here to oppose. We're here hoping to address our concerns, and we'd like to work with Uline to have those concerns. A couple of them, I see they have wonderful intent, but it says the floodplain will be impacted within the interior, and it will be contained on the Uline property. What our consultants have told us, a big concern, is that this encroaches on the Jockey property. It goes over by five feet on the Jockey. Jockey hasn't had a chance to evaluate if they want something coming over five feet on their property. That could be problematic, maybe not.

What the suggestion they have is let's table it two weeks, let's sit down with Uline, let's see what we can work out. Maybe we can address it without having a big problem. Because if it can't go on the Jockey property then it has to shorten up the pond and then you have it steeper on the sides. Then you have planting problems, retention of vegetation, those type of things. There's a few other concerns. And so what I would like to do is just respectfully suggest that we table it for two weeks. And, as you know, Jockey is not just kids down the street trying to horse around. They've been an established company in the community for over 100 years. They would have their consultants sit down and try to work out a reasonable solution so good neighbors can go forward together.

To the concerns that we have I am not the environmental engineer. I know little about it. So I will let these two gentlemen present it to you in a little bit more detail if you'd like.

Tom Terwall:

Thank you, please do.

Joshua Skolnick:

My name is Joshua Skolnick. I'm a certified wetland scientist with Trillium Native Landscapes. And I have over 15 years of experience dealing with stormwater issues, shoreland zoning, wetland delineations, site evaluations with regards to ecological impacts and drainage issues. What I found in my review of the plans you actually had that on the previous actually the next screen there showing -- okay, there is where it looked to me to be an encroachment. This looked to me to be the property line right there. And there was this little sliver. It's not floodplain. It's significantly above that so it's not introducing any floodplain onto Jockey's property. But it is on the edge of a grove of mature oaks, and it is over the property line. I didn't know if there's a consent. There has to be a consent of the property owner to allow that grading to happen even if it's minor and negligible. So there's kind of the boundary issue. That's the main issue that I see.

There's also the existing conditions, there's also a nice diverse native plant community that's been planted and seeded on that slope that's existing. And there's wetland plants in there so obviously those would be destroyed in the process. There needs to be some kind of addressing of that issue when the site is re-vegetated. I have not had the chance to review any plans nor were those provided to us. So we did have the grading plan but not a re-vegetation plan for that so I didn't have a chance to review anything.

Tom Terwall:

Thank you. Jean, did you want to comment? Go ahead, sir.

Kevin Rische:

My name is Kevin Rische, owner of Trillium Native Landscapes. Our concerns on the property are just that, the encroachments. And that property there to the east of that is an incredible woodland, mature oaks. Going over just a little bit can affect the root systems, and you guys have heard it all about the roots. Also, in order to correct this problem they will have to make the basin bottom a little larger. The slope already looks like a one to three pitch to me. If they make it larger the slope will be steeper. One to three is bare minimum for that kind of erosion control issues. Any steeper than that it becomes an issue down the road.

So as far as the maintenance as Joshua stated there should be a plan for re-vegetation. Jockey has been great. Their property looks fine, and I'm sure they'd have a great plan. We would just like to see it, and we'd like to see their management plan along with it. But once again that encroachment is serious enough. And I can imagine if you thought somebody was building something in your backyard you would [inaudible] to that. So we just need to look at another set of plans.

Tom Terwall:

Thank you.

Michael Serpe:

Could we have the engineer from Uline talk about this?

Adam Artz:

Good evening. Adam Artz, Pinnacle Engineering Group, 15850 West Bluemound Road, Brookfield, Wisconsin. Two issues. The encroachment, yes, I'll take that one square on my shoulders. That was something where we followed the tree line and not the property line right there. That has been removed and addressed. We are not impacting their property anymore. That was on our last submittal to the Village.

And the second concern that I heard was seeding on the slope. We put that seed there in the first place. That slope wasn't there when Uline was there. That was a design we had. We fully intend to re-vegetate that hillside. I don't think that's going to be an issue in any way. The slopes are being created on Uline's property. So I think those are the two items I heard of concern. We're addressing both of those and have been previously addressed.

Jean Werbie-Harris:

There was also a question by Dr. Reese regarding the ground level level. I don't know if you were here when he was speaking, but he was concerned about the groundwater elevation in relation to the pond.

Adam Artz:

The pond itself would equalize with the groundwater level. We've never had an issue with groundwater infiltrating into that pond. We're extending that same elevation. It's all relative. The same plane, if you will, will continue with the existing pond. If there was groundwater seepage out of that hillside you'd experience it today in the exact same conditions. There's no clay liner on that hill, anything along that nature. And as far as groundwater contamination we are sitting in the middle of clays out there. All the clay is percolated test to meet class C liners, and it's in accordance with the DNR. So the groundwater is not a concern in my eyes as a professional.

Tom Terwall:

Jean, do we have the revised plans that show it no longer interferes with Jockey's property?

Jean Werbie-Harris:

We did receive the revised plans.

Adam Artz:

And in there some of the points were it would be an increased slope if we took it off their property [inaudible] we kept to the one size slope just like there is out there today.

Jim Bandura:

How close is that going to come to the property?

Adam Artz:

Silt fence will probably within several feet of it. Previously in 2007 as part of the grading operations the property line all the way down that line was taken at a three to one slope all the way down with the exception of there was previously planned to be a walking trail imbedded into that hillside that would go into the Jockey woods. That was part of the master plan, if you will, for the Prairie Wood Corporate Park. That never came to fruition. So at this point we're taking out that bench, if you will, that 12 foot wide plateau on there. But the grading operations [inaudible] just changing the depth as you go south.

Tom Terwall:

Thanks.

Jim Bandura:

Just a quick question. Is this the first that we're hearing about this that there's a little discrepancy here? Has Jockey talked with Uline and Uline talked to Jockey earlier than now?

Adam Artz:

In terms of revising it? I don't know if there was a direct dialogue.

Randy Copenharve:

Yeah, we brought Jockey into this approximately six weeks ago to inform them. They had some questions when we submitted to the Village. Jockey then had called, and I personally had called Jockey and said, hey, this is what we're doing, invited them out to our site. With a representative from Jockey and myself and another gentlemen from Uline we walked our entire property including the pond, where the pond is going to be enlarged, as well as where the conference center is going to go. At that time he had asked if we'd delay this process for 30 days which I agreed and talked with Jean to delay it for 30 days and have not heard anything back. We've been asking for clarification. I think about two weeks ago one of the representatives from the landscape company had asked for some plans. I had sent them over some plans, sent them over everything that was submitted, and we've not heard back.

David Barnes:

Can I address that?

Tom Terwall:

Please do.

David Barnes:

We had some cooperation, we had some concerns. There were volumes and volumes and volumes of documents and plans that Trillium received. Trillium then went out there, inspected again, got more information. Trillium got to us on Thursday evening a letter, preliminary with their concerns. On Friday we contacted Uline and said we have more concerns. You're encroaching on the property. We had some other ones, the pitch. There were some other concerns that they wanted to address. They got back to Jockey, their corporate counsel, Monday morning and said should we sit down and can we go over this? That's what Jockey had asked. They said we want to go forward with the project, you can address it at the hearing.

So the first that we're hearing right now of updated plans that this has been addressed which causes me quite a bit of concern. Because, again, this is a significant neighbor who is also looking at doing potentially headquarters there and a new campus. And to have this stuff -- I mean they're moving, they're respectful of each other, they'd like to work with each other. They want to see good things go on. But they're also very concerned as to how is this going to impact us. I mean they're hiring outside consultants, they're hiring us and saying what can we do? We're not trying to stall this forever. But let's just sit down over the next couple weeks, and if we have issues let's sit down with their engineers, let's have our engineers look at it, let's look at it and make sure we're okay. To show up at the hearing and say I take it square on my shoulders, I appreciate his honesty, but to say I take it square on my shoulders, by the way I've modified the plan for good I'm blind sided. I don't know what the plans say. I haven't had an environmentalist look at it, I haven't had engineers look at it, I don't know. Like I said I'm not the environmental engineer, I don't know.

I'd like to keep this moving along in a neighborly fashion and say if we have just a couple weeks, not asking for a 30 day extension, just a couple weeks, table it and when we come back by that time maybe it can all be resolved. If not then they can work out what they want. But the goal is to try to make this work for everybody.

Michael Serpe:

With the information, Dave, that you have that Uline is not going to encroach on Jockey's property now does that change your thinking of the engineers?

David Barnes:

Well, I mean that's a positive, that's very good. If it's not going to affect the vegetation. There were some other issues that they had. How's it going to -- there was some fencing issues. There was some replanting issues. There was a drainage issue. And we all thought things that we could work out. Maybe they're in the plan, maybe they have addressed it. But I can't sit down here right now and say great it's all -- I mean these are things that were our concerns, if they're telling us they're addressing it or willing to address it that's great. Then let's just put the experts in a room and let them work it out and reschedule it and come back and say, hey, thumbs up, we're good or we have additional concern. I think it would be much more thumbs up, we're good, but I'd want to give them at least the courtesy --

Michael Serpe:

I would hope that Jockey does move forward with their corporate headquarters. I will say this, if they do I think you'd be hard pressed to find a better neighbor than Uline considering what they've done out there and the way it looks and the amount of money they put into that site. We're glad we have them.

David Barnes:

We would agree that they're two wonderful corporations to have in the community. And I know that Jockey only wishes them well. So we would hope that they can continue that way.

Jean Werbie-Harris:

I just want to mention that when Attorney Barnes and I talked last week Wednesday I thought that I was going to get some type of comments from Jockey. I did not receive them. That was the same time that our engineer Matt Fineour was reviewing these revised set of plans. So our original set of comments, the first time we reviewed it, we mentioned the encroachment. We mentioned that there was a need for an easement. We mentioned all those things. But Matt has since reviewed the revised set of plans, and the issues that were brought up were actually addressed as part of this revised set of plans. And maybe Matt can go into some of the detail with respect to that. But not having had those comments ahead of the meeting it was not possible for me to actually that as even part of my staff comments.

So I believe that the issues have all been addressed. We have the set of plans here. The engineers can sit down after the meeting and take a look at these things so maybe they don't have to postpone this for two weeks. But keeping in mind that this is the Plan Commission's recommendation, and then this matter goes onto the Village Board for their official recommendation. And it also needs to be approved by DNR, and then the CLOMR is needed by FEMA as well. So I don't know that we need two weeks, but maybe over this next week before it goes to the Village Board any and all final issues could get resolved during this week if it gets conditional approved by the Plan Commission tonight.

But if you would like Matt to address any of these concerns that were addressed. I mean he did this review less than a week ago, and I'm just looking at the plans now and the encroachment was eliminated. The three to one slope is still being provided. The path was taken out. So it looks like those comments have all been addressed that they had raised with respect to the encroachment.

Jim Bandura:

I'd like to hear from Matt. I would.

Matt Fineour:

The original plans had a slight encroachment on it. They have since addressed that so there is no more encroachment. From the engineering department's perspective if there was an encroachment they would have to get approval from Jockey. If there is no encroachment and they're keeping the slopes as is that's fine. So their revised plans, again, they did not have the encroachment, and the slopes were three to one which addressed our comments regarding that.

Jim Bandura:

Question to Jean real quick. If they sit down and don't come to an agreement or there are still issues, will that move forward to the Board?

Jean Werbie-Harris:

Normally I would be putting this item to the Board tomorrow night. It would go to the Board on their agenda on Monday night. If there is a reason for it not to be taken up the Board can actually table it at the Board meeting as well.

Jim Bandura:

I guess my question to Uline and Jockey are you okay with this type of schedule and what the Village is doing?

Jean Werbie-Harris:

Again, the Board meets next Monday which would be June 15th.

Wayne Koessl:

Mr. Chairman, I see no reason the Plan Commission cannot approve this recommendation. And we're sending it to the Board for their meeting on Monday. So if there is an issue that comes up the Board can send it back.

Jim Bandura:

And I agree with Mr. Koessl on that. I just want to make sure the two corporations are talking.

Wayne Koessl:

And I think they have a week to talk.

Tom Terwall:

Is that a formal motion then?

Wayne Koessl:

That's a formal motion, Chairman.

Jim Bandura:

Second.

Tom Terwall:

IS THERE ANY FURTHER COMMENTS BEFORE I CLOSE THE PUBLIC HEARING? IF NOT WE'VE GOT A MOTION BY WAYNE KOESSL AND A SECOND BY JIM BANDURA TO SEND A FAVORABLE RECOMMENDATION TO THE VILLAGE BOARD TO APPROVE THE FLOODPLAIN BOUNDARY ADJUSTMENT SUBJECT TO THE TERMS AND CONDITIONS OUTLINED IN THE STAFF MEMORANDUM, AND AN OPPORTUNITY FOR ULINE AND JOCKEY TO MEET OVER THE COURSE OF THE NEXT WEEK AND RAISE ANY ISSUES WITH THE VILLAGE BOARD BECAUSE THEY ARE THE AUTHORITY THAT WILL ACTUALLY APPROVE THIS. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Tom Terwall:

Opposed? So ordered. Now we need a motion to approve the preliminary site and operational plans.

Jim Bandura:

So moved.

Judy Juliana:

Second.

Tom Terwall:

IT'S BEEN MOVED BY JIM BANDURA AND SECONDED BY JUDY JULIANA. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Tom Terwall:

Opposed? So ordered. Thank you. So, Jean, can Jockey get a copy of those revised plans?

Jean Werbie-Harris:

Certainly. In fact, we could have Adam Artz who is the engineer for Uline he could email them or get a paper copy sent overnight to Jockey or to their engineer. And then maybe they could set something up in the next day or so for them to go through any other concerns.

John Braig:

Just a comment. These are two very valued residents or participants in this community. And I think the attitude of the Commission and the staff is to protect their interest as much as possible. It seems like we're pushing something through, but I see some valuable safeguards at the end that if there is a problem the Board can arrest it and get us back on track. So rather than suggest that we're rushing this through I think we're trying to show a high level of cooperation.

Tom Terwall:

Good point, John.

6. NEW BUSINESS

B. Consider the request of Michael Risselada of Partners In Design Architects, agent for Ocenco Incorporated for approval of Site and Operational Plans for the construction of a 35,182 square foot addition and site improvements at their facility located at 10225 82nd Avenue in LakeView Corporate Park.

Jean Werbie-Harris:

Members of the Plan Commission and the audience, this is the request of Michael Risselada of Partners In Design Architects, agent for Ocenco Incorporated, for approval of Site and Operational Plans for the construction of a 35,182 square foot addition and site improvements at their facility located at 10225 82nd Avenue in LakeView Corporate Park.

The petitioner is requesting approval of a 35,182 square foot addition and associated site improvements including parking lot expansion and relocation of an existing oxygen tank and related equipment at the existing Ocenco Incorporated facility located at 10225 82nd Avenue in LakeView Corporate Park.

Ocenco Incorporated has designed, manufactured, warehoused, distributed, and serviced respiratory equipment in this facility since 1991. Ocenco, Incorporated manufactures three types of respiratory products at the site. Descriptive literature for each product type are provided with the application and they include:

1. Emergency Escape Breathing Devices which protects users from hazardous atmospheres during egress from confined spaces such as mines, tunnels and below-deck quarters of maritime vessels. The U.S. Navy is equipped exclusively with Ocenco EEBD's. These products carry the brand name OCENCO.
2. Self Contained Breathing Apparatus, SCBA, which are employed by first responders in firefighting and rescue diving operations. Several local fire departments, including Pleasant Prairie, are equipped with these SCBA devices. SCBA products carry the brand name INTERSPIRO.
3. Medical Oxygen products which are typically utilized by medical professionals and first responders to administer supplementary oxygen to persons in respiratory distress. The

Pleasant Prairie RecPlex is equipped with the type of medical oxygen unit or kit. This medical oxygen product is branded ERIE MEDICAL.

All operational activities of design, manufacture, sales, warehousing, distribution and service are conducted in their existing building of 39,741 square feet. The proposed addition of 35,182 square feet is intended to house expansion of the existing activities of light assembly, inspection, and warehousing. This replication of activities is necessitated by their continued sales growth in existing markets and their planned participation in emerging markets.

Their offices are open Monday thru Friday from 8:00 am to 5:00 pm. Personnel are active in the manufacturing and warehousing spaces Monday thru Friday from 6:00 am to 5:00 pm and Saturdays from 6:00 am to 1:00 pm. Freight deliveries are accepted from 6:00 am to 5:00 pm Monday thru Friday.

Currently there are 110 employees working weekdays at the existing building. After the proposed addition is populated they anticipate a maximum daily workforce of 143 employees. Automobile traffic is estimated to be 150 trips per day as many of our workers arrive via car pool. Increased traffic on 82nd Avenue will be mitigated by the proposed secondary eastern access to 80th Avenue.

Upon completion of the addition and site improvements the facility will have 144 parking spaces and six handicapped accessible parking spaces with a second access to 80th Avenue.

Pursuant to the Zoning Ordinance, a manufacturing facility requires a minimum of five spaces plus one space per employee on the largest shift. In addition, the required handicapped accessible parking spaces pursuant to the State Code are also required. The site does appear to be short four parking spaces if all 143 employees will be working on one shift. If a parking problem develops, additional on-site parking will need to be provided as no as no regular parking for the business will be permitted on the adjacent roadways.

Sales, design, and other administrative activities are currently housed in the westernmost section of the existing building. These activities are planned to continue in the existing building.

Inward receipt of materials and shipment of finished goods occur at the existing enclosed truck docks. Approximately, six semi-trailers and five parcel trucks visit the site daily. Their planned business growth will likely increase only the semi-trailer traffic to ten visits daily. The proposed entrance to 80th Avenue will relieve the impact of increased traffic to neighboring businesses.

In the existing building environmentally controlled rooms house the sub-assembly activities of ultrasonic parts washing, processing and packaging of carbon dioxide absorbent, assembly and testing of oxygen delivery systems and filling of oxygen cylinders. Equipment residing in these rooms consists of compressors, an HVAC system, ultrasonic parts cleaners tableting machine, vibratory screeners, dispensers, hand tools, and various table-top holding fixtures. Continuation and planned expansion of these sub-assembly activities will reside in the existing building.

From the environmentally controlled rooms, sub-assemblies are advanced to the light assembly areas of the shop floor where they are joined with miscellaneous plastic, metal, rubber, and fabric components to form finished goods breathing apparatus. These activities are conducted with hand tools, pneumatic holding fixtures and table-top ultrasonic joining devices. Finished goods are subjected to visual inspections, leak tests and pneumatic flow tests performed in the light

assembly areas. Replicate light assembly and inspection/test activities will be also be housed in the proposed addition.

Warehousing activities are limited to storage of product constituents and finished goods. Most finished goods are shipped within days of manufacture. Components, packaging, and finished goods are stored on metal shelves and pallet racks to a maximum height of 15 feet. Product components are principally composed of thermoplastics, rubbers, metals and synthetic fibers. Their warehousing activities will be expanded into the proposed addition.

Carbon dioxide absorbent lithium hydroxide is contained in the plastic lined fiber drums in which it is received from the supplier. Isopropyl alcohol and 1-1-1 trichloroethylene, the solvents used for ultrasonic parts leaning, are stored in the metal drums as received from the supplier. Gaseous oxygen is contained in secured metal cylinders conforming to U.S. DOT requirements.

In accordance with the previously issued Village of Pleasant Prairie Conditional Use Grant which was at that time 96-06, bulk liquid oxygen is currently stored in an exterior tank immediately east of the existing building and is proposed to be moved south of the proposed addition.

Three times weekly 16 yards of solid, non-hazardous waste is removed from their site by Advanced Disposal. Increased manufacturing activity will likely increase the frequency of waste removal to a maximum of five times per week.

Approximately 160 gallons of hazardous liquid waste is generated each year by their manufacturing activities. The liquid waste consists of depleted trichloroethylene and contaminated isopropyl alcohol. This waste material is manifested under their Wisconsin EPA Hazardous Waste Generator ID and is disposed by the Safety Kleen Corporation. Planned operations will likely increase our waste stream by 25 percent.

It is estimated that approximately 500 gallons of fresh water is consumed annually by their service operation when customers' breathing masks and harnesses are washed with detergent and water. Effluent from this operation is discharged directly to the sanitary waste service. No water is consumed in their manufacturing activities. The property owners will continue to engage local contractors such as Kenosha Grounds Care to maintain the integrity and appearance of their site.

I'd like to introduce representatives from either Ocenco or their consultants to see if they'd like to add any additional information regarding the proposed addition for the Ocenco operation.

Michael Risselada:

Good evening. I'm Michael Risselada. I'm with Partners in Design Architects, 600 52nd Street, Kenosha, Wisconsin.

Tom Terwall:

We've murdered your last name several times. Would you pronounce it again for us?

Michael Risselada:

Risselada just like it's spelled. We received your comments Friday afternoon, and we've done our first pass at them. And we feel there's no issues with compliance except with the exception of the vinyl slats requested for the chainlink fence around the oxygen tank. There's a problem with having combustibles that close to the oxygen tank. There's an excerpt in the code of NFPA regarding that.

John Braig:

Would aluminum slats substitute.

Michael Risselada:

Yes, sir.

Jean Werbie-Harris:

It should be vinyl coated, and then with the aluminum slats would be fine. I have not received any comments yet back from CenterPointe from Ed Harrington. They typically will review these additions in the Corporate Park and ask if there's any comments or any additions. One thing that they often ask for are some type of vinyl or aluminum slatting, and they also do typically ask for some type of additional landscaping. I just have not received anything from them yet.

Michael Risselada:

I spoke to him this afternoon and he's reviewing it now so we should be good.

Jean Werbie-Harris:

Okay, so we can address it and work with them as it may work for them.

Tom Terwall:

That's the only issue?

Michael Risselada:

That's the only one we see right now.

Tom Terwall:

Thank you very much. This is not a matter for public hearing so what's your --

Michael Serpe:

Move approval of site and operational plan.

Wayne Koessl:

Second.

Tom Terwall:

IT'S BEEN MOVED BY MICHAEL SERPE AND SECONDED BY WAYNE KOESSL TO APPROVE THE SITE AND OPERATIONAL PLAN AS SPECIFIED SUBJECT TO THE TERMS AND CONDITIONS OUTLINED IN THE STAFF MEMORANDUM. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Tom Terwall:

Opposed? So ordered. Jean, you wanted to take Item A under new business and Item C under old business together. But A first is that correct?

Jean Werbie-Harris:

I would like to talk about them at the same time but requesting whether or not the Plan Commission wanted to take up Item A first and then go into Item C. So we could take them as two separate items, but I just have one slide presentation. So what I'd like to do is have the Plan Commission discuss Item A first, but it's likely that we might have some intermingled discussion with both. But I would like to bring up Item A first and have discussion on that item first.

A. Consider Amendment #3 to the Settlement Agreement between the Village and VIDHYA Corp VIII, Inc. for the request of VIDHYA Corp. to modify the testing requirements and to follow the recommendation and approval of the Wisconsin Department of Natural Resource for testing at the BP Amoco gasoline station and convenience store located at 10477 120th Avenue.

I think what I might do is I might at this point since the finding of fact covers a lot of items with respect to the conditional use permit, what I might do at this point is I'm going to turn it over to our Village Attorney and our Village Engineer and have them discuss this request for this Amendment #3 to the settlement agreement. Again, we have a current settlement agreement and amendments #1 and 2 that is in place as part of our approval process with BP, and it is the petitioner that's requesting a modification of that settlement agreement. And so with that I'd like to introduce Matt Fineour our Village Engineer and Tim Geraghty our Village Attorney,

Matt Fineour:

What I'm going to do is just kind of give you a background a little bit. I'm going to go through the site plan to show you where the site is and how it's laid out as far as the treatment system and where things are at. And I'll give you a little bit of a background on the site or the project, the current site status just to give you a background on it. Then I'll go through the proposed settlement agreement #3 just to give you an idea of what's coming up.

This is a diagram of BP gas station here. This is 165 and 120th Avenue. This is the gas station here. The gas station has some gasoline underground storage tanks here and a diesel underground storage tank located here. There is a treatment system right now that treats the groundwater from the BP site. This well here, another well there and north well here pump groundwater and take it to this treatment system. This treatment system then discharges the water back out into the storm sewer system. The site has an onsite storm sewer system. This is a catch basin that comes along here, goes up here and discharges to the 165 ditch line up in here.

These other locations here are monitoring wells for the site, so there's a monitoring well located on Culver's right there, three monitoring wells on the Culver's site, a monitoring well here, and you can see monitoring wells throughout the site over there. Those monitoring wells they can take water samples out of and sample the groundwater at those locations. So that gives you kind of an idea when we talk about the BP site what's going on. As far as illicit discharges from the past we're talking about the storm sewer discharge coming out into the 165 ditch line at this location here.

As far as a little bit of a background on the site, in 2011 it was reported that petroleum was being discharged from the BP gas station's onsite storm sewer system to the 165 ditch line. The petroleum discharge is an illicit discharge that violates Village ordinances. Following several reports, observations, citations, the Village enters into a settlement agreement with VIDHYA Corp. on November 19, 2012 as a means to address the illicit discharges.

As the project progressed the settlement agreement was amended twice, first on April 1, 2013 and again on February 3, 2014 in order to modify requirements. The BP property has a prior record of contamination that was investigated from 2000 to 2004 with a DNR case closure in 2006. With the new releases in 2011 the WDNR was notified, and a new site case was opened. The property owner must meet DNR criteria and approval for the site case closure, however there is no specified time frame set for the WDNR to accomplish this. So it's really on a time frame by the property owner if they would like to get site closure from the DNR.

The settlement agreement contains remedial and reporting requirements to bring a property into compliance with Village ordinances. Without going into a great amount of detail here of each specific requirement, the actions taken to address illicit discharges include the following broad scope items: A site investigation to determine the source and extent of the contamination; remedial plans and actions to remove contaminated soils from the ditch line by the storm sewer discharge locations and prevent site contamination from further contributing to illicit discharges. There's also requirements for sampling inspections and reporting to monitor the sites and the remedial treatment system.

As far as the site status currently over the past several years VIDHYA and their consultants have taken actions in order to comply with the settlement agreement and have made progress in addressing illicit discharges. The following broad scope items have been completed to date: A treatment system has been designed and installed to extract and treat contaminated groundwater that contains petroleum products. The groundwater is an identified contributing source for the illicit discharge due to the high groundwater elevations and interaction with the existing storm sewer trenches. So as the groundwater raises it can enter the storm sewer at least as a potential.

The treatment system is currently operational with an ongoing sampling and monitoring requirements. When we're talking about sampling and monitoring on the site keep in mind

there's two. There's the treatment system itself that we're monitoring as far as what's coming into the treatment system and what's going out of the treatment system. There's also monitoring of those groundwater monitoring wells around the site. So as the site as a whole there's also sampling requirements for those monitoring wells.

Contaminated soils were removed from the State Highway 165 ditch line in 2014 as part of work that they did in 2014. And they continued working on a site investigation plan in 2014 with additional soil and groundwater investigations which is documented in a report prepared by their consultant. And it was submitted and reviewed by the DNR and the Village. Over the past year the Village is aware of one illicit discharge that was reported during a routine inspection on September 4, 2014 which a petroleum sheen was noticed coming from the storm sewer outfall. The Village noticed BP representatives of this illicit discharge.

BP's representatives have requested to modify the settlement agreement to permit quarterly sampling and reporting of the ground water treatment system. Settlement agreement #3 has been drafted to provide modifications to the sampling and provide requirements for the ongoing site investigation based on the findings of the site investigation report and the WDNR's review comments. The presented amendment is the amendment that would be recommended by the Village staff for approval or for the modifications.

As far as amendment number 3 goes, amendment number 3 talks about really two major components of the site. It talks about the site investigation plan which is really the overall plan for the site. And from the property owner's perspective it's a plan that goes through the DNR, they have to go through the DNR process in order to get site case closure for it. So they've got to meet DNR requirements and criteria to get site closure.

Part A of the settlement agreement #3 deals with the site investigation plan. I'm going to just read through some of these requirements. I'm not going to necessarily go through every single one of them, but I want to give you a sense of what this settlement agreement #3 contains. A comprehensive site investigation plan dated December 19, 2014 was prepared by Fehr Graham Engineering and Environmental. The report was reviewed by the DNR and Village. Comments from the DNR including a May 4, 2015 email from Shanna Laube-Anderson are included in Exhibit A and incorporated into this agreement.

VIDHYA based on the report findings and the DNR's technical review to complete the following: Provide quarterly monitoring of all nine site monitoring wells for laboratory analysis to show a stable or decreasing contamination trend. Samplings shall include obtaining groundwater level measurements from all existing monitoring wells for evaluation of groundwater flow and treatment system influence and collection of extraction while depth measurements. The DNR in its May 4, 2015 email authorized VIDHYA to proceed with its plan to collect quarterly groundwater samples until a stable or decreasing plume is established, however long that may take. So in this quarterly sampling we are sampling all these monitoring wells around the site to really view to see what that contamination is and get a trending over time. And as part of their site case closure they've got to show a stable or decreasing contamination trend in those monitoring wells.

Number 2, if the DNR indicates further definition of the extent of contamination is necessary, VIDHYA will provide a revised plan acceptable to the Village. Number 3, a summary report will be provided to the Village and its consultant for the quarterly site investigation monitoring

results. The report shall be submitted no later than 45 days after the sampling event. The Village and its consultant shall be provided copies of the laboratory analytical reports for each quarterly sampling event within ten business days of report issuance by laboratory. Submittal of such laboratory analysis report via email to the Village and consultant within ten business days period will meet this requirement.

Number 4, VIDHYA shall notify the Village and its consultant of their intent to submit for WDNR case closure for site investigation at least five business days prior to the request, and shall provide the Village and its consultant with a copy of the case closure request report concurrently with its submittal of such a report to the DNR. So when they are eventually ready for site closure they're to notify us and also submit copies to the Village.

Number 5, the supplemental site investigation plan requirement shall be considered by the Village to have been completed upon VIDHYA receiving DNR conditional closure for the site subject to continuing obligations for the site. So if they go through the process and get site closure from the DNR that site investigation plan is essentially complete.

The second part of the settlement agreement deals with the sampling and analytical testing of the treatment system. So that is actually the treatment system here that treats the groundwater from the three wells that it's pumping into or pumping from. They've requested on this treatment system -- right now they're testing on a monthly basis the influent and effluent from that treatment system. They've requested to reduce that to quarterly sampling.

So this is part B. The Village agrees that reduced quarterly testing of active treatment system effluent may be permitted based on its review of the current site conditions so long as the laboratory analytical results for the effluent samples remain below respective WPBES permit standards, or they have to meet water quality standards to that respect. Such reduced sampling shall require VIDHYA to continue to permit the Village to conduct monthly effluent samples per the terms of the settlement agreement, and the Village shall also be permitted to obtain routine water level information from existing and/or future extraction wells or any existing or future monitoring wells.

Number 2 is part of this treatment system testing. A quarterly report for the carbon treatment system operation shall be provided to the Village and its consultant within 45 days of each quarterly sampling event, and shall contain the following elements at a minimum. And then we go through and basically describe what those elements in that report shall be. Analytical test results for each sampling event and sampling point along with a copy of the signed discharge monitoring report for the periods covering the report; summary of the gallons treated and discharged on a monthly basis based on the actual readings obtained during treatment system inspection events; a summary of the water level recordings of the extraction wells; and any existing monitoring well obtained during treatment system inspection events.

Part D is a summary of any high level alarm activations or any incidents where the water level is less than eight feet below ground elevation. So here part of the original settlement agreement was to, or an amendment to the settlement agreement was to keep the groundwater elevations at these extraction levels at least eight feet below ground elevation. And that was to help prevent contamination which is located a little bit higher than eight feet from entering the ground water. Or getting the water elevation so high that we could have that expectation of the contaminated

groundwater entering the storm sewer system or getting illicit discharge from a high groundwater elevation.

VIDHYA shall immediately notify the Village within 24 hours of any incident where it is discovered that water level is less than eight feet below ground elevation and take immediate action to rectify such a condition. VIDHYA shall ensure that proper and sufficient training is provided to its staff in order to allow its staff to understand and implement proper response procedures in conjunction with any future treatment system alarm notification. Such training shall be conducted every three months or more in order to ensure staff is adequately trained. In the event that staff does not demonstrate sufficient understanding of the system alarms, the Village may require VIDHYA to install a remote notification system that shall serve to immediately provide VIDHYA consultants and the Village with notice that the treatment system alarm has been activated.

We also request a summary of the zeolite and carbon filter media including monitoring method life expectancy of each filter percent utilized and expect the change out dates. Those are the media filters that are in the treatment system that treat the groundwater in the treatment room. A summary of the treatment system operation system conditions and site inspections performed during and the reporting period for each of the listed items below. Inspections shall be completed by a qualified individual for the task identified. So in this section we're specifying essentially inspections of the site by either a professional or somebody that's qualified to do it to make sure that their system is operational, that their site is managed in a way to help prevent illicit discharges.

Inspection of the treatment system and measurement of the water level recordings of the extraction wells no less than twice per month by an environmental professional with the experience and knowledge of operating and maintaining the system and obtaining water level recordings. If free product is observed within the extraction wells the Village and the DNR shall be notified of such a discovery.

Number 2, inspection of the ditch line located at the treatment system discharge on a weekly basis and after each rain even of half an inch or more in 24 hours. The quarterly report shall confirm that such inspections were completed and recorded in an inspection log. Copies of the required inspection log shall be provided to the Village within five business days if requested.

Number 3, inspection of the storm sewer catch basin with an oil absorbent boom no less than twice per month. The condition and change out dates of the oil absorbent boom and storm water baffle absorbent shall be recorded and reported to the Village. So they do have a catch basin onsite that has an oil absorbent boom in it that needs to be inspected.

The storm sewer flow rate and measured water level elevations from extraction wells shall be provided to the Village and its consultant on a monthly basis. And VIDHYA shall be responsible for performing routine monitoring of its site groundwater and surface water conditions as necessary to prevent illicit discharges to the ditch.

Those are I think the main points of this settlement agreement number 3 that is brought forth. If there's any questions on this or the site you can ask myself. There's also representatives from BP here. Also our environmental consultant expert is also here.

Tom Terwall:

Are you currently receiving the reports as required?

Matt Fineour:

The monthly reports that they're doing we are receiving, yes.

Tom Terwall:

And as required in a timely fashion?

Matt Fineour:

They have been reporting those in a timely fashion.

Tom Terwall:

Has there been any alarms?

Matt Fineour:

Yes, there has been alarms.

Tom Terwall:

And they've been reported on time as well?

Matt Fineour:

The alarms that they've had over the past year I would say the Village seems to have had caught those from our inspections.

Tom Terwall:

But they haven't been reporting them to you?

Matt Fineour:

They have not reported those to us.

Tom Terwall:

And yet that's a requirement, is it not?

Matt Fineour:

That is a requirement, yes it is.

Tom Terwall:

Okay, thank you. Did you want to say something?

Tim Geraghty:

Yes, Mr. Chairman. I'm Tim Geraghty, the Attorney for the Village for this matter. I just wanted to mention a couple things. One, to emphasize that the conditional use permit renewal is not tied to amendment number 3. I believe Village staff has recommended that there be a renewal of the conditional use permit for one year, and that is a recommendation that is regardless of whether any amendment number 3 is entered.

As representatives of VIDHYA may have mentioned there are some differences of opinion regarding amendment number 3, and so we have not been able to bring you at this time an amendment number 3 that's agreed to by all parties. So I'm not sure if there are still objections that there's really going to be an amendment to approve tonight anyway. We have some differences in the language of the amendment and also some differences on whether the Village can continue independent sampling of certain items.

Basically the original agreement provided the Village and their experts could do their own testing to make sure that everything is being done. And I believe VIDHYA amendment number 3 would like to propose that that no longer take place and that mostly the Village just be provided with copies of theirs. And so I just wanted to emphasize those two points as you move forward in deliberating.

Tom Terwall:

Thanks, Tim. Jean, anything further from you before I open it up to the public?

Jean Werbie-Harris:

No.

Tom Terwall:

This is a matter for public hearing. Is there anybody else? Yes, sir, Mr. McTernan.

Michael McTernan:

Michael McTernan, 6633 Green Bay Road, Kenosha, Wisconsin. I am here on behalf of this item. And Mr. Fineour has gone over a pretty good summary of what we're looking to present here tonight. I also have Don Gallo, an attorney and environmental expert along with our environmentalist here to go over some details of what we're bringing before you.

The two fundamental issues that are presented before you is dealing with the constant costs of the continuation of having the Village monthly test the site along with the monthly cost of the client

testing the site but for one event where there was sheen appeared in the ditch that resulted from the heavy rainfall that was immediately resolved.

But I really want to take you back as I know the history of the site was explained, but it's critical to understand that the contamination that's on this site has nothing to do with BP. My client had nothing to do with the contamination that's here. He purchased the property that was contaminated by BP Corporate when they had two significant environmental problems on the site where gasoline leaked and contaminated the property.

In that context the Village of Pleasant Prairie approved that they allow to leave a significant amount of contaminated soil on the site and they rebuilt the station. Years went by. My client purchased the property. Many years went by and the sheen appeared in the -- excuse me.

Jean Werbie-Harris:

Can you repeat what you just said. That the Village approved you to rebuild on a contaminated site?

Michael McTernan:

The Village of Pleasant Prairie approved the remediation of the site in allowing the entire site to be rebuilt with contamination on the property. And it stayed there. It all wasn't removed. That's what the fingerprint analysis that we did is there is old, old contamination on this property. And I'll have Don Gallo re-introduce that information that there's contaminated soil here that is many, many, many, many years old that is not from my client.

Nonetheless, we have spent, my client well over a million dollars trying to figure out and solve this problem permanently. The thing that is tugging at my client and is causing them incredible hardship is the constant testing of the site that for 24 straight months has shown that the system is completely functioning properly. We have no affluent testings that have shown up that there's been any issues. We formally went before the DNR and asked them is it a problem that we can change this back and hold this to quarterly testing. They agree. The Village agrees.

The thing that we are looking for that we don't agree on the amendment is to have the Village every month go out there and test the site with the caveat they can go out there very day and test the site if they'd like, we just don't want to get billed for it. Because what's happening is as you can see by the information that's presented to you in one year alone VIDHYA has been presented with invoices almost of \$20,000 which are directly related to duplicate testing and engineers that are onsite looking at what's going on on the property.

And we have no problem with the continued quarterly testing by our engineers, the continued reporting to the Village for everything that's going on on the site. We just need to cut off not only the duplicate testing, we're asking for four tests. The Village is asking for 16 every single month plus us to do it quarterly. Now, we have received nothing from the Village in 24 straight months that a test that the Village has shown there's a problem. Matter of fact, the tests that we have presented and presented to the Village say the system is fully functioning and working. Yet it's killing my client financially.

I hope you can appreciate the \$20,000 that the Village is sending my client a bill every year that is about what it costs my client to do their own testing and have their own environmental experts onsite and have their own labs conducted and have them submitted to the Village. It is completely duplicative.

The second piece that we don't agree within the settlement agreement that I know Mr. Geraghty has presented to us is dealing with the item on Item C of the settlement agreement under paragraph 3. This is the Village of Pleasant Prairie, and we're coming to you for relief under a settlement agreement to ask for a modification. And all we're saying is can we obtain some modification to this relief. Tied to that is C, that VIDHYA needs to waive all of its rights if the Village has somehow violated some breach of its agreement with us, and we have to agree that we have to waive those. I mean to some extent that's almost coercive. That if we may have done something wrong if you want us to agree to change it you've got to agree that you can't do anything about anything that we've done in the past, that it's improper. We're not asking you to release us of anything. If we've done something wrong we'll stand up here and take it and take it. But if the Village has done something wrong why should we be required to waive it? Why is that fair.

All we're asking for as the engineer has said the request we're making is appropriate. The DNR agrees it's appropriate to reduce it to quarterly testing. We'd love the fact to have this only test quarterly and only done once, not 16 times. And we don't feel it's fair and appropriate to have the Village sit there and say, well, if we agree to this you've got to waive all your rights to bring anything forward if anything has been done improperly. I understand if there was a settlement agreement, a mutual release and there was claims brought back and forth that we're looking for relief and parties do that all the time as lawyers. The quid pro quo of paying you something or getting you released from some claim that's presented is [inaudible] release language like this. I don't believe this is appropriate. I think that should not be a part of what we're asking for.

We're not asking for anything different. Something comes up in the Village and they need to change the deal and there's some problem that arises as we've agreed to we'll agree to it. We'll be bound by it. But we just think those two elements are just too much. And Mr. Gallo is going to talk. One of the areas that I know Mr. Gallo has been involved because there are issues like this that the DNR gets involved with, the communities want to test. And communities test all the time on projects where there's an issue.

But in other communities where they do test the community bears the burden and the cost and the obligation. They can test all they want. And the only time it falls on the property owner's shoulders is if there's a problem. And we'd like that to be in the agreement instead. That if the Village wants to test they can test. If Mr. Burns wants to go out there and spend weeks at a time investigating the site go ahead. But just don't bill us. If you find a problem then we'll address it and we'll be obligated to pay it. But I think it's unfair that now for two straight years we have done an enormous amount of work here, showed all the things that we're willing to do to work with the Village to have this done.

We have done an enormous amount of progress in this site, and we just need to stop the costs because they're just outrageous. And they haven't shown one iota that we've done anything wrong. The one item happened in September that we can see there was a sheen in the ditch on a huge, heavy rainfall. That's it. The rest have been compliant with the agreement that we've presented before you. Obviously we're here today, we're up against a deadline. Our conditional

use permit expires. We're fine to let this continue another year. Show you again in another year we'll be back. We're not going anywhere. We're not saying let them do what they want. They have another year where they have to comply, and we'll be back in another year, and we'd love to be able to continue to show you that we're doing what we've said we'd do, improve this condition on the site, address the groundwater contamination that's there and make certain it's handled appropriately with the experts we have. We just need some more relief. Mr. Gallo is going to speak. Thank you.

Don Gallo:

Don Gallo, I'm with the law firm of Whyte Hirschboeck in Milwaukee. I live in the Town Erin, 1386 Highway 83. I don't know much more to add than Mike. He did a very nice job. But my experience, and I have experience all over the state and other states, is normally when you're doing compliance monitoring the community pays the costs unless there's a violation. And then that violation and those costs of sampling and analysis are passed to the violator until compliance is demonstrated. And that's all we're asking for here.

The one thing, Mike is very generous here, we have experienced a lot of delays with the Village. And I can't not pass this opportunity to explain that. Because there was a tremendous problem at that station. And we essentially put in a very robust system. It has functioned fantastically. It's been compliant for 24 straight months. That treatment system is working like a watch. This is a complex problem. The conceptual model that we developed on that system captured the waste water or the groundwater and treat it has been working extremely well. I'm very proud of that.

We have one incident, and you have to understand the conceptual model. As groundwater rises it reactivates the contamination, and it's captured in these sumps. But when we first started this project and we pulled those sumps and replaced the sumps in the tank banks it was extremely contaminated. We pulled 16,000 gallons of very old, very degraded contamination out of those sumps. And then the system dramatically started to perform. The first month, April I think it was 2013 was a tough month because of that very contaminated material. That was pulled out and hauled separately in a tank truck. From then on the system has worked very well.

So I think you have to look at the performance that this system has done. I would ask you to be considerate of the cost that this individual has incurred to operate this system. And I did fingerprint analysis, forensic sampling analysis on all the contamination. It's old gas, and it's well documented it was long before VIDHYA owned that station. So he's been cleaning it up. I'm more than happy to answer any questions if you have any.

Tom Terwall:

I'm just going to open the public hearing. But you'll be available to answer questions, correct?

Don Gallo:

Sure, thank you.

Tom Terwall:

Thank you. Jean?

Jean Werbie-Harris:

Just to clarify, we're actually entertaining comments from everyone, but we didn't actually open the hearing for the conditional use. But if there's anybody else that would like to speak on this item I believe that you were entertaining comments.

Tom Terwall:

Now is your opportunity. Anybody else wishing to speak?

Kendrick Ebbott:

My name is Kendrick Ebbott. I'm with Fehr Graham. Address is 1237 Pilgrim Road, in Plymouth, Wisconsin. I'm a professional geologist. I've been a consultant in Wisconsin since 1987 working for petroleum contaminated sites and a variety of other contaminated type projects just like this one. I think the case has been described quite accurately by Matt and others. The big issue is we've had 24 straight months of compliance with the DNR standards. And the DNR has requirements that make us test, report, document and do things properly.

There's not a need to have the Village do the same thing. Or if I were redrafting it I would say the Village would have the right to do it, but if they were so curious about it perhaps they could pay the bill for doing that. If they still wanted to retain the ability to sample I think that's fair. But I just don't see why they need to be billing the client so much for so long.

As far as why we need a third settlement agreement just things change. You design and you start a project, and as you get into it the conditions change. The need for sampling and frequency changes. So that's why we're coming up to a third settlement agreement instead of sticking with the second one. It's just not necessary to do what's in the second one anymore, the third one is more appropriate and reflects what the conditions are now. I'm willing to answer any questions on the technical aspects if you have anything.

Tom Terwall:

Thank you. Anybody else wishing to speak? Anybody else? Yes, sir?

D.J. Burns:

D.J. Burns, N105 W7585 Chatham Street up in Cedarburg, Wisconsin. I am the President and Project Director of Drake Environmental Consulting Group. We act as the Village's consultant in this matter. A number of points have been made by a number of people here. But I think we should really refocus back to the original settlement agreement and what it really intended to do.

The Village staff worked very hard with the [inaudible] representatives, its attorneys and its environmental consultants back in 2012 to come up with an original settlement agreement where most of the terms were laid out very clearly as to milestones for completion of certain activities, what the testing requirements might be, what the requirements for additional remedial investigation could be over on the adjoining properties. And we came before the Plan

Commission and also the Village Board on a number of occasions and explained the rationale and the justification for certain things that were going on.

Without going into a great amount of detail, in the original settlement agreement I believe there are provisions contained within their parameters and guidelines that we have set for the effective treatment, what we would consider an effective treatment system. One of the first things that we wanted to do was prevent an future illicit discharges to that ditch. That is where that petroleum sheen or petroleum contamination, whether it's from a new release that they had caused, or an old release that was caused by somebody else, but by virtue of Chapter 292 of the spill statutes in Wisconsin VIDHYA has a responsibility for that contamination whether he caused it or that corporate entity caused it or not by virtue of ownership of the property.

So we actually went out and said what might prevent that? What could work to solve this issue? VIDHYA environmental consultant came up with a conceptual treatment system. It was brought before the Village staff, it was implemented, and that treatment system was designed to prevent these ongoing discharges into that north ditch. Those discharges occurred as recently as September 14, 2014. VIDHYA's environmental consultants and their attorneys now are saying that they've had I guess no effluent discharges above State standards. But clearly as some photographs show, and they have the photographs, there are concerns about this ditch line and the petroleum sheening that's occurring there.

Again, as we kind of move back from that original settlement agreement it set the tone for what was required and what was expected of VIDHYA. The subsequent settlement agreement, the Village in my opinion, have been very generous in relaxing the testing requirements. I believe amendment 1 considerably reduced those agreements, those testing requirements that VIDHYA had originally agreed to in the first settlement agreement, in the original agreement. I believe in settlement agreement number 2 the testing requirements were even further reduced.

So for anyone to paint the picture that says the Village has been onerous in their demands, if you go back to the original settlement agreement and the cost that all of the attorneys knew were going to be incurred, I don't understand that argument. It was on its face very clear as to what the expectations and obligations were for the testing.

That takes care of the analytical portion of this. They also had a duty throughout this contract period starting I think with amendment number 1 to keep the groundwater elevation at that site at a level below 8 feet below ground surface. On numerous occasions Village staff have been out there, as well as Drake staff, only to discover that that groundwater elevation is, in fact, above that 8 foot elevation. The reason that that's important is as everyone here I guess generally agreed that there was contamination trapped in the soil. And as you allow groundwater to rise up above the 8 foot level mark that causes a condition whereby the release to the ditch is possible.

And that's precisely why we stood in front of the Board many years ago, and Attorney Don Gallo said this remediation is going to be like extracting petroleum contamination from a sponge. And this is going to take a long time. And, again, when we go back to the original agreement it stated if we discover that some of these parameters aren't achieved or there's violations present there would be a need for additional testing to include monthly testing. So Drake in working with the prior Village Engineer Mike Spence over time we have agreed to relax the testing requirements.

But the oversight Drake still feels is considered necessary as a result of the fact that there are no alarm systems that notify the Village or VIDHYA immediately if that groundwater exceeds 8 feet. That's not a good condition. That was requested in the past, but they explained that that was impossible for them to achieve. It's actually a fairly common practice in groundwater remediation technology. You would just install a high level flow switch, and it would automatically notify somebody that, hey, there's a problem out there much like your sump systems, your sump pump in your home. There's a flow that's designed to turn the pump on. That's as simple of a remedy as could have been an install.

So I guess when we look at this as a whole the Village came before -- or we came before the Village and produced certain recommendations and testing requirements. They were agreed to on a number of occasions by VIDHYA. Now it doesn't seem as if they feel that those were reasonable. If they weren't reasonable why did they agree to them in the first place. That causes me to question what's really happening here.

As far as any assertions as to how the DNR feels about this project the Village Engineer and the Village Attorney and myself we actually spoke with the DNR on a recent occasion. They are kind of taking a wait and see approach. Let's see what these new results bring. Let's see what the testing brings along and let's go from there. So from that standpoint I would continue to have the Village in conjunction with Drake we'll continue to look at the new conditions out there. We'll continue to modify testing requirements as they seem to be reasonably supported. And I think that's the best direction for the Village to continue taking. Does anybody have any questions of me?

Tom Terwall:

Not yet, but thank you very much. Anybody else before I open it to Commissioners and staff. Jean, anything you wanted to add?

Mike Pollocoff:

Just a couple comments. One is that Attorney McTernan said the Village approved the construction of the gas station on a known contaminated site. The Village didn't have any knowledge of the settlement between BP Corporate and the DNR on that site. That became obvious as we were going through the process of determining what was happening with the contamination once it occurred. So while we did give out a building permit, at that time DNR did not share that settlement with the Village of Pleasant Prairie. It was recorded at the County Courthouse and that's where it was.

And, secondly, as far as the \$20,000 number we've spent in the period in question \$10,103 with Drake as our consultant. We've spent \$3,186 of engineering time on the project. Sanitary sewer discharge which is everybody's sewer bill, they're no different than anybody else, their sewer bill over that time was \$1,486. Their weights and measurements which is a fee that the State bills us and we bill them for the accuracy of the gas pumps is \$160. Community development review fees were \$637. And the Village spent \$2,500 on legal fees going through the request and renewals for modifications to the agreement. All those bills were sent. None of the bills were paid. Village taxpayers paid those costs along the way. And per ordinance there's an interest charge for those that accrues over time.

I do want to concur with our consultant's comments that at the time the contamination was discovered it wasn't a matter of we discovered it and VIDHYA came right to the table and worked on doing it. We went months trying to get this resolved. And at the time DNR wasn't involved on it. We went months trying to get DNR involved on this. So I don't want anybody to think that this came, it happened, we found it, and everybody immediately came to the table to get this resolved. This went on for months and months.

And one of the reasons that the settlement agreement existed, if you think back the Plan Commission was considering revoking or not renewing the conditional use permit for the site. VIDHYA through their attorney said we'll come up with a settlement agreement, we'll get this place cleaned up, and we'll perform. And you can monitor us, you can sample us, we'll show that we're in compliance. And I think the Village Plan Commission and Board said okay, if you really in fact do this we'll go through it, and we'll verify to the extent that happens. And I think the Village has tried to work with what we perceive to be a good effort. We do know that the sampling system that was put in appeared to be doing the job. I don't think we withheld any permits.

I know that there was some difficult times when they started where contractors hadn't come in to get permits because they hadn't either received payment or approval from VIDHYA. There were things that happened we can only give a permit out when somebody is going to come in and pay for the work to get the permit done. So from the very beginning we've had a difficult time getting payment for the services that are above and beyond what the Village had to provide to a business in this community. And I think our ongoing concern is that we've had problems where there's specific -- it's clearly obvious that what's happening out there isn't being monitored by the station ownership. And we can share that if we need to. But that's where we're at.

So I think from the standpoint I think Attorney Geraghty explained it we do have a current agreement. If we don't come to an agreement tonight we still have an agreement in place. If the Village Plan Commission doesn't want to support the agreement or amendment number 3 we're still going to be on amendment number 2.

Michael Serpe:

Hearing all of this, Mike, there's one thing that's sticking with me, and one person or business that's been very silent and patient about this was Culver's. Do we know what's going on with that contamination, if any, in front of that business?

Mike Pollocoff:

Matt, do you want to address that?

Matt Fineour:

As far as the site investigation went we have three monitoring wells, or they have actually three monitoring wells on the Culver's property here. Two of those monitoring wells show no contamination, look good. This monitoring well here, M102 showed some contamination level in it. In the report from December which was submitted to the DNR that contamination level was below what they call an enforcement standard. So it was below, if you will, a red light if you're looking at a traffic light, but it was above a preventative action limit, so it was kind of like a

yellow light if you will. So what the approach from the DNR is as they monitor this over time the results of this is going to flush out one way or the other.

Michael Serpe:

A question for you, Matt. If the groundwater that we've talked about rises will that cause a contamination to Culver's?

Matt Fineour:

It could depending on -- my opinion it could. If it rises and resuspends contamination in the groundwater flow obviously going to Culver's I would suspect it could.

Michael Serpe:

And that groundwater has obviously risen and unchecked quite a few times?

Matt Fineour:

If that groundwater does rise it can resuspend solids, so yes. Anytime an alarm goes off here it's something that they need to be right on top of their system and that has occurred, yes.

Michael Serpe:

And that's happened?

Wayne Koessl:

Matt, before you sit down, I was out there Saturday and kind of looked at the site. And on the ditch on the south side of 165 there's a drainage coming off the BP property that goes into that ditch. And it looks like they have a flotation device there trying to stop it. What's the purpose of that, and do you know how much water comes out of that discharge every week?

Matt Fineour:

The first question I believe -- in the ditch line they have a boom, if you will. It's kind of like a sock that crosses the ditch. And that's there in case you have an illicit discharge. In case some contaminates gets in there what that's supposed to do is kind of help absorb it. It's kind of like an absorption sock if you will. How well that functions I couldn't tell you, but that's what that sock is. As far as the amount of water coming off that treatment system I could look in reports. I don't know the number of gallons per month that's coming off that treatment system. But it constantly is flowing through that ditch. So if you look at that ditch it's constantly wet.

Wayne Koessl:

And that flows east toward Culver's and then further on towards the Des Plaines River?

Matt Fineour:

Correct.

Wayne Koessler:

I was out there, and it looks like a collar that they use to absorb oil. And I don't think it's doing its job. Does that water ever get tested for contamination?

Matt Fineour:

The water coming out of that discharge I don't believe gets tested. One other thing I'd like to point out as far as the sampling and the cost and everything, what I'd like to just point out is in the original settlement agreement I'll just read you what the original settlement agreement has. They were performing monthly testing, now they're requesting quarterly testing. This is what the original agreement says. Following at least two years of monthly influent and effluent sampling a change to quarterly sampling may be approved by the Village at its sole discretion if all the preceding monthly testing results showed no detection levels contamination above the laboratory method or above the PAS. The Village may at owner's expense collect influent and/or effluent samples for analysis of VOCs and other PVOCs at least up to once per month during the quarterly sampling event.

What I'd like to point out is I believe this settlement agreement number 3 is a fair agreement. They started monthly sampling as part of the February amendment number 2. So that was February 2014 is when they requested to go to monthly sampling. In our original agreement they are required to sample monthly for two years which would come up to February 2016. So in their request here we are trying to work with them in reducing their costs as far as what they would like to see. As far as the Village's oversight really when I came into this project I had to look at this and evaluate it myself as to what's going on. And ultimately we would like to see less involvement from the Village and more oversight and management from them.

Just from my observations and everything the Village oversight and inspections and monitoring are necessary just due to the performance of the management of the site and the overall with what's really happening out there. We're still having to go out there and really see what's happening. When reports come back we want to make sure that those reports are accurate. And sometimes we end up having to question some of that. So as those things proceed if they want to see less Village involvement then it really comes down to them really taking ownership and everything of the project. And as that occurs in the future then I think the Village would be more likely to back off on some of how many times we go out onsite.

And the original settlement agreement doesn't say that we have to go out there monthly. It says we have the right and we do have the right to bill them. So that could be worked out as the future goes by. At this point I would not recommend changing that term in the original settlement agreement. That's just my opinion.

Wayne Koessler:

I feel that the monthly check the Village does is like a check and balance against the other data that we receive. And I think I don't know when there's ever going to be a closure with this project because it's been going on and on and on forever, and it doesn't seem to get any better.

And the ones that suffer are the tenants of the park to the east that have to put up with the drainage coming by their property, and they don't what kind of contamination may be in there. Maybe if this continues and there's nothing that that drainage should be tested on that ditch once in a while also to see what's in it. Or they should put a tile all the way to the Des Plaines River and bury it, and it would look a lot better along 165, and the neighbors won't have to worry about it. Thank you.

Don Gallo:

I just want to address a number of issues that came up because any original agreement we agreed that was fair. DJ is right. And we really walked into a very difficult and complex situation. There were several consultants who failed on this before we were involved. And I think the Plan Commission, and not intending to speak for yourself, but you didn't have a way out because if you denied the conditional use there was no way to pay for the cleanup and it would be abandoned. And it was a disaster. So we're in effect in partnership on this thing. And all we're asking is for some financial relief with regard to the frequency of sampling and to lighten up. And I appreciate what Matt is saying because he did look at it independently. So he has a fresh look at this site.

With regard to Culver's we did extensive fingerprint analysis, and all of that contamination that's on the Culver's property predated the operation of VIDHYA, so that's really BUP's responsibility. And Culver's has a right to sue them. VIDHYA doesn't have the right because they agreed when they purchased to waive that right. But Culver's has the right to do that. But Culver's really doesn't have a case because it's below the enforcement standards. Now, it could go higher but I don't think it will because we're intercepting. We've captured that groundwater flow, and to the extent that we still continue to operate this aggressively then it's not going to go onto Culver's.

With regard to the ditch on Culver's I really don't have any sympathy for them because I approached them several times and said we would design -- I said your ditch is going to be wet. It's going to be wet because there's discharge. And if you just want to mow this you're going to have a very difficult time, and it's going to be difficult to get a mower through here. So we will design for you a high quality wetland in that ditch which would have been ideal. Because wetlands polish water. They didn't want that. They wanted a mowed ditch so it is what it is.

With regard to sampling in that ditch it's a great idea. The problem is, and we have sampled upstream of the ditch, uphill of the gas station and this contamination coming onto the ditch. That's roadway oil. And so it doesn't necessarily prove anything to sample in that ditch. We're happy to do that. The best thing is that we're putting water in there that is clean. And with regard to the groundwater rising that definitely releases contamination. And with respect to how long this is going to operate easily 15 or 20 years. That's experience with this kind of soil. When DJ said that I talked about it will release like soap out of a sponge that's exactly what this is analogous to. So I just wanted to respond.

Tom Terwall:

Thank you.

Wayne Koessl:

Before you leave, sir, on the sampling I thought if it was done it would be right at that discharge coming out of that drain instead of into the ditch. Because I know there could be other contamination coming in.

Don Gallo:

Yeah, you're right. I think that's a good place to sample.

Wayne Koessl:

And also I think my time on this project, the Village and the Plan Commission I think has been a real good partner in trying to get this resolved.

Don Gallo:

No question. Yeah, we would agree with that. What we're really asking for is your continued cooperation because this is a tough project. And one party is paying for it right out of their pocket. There's no insurance, there's no State funds. The million dollars came right out of their pocket.

Two things that speak to the discharge at the ditch we purposely planted that sump right at that location because the groundwater contamination was not only going through the pipe, but it was in the gravel bedding. So that sump was intended to intercept all the groundwater in that area. We also put a wiper, kind of a barrier, in the catch basin so catch any oil and grease that would be floating in that pipe, and that gets changed regularly.

The other thing to point out is that Fehr Graham and North Shore Environmental also inspect that site monthly on behalf of VIDHYA. It is a problem because the staff at the convenience store they're trained but they're not that well trained in terms of experienced in what to look for. So that's why we have North Shore and Fehr Graham inspecting monthly as well. Thank you.

Tom Terwall:

Thank you.

D.J. Burns:

D.J. Burns again. Maybe two points of clarification. As Don was just mentioning on that north end of the site they did actually during the installation of the effluent pipe, the discharge to the ditch from the treatment system, they also installed a clay cap which prevents water from migrating off the site. That's an aid in prevention there. I think Don just forget to mention that. So that is another step that was taken in that process. But you should know that that's present there.

With regard to the statement, though, that all of the testing so far has been below the enforcement standard for groundwater, didn't the recent test come back with benzene at 13 parts per million?

[Inaudible]

D.J. Burns:

Okay, so at the Culver's property just so everybody is crystal clear on this, the original settlement agreement did talk about enforcement standard exceedences. These are as Matt pointed out before the red light saying you've got a problem here. I don't want anybody to think last summer there were no red lights on the three wells along the Culver's property. In their most recent testing as of April 29, 2015 one of those three wells has a red light.

Tom Terwall:

And so then what happened? What action is taken as a result of the red light?

D.J. Burns:

I guess one of the main criteria that the DNR evaluates these sites with is whether or not the groundwater plume, that is the impact at groundwater beneath the site, whether that plume is stable, that is it's not gaining in size, or that through processes of natural degradation, biodegradation, petroleum typically breaks down in the natural environment over time through various processes.

So what the DNR really likes to see is a groundwater contaminant plume. If you picture it like an oval platter they would like to see that shrinking in on itself or not traveling, say, to the east towards Lake Michigan. In this particular case you have the possibility of data that shows groundwater, contaminated groundwater may be migrating. We all tend to agree that groundwater flow direction is east towards Lake Michigan towards the Culver's property. You may have an early warning sign that that plume is not stable or isolated only to the BP property. That it could be migrating.

More data should be collected. And, again, that's why as consultants looking at these projects we appreciate when you can collect sufficient data points maybe on a monthly basis or quarterly, whatever the DNR might require. But, again, that is a very big change in circumstances from last year when you could say that this didn't appear to be going offsite to now I believe is it the order of magnitude greater than the earlier result?

[Inaudible]

D.J. Burns:

So you're going from four parts per billion which was below the enforcement standard before. The enforcement standard for benzene I believe is five parts per billion. Now you've got a 12.8 result.

Tom Terwall:

Thank you. Yes, sir?

Kendrick Ebbott:

Ken Ebbott with Fehr Graham again. As far as the levels on the Culver's property, as we've been talking groundwater is fluctuating at the site. It will go up and it will go down. And as you can imagine petroleum being a light substance is in the shallow part of the water table from this old BP spill from years ago. As it fluctuates with the water levels when spring comes and water hits what used to be saturated you're going to resuspend the petroleum. And we did a statistical analysis from the water from the Culver's property, and you can link it directly to the elevation of the water in that well. So it looks clearly like this is an incident where because the water is a little higher the concentration is a little higher. And when the water is a little lower the concentration is a little lower.

So as the DNR agreed we're going to do the quarterly sampling. Let's figure out the trends over time. If it's stable or decreasing then we should be okay. If it continues to go up then we may have to do something else, something further. And as far as the flow rate on the system it's doing about a gallon a minute, on average about 1,000, 1,500 a day. Which your basic garden hose fills a five gallon bucket in a minute, that's five gallons a minute. So it's not putting out a whole lot of water to the ditch every day. It's a pretty small flow rate.

Bill Stoebig:

Any idea what it was the previous year?

Kendrick Ebbott:

Yeah, it's been pretty stable. We've got a chart of that if you wanted. But we had high flows at the very beginning because we were treating all this water that we accumulated from when the system was constructed and we had that real contaminated water. Ever since then it's been pretty stable from 1,000 to 2,000, maybe 3,000 gallons per day. So it's been a pretty stable system. It's pretty tight clay out there.

Bill Stoebig:

The level of the benzene, was it four the year before or what it in the 12, 13 range?

Kendrick Ebbott:

No, no, the wells have only been sampled twice.

Bill Stoebig:

Okay, so there isn't a year for samples?

Kendrick Ebbott:

Right. We've got two events, and we're going to go forward with quarterly now, so we'll get trends going forward.

Tom Terwall:

Mike?

Michael Serpe:

Not for you, thanks. Just a question. Mr. McTernan mentioned about 16 tests a year, that's 12 monthly tests and four quarterly tests. What's the difference between a quarter test and a monthly test?

Matt Fineour:

The difference as far as what they sample?

Michael Serpe:

Is a test of a quarterly test different than a monthly test.

Matt Fineour:

It's the same test except one is done every month and one is done every quarter.

John Braig:

Are you questioning McTernan's math?

Tom Terwall:

He's a lawyer, not a mathematician. Yes, sir?

Matt Dahlem:

Matt Dahlem, Fehr Graham. Another thing that kind of got bypassed here is to allude on D.J.'s point and the previous Amoco contamination is that, yeah, the groundwater flow, the natural groundwater flow is to the east. The difference is right now this is not natural groundwater flow. You have basically a bathtub. Does this remove?

Tom Terwall:

Yeah.

Matt Dahlem:

So we have natural groundwater flow going to the east. The old Amoco contaminant probably floated right on top of it into the Culver's property. Now we have three sumps going causing all the groundwater to get sucked into its own property. So contamination here we, again, only have two rounds of it, but it could be some fringe stuff from here, but it could also be the re-migration of the Amoco contamination getting sucked back into the sumps and getting treated.

Tom Terwall:

Thank you. Yes, sir.

D.J. Burns:

One last point. As far as the remediation system and its efficacy in the original agreement that always contemplated that maybe on the first attempt you wouldn't get everything perfect. And so there are provisions in the original settlement agreement that if there is something over on Culver's an additional what's called an extraction well could be placed or installed, and that could draw contaminants back. I believe the treatment system is completely adequate and sized in a capable manner to allow that to happen. If that is the case, if that's the scenario that VIDHYA faces, that was contemplated in the original agreement. So that allowed for what's occurring right now or what could be occurring right now to be potentially addressed if it is, in fact, a problem. Again, it's been a great partnership.

Michael Serpe:

Next time you're out there and you're going to have a hamburger at Culver's could you sit down with the owner and explain that to him? Because he's more than concerned about what's happening here.

D.J. Burns:

Yeah, I think it's very helpful for all potentially impacted parties to be informed, yes.

Tom Terwall:

Thank you. Yes, sir?

Don Gallo:

In response to that the Culver's owner I keep continuing to tell his attorney he should not have bought a contaminated site in the first place. We're cleaning his site up.

Tom Terwall:

With that I'm going to close the public hearing. Jean, any recommendations before we vote?

Jean Werbie-Harris:

Actually, this was a lot of very good discussion. But it was not a matter for public hearing, but we did have a lot of good discussion which was good. The staff is recommending approval of amendment number 3 to the settlement agreement between the Village and VIDHYA Corp. as drafted by our Village attorneys to modify the testing requirements and to follow the recommendation and approval of the Wisconsin DNR for testing at the BP Amoco gasoline station and convenience store located at 10477 120th Avenue. And I recommend that the Plan Commission consider it and move it onto the Village Board for their consideration as drafted.

Tom Terwall:

Go ahead, John.

John Braig:

We've had a lot of discussion, a lot of talking. A couple points were not made. Clear in my mind is McTernan made an accusation that the Village freely granted a building permit on contaminated soil. He had to retract it or correct it somewhat. It's not the first time we heard that from McTernan. I recall one time him making a very clear statement that all subcontractors had been paid when contractors in this audience corrected him on that.

Something that was missing in the total discussion is how did this start in the first place. We're familiar with it. We know how BP Amoco or VIDHYA totally ignored the input of the Village trying to get this thing corrected. And now he's here, and his biggest justification for making an amendment or amendment number 3 is the cost. He should have thought of that when it started.

Michael Serpe:

So, Jean, do I understand your recommendation is to go quarterly and not monthly?

Mike Pollocoff:

No.

Michael Serpe:

You want to continue monthly inspections.

Matt Fineour:

The settlement agreement allows them to go to quarterly sampling of their treatment system. It still maintains the original terms of the settlement agreement as far as independent testing from the Village.

Jim Bandura:

And that is stated in number 3 in the amendment.

Matt Fineour:

That is stated in the current amendment number 3 as presented, yes.

Deb Skarda:

Have we received the payment?

Jean Werbie-Harris:

I would ask the petitioner whether or not they're -- and I'm going to bring this up under the conditional use permit. Because one of the conditions of the settlement agreement is to be current with respect to all payments to the Village. And that payment right now is over \$19,000. So I

would ask the petitioner whether or not they made payment to the Village, again, for the charges. I did not check with finance this afternoon.

John Braig:

As of this afternoon it was not received.

Jean Werbie-Harris:

I did not check this afternoon.

Dixit Patel:

Hi, my name is Dixit Patel. I am the owner for 120th and 165 for BP Amoco. And now I [inaudible]. I spend a million six for the project [inaudible]. In the gas business I don't make this kind of money, but I helped clean out property, and I have to stay [inaudible].

Deb Skarda:

So the question I asked is right now we've got close to \$19,000. Have you paid that?

Dixit Patel:

Yeah, last year same thing. I pay for treatment plan every month. Same thing I want to pay out [inaudible]. Right now monthly cost is \$35,000 to \$40,000 for a monthly cost for [inaudible], everything. Last year I spent \$400,000.

Deb Skarda:

Sure, I understand.

Dixit Patel:

Every year \$400,000, \$500,000. I don't make, I lose lots of money, \$1.6 million plus for this project I spend [inaudible]

Deb Skarda:

So can we make the assumption then that that \$19,000 has not been paid at this point?

Dixit Patel:

No, just a payment plan, something. Last year how much [inaudible] \$66,000 I pay out. So just a payment plan I have to pay out [inaudible]. I help to pay everybody for the cost. Every month I make payment plan I now. Every month [inaudible], payment plan [inaudible]. And I want to finish [inaudible], okay?

Deb Skarda:

So you're asking for a payment plan or you're saying you have a payment plan.

Dixit Patel:

Yeah, no, I'm only asking for [inaudible] payment plan.

Mike Pollocoff:

Through the Chair, I believe a payment plan was addressed for the sampling costs and expenses associated with it. And I delineated what those costs were earlier. The Village cannot make a payment plan, and it's not included in this with property taxes, nor weights and measures, sanitary sewer bills. Everybody gets those. They get that bill every month anyway.

Dixit Patel:

I pay for property tax [inaudible].

Sophia Patel:

[Inaudible] expenses we are going to make a payment plan. But the property tax we are going to pay. We already paid the property taxes.

Mike Pollocoff:

Right. Well, I'm saying right now there is \$19,000 outstanding. And that \$19,000 is made up of more than just your expenses of the sampling and engineering. If the Village Board decides to approve a payment plan for sampling and the engineering associated with it that's one item. But all the other bills that haven't been paid there's a process by statute that those get paid. And most of those are monthly as it is anyway.

Michael McTernan:

And he understands that, and he understands the obligations of those costs. And what he's looking for relief upon is as we've done in the past is pay the monitoring costs and the engineering costs which I believe Mr. Burns says are \$10,000, \$12,000 a year. The last time we were at this hearing and it came before us last year when they came for renewal of the liquor license we were presented and received all the bills that were paid, and they were paid in full last year. Shortly after that hearing that we had last year they were presented an additional \$7,000, \$8,000, \$9,000 from Mr. Burns that were presented to him that were mailed to him. And to be honest it was sort of shocking that all of a sudden now we're hit with another score of bills.

Those are the things that he's looking for relief on. The utility charges, the taxes and the other obligations that you had alluded to those will be paid in full before the conditional use permit as a condition of the conditional use and he agrees with that. All he's looking for is the obligation as it relates solely to the monitoring costs and Mr. Burns' bill that he'd like some relief on. That's it. So to answer your question, no, he has not paid the \$19,000 yet. Those are obligations that are there. But as you hear from what is going on this is not an inexpensive process. And that's why

he's looking for trying some way of reducing the costs. Because Mr. Burns isn't cheap. I understand he comes onsite. I understand he's doing the exact same testing that my client is doing.

So those costs he's already paying out of pocket to Fehr Graham and to his engineers and to the State labs. If the community is not going to allow him to do it at some point it will break him and he won't be able to stay in business. But for the time being we're willing to continue to do as we've done in the past and we look for your assistance so I appreciate it. Thank you.

Jean Werbie-Harris:

Mike, does your client know that these bills were from last May, June, July, August, September, October, November? They aren't actually from this year at all.

Michael McTernan:

Those bills that we received, and I had received them as well, came within days after the last [inaudible] before the Village Plan Commission where we received conditional use those did not make it to my office. And my client did not see them until after the last time we were before the Plan Commission and Village Board for a conditional use approval for another year. I looked at those dates, I saw when they came in, and they all came in days, literally days, after we extended the permit. And we had paid all the bills up to that date.

Those bills would not -- we paid 100 percent of the bills that were presented by the Village as a condition of receiving a conditional use permit in 2014, in June of 2014. And he paid 100 percent of them including the bills that were presented to him. And then those came like days later, a handful of them, and then they came trickling in during the summer. And I know they are almost -- they're going on a year old. But they came in right after we received conditional use approval and extension for another year last year at this time. And I don't know if there's any additional bills. And I assume, I assume --

Jean Werbie-Harris:

There will be additional bills from May.

Michael McTernan:

Mr. Burns has met with the Village, and I know Mr. Geraghty and he has presented his bills, and those do show up on a regular basis. And I'm sure Mr. Burns in the meetings he's had with the DNR will show up probably next month. Hopefully it's not another \$10,000, but I understand they're going to cost. And they will be my client's responsibility and my client will have to pay them. I understand that. I'm trying as they did last year just trying to seek relief.

I appreciate the Village's assistance to allow us to go to quarterly. That is a huge relief for my client. Instead of monthly he can go to quarterly. I understand there is one issue that crops up that we say, okay, we should continue to monitor monthly, and I understand the engineer saying we can look at it because the Village has the ability under the settlement agreement to maybe shift down to quarterly. Or maybe as relief let's just monitor and test the one well. But no one has given me any justification why we've got to test all the wells every month for another year,

every month. The DNR doesn't even say you have to do that. DNR says just do it quarterly. But even Mr. Burns isn't saying, well, the reason we have to test all these very month is because it will provide us more data. If we have one issue where they want to test then let's just test that one well monthly, not all of them every month. It gets extremely expensive. So I appreciate your assistance and your listening. Thank you.

Tom Terwall:

Thank you. John?

John Braig:

The argument is getting somewhat repetitive and argumentative. With that I would move rejection of amendment number 3.

Jean Werbie-Harris:

Staff is recommending approval of amendment number 3.

John Braig:

I'm recommending rejection.

Tom Terwall:

You're referring to Item C under old business, John?

John Braig:

No, no, A under new business.

Tom Terwall:

Motion dies for lack of a second.

Michael Serpe:

Move approval of amendment number 3.

Judy Juliana:

Second.

Tom Terwall:

It's been moved by Michael Serpe and seconded by Judy Juliana to approve amendment number 3 subject to the terms and conditions outlined in the staff memorandum. All in favor signify by saying aye.

Voices:

Aye.

Tom Terwall:

Opposed?

John Braig:

Aye.

Tom Terwall:

Then we'll go back to Item C under old business.

5. OLD BUSINESS

C. TABLED PUBLIC HEARING AND CONSIDERATION OF AN AMENDMENT TO CONDITIONAL USE PERMIT #13-03 for the request of Attorney J. Michael McTernan agent for VIDHYA Corp, VIII, Inc., the property owners, to remove condition #54 and allow the BP Amoco gasoline station and convenience store located at 10477 120th Avenue to remain open after June 10, 2015 subject to the terms and conditions of the existing Conditional Use Permit and the Settlement Agreement between the Village and the property owners.

Tom Terwall:

Jean, the recommendation is to extend it for one more year, is that correct?

Jean Werbie-Harris:

Yes, but as far as the findings of fact, I do need to read some of these into the record just for the record unless both the Plan Commission and the petitioner is willing to agree that all of these comments are put into the record.

Michael McTernan:

I agree you could put those in the record and save the trouble, Jean, we agree. Thank you.

Jean Werbie-Harris:

So this is the staff report dated June 8, 2015. And as part of the public hearing comments that all of the findings of fact that start with item number 1 and then go all the way through item number 11 on page 5 that all of these become part of the public record. I just want to reiterate that some of this background information as well as the site status and engineering recommendation some of that was already presented actually word for word this evening by Matt Fineour, our Village Engineer.

One item that I would like to add is that as of June 1, 2015 VIDHYA identifies owes over \$19,360 in unpaid invoices and interest charges payable to the Village. This includes Village staff costs, consultant fees, attorneys fees, legal fees, weights and measures charges and other operational charges such as the sanitary sewer charges and interest. And as a result the staff is not recommending that there be a payment plan set up, that these charges be paid in full. Especially as it relates to community development charges and surcharges and weights and measures we don't carry those costs for other businesses in the community for six months or a year at a time. Those have to be paid on a 30 day basis.

And it's difficult for the staff to make a recommendation of a renewal or an extension of a permit with outstanding and delinquent invoices owing to the Village of Pleasant Prairie. And then maybe Mike can address the engineering and the Drake Environmental bill, but the other bills have to be paid. That they should not be going this long. This is not new. They went out all last year. They went out in December. They went out again this spring. So they're repeatedly going out to the petitioner. They have to be paid. Just like the bills for the community development and the rest of the departments that are being accrued in May and June they have to be paid within 30 days again as well. They can't go on and not be paid especially since the interest charges alone are almost \$1,500. So that's just starting to get excessive on these as well. So the staff does recommend that those bills be paid.

With respect to the staff conclusions and recommendations, the staff determined that based on the foregoing information presented in the application, the related materials provided, the settlement agreement if they choose to move forward with 1 and 2 or if they agreement to settlement number 3, the payment of the outstanding invoices and the comments at the public hearing as well as all of these comments that we are all agreeing to be included as part of the record that they would meet the granting of a conditional use permit for one additional year.

Again, as the engineer mentioned there are some still outstanding concerns that they have, and with respect to the testing and monitoring and sampling we do want to make sure that things are continuing to move forward in the right direction for an additional year. That their staff is trained properly to respond to alarms and other issues that occur on the site.

- a. The project then does not impede the traffic patterns on the site or cause traffic congestion or traffic circulation problems and the traffic patterns on the site do not hinder, harm or distract the provisions of public services. Again, these are part of the conditions I have to read;
- b. The project does not impair an adequate supply of light and air to the adjacent properties;
- c. The project does not increase danger of fire in so far as the danger of fire does not exceed the capabilities of the Village Fire and Rescue Department;
- d. The project does not create storm water flooding or drainage problems. The existence of obnoxious odors and release of petroleum products to the water way have been minimized, but they have not been sustained for a minimum of one year, again, without any incidents or alarms. These problems when unabated may present a danger to the public health, safety or welfare;

- e. The existing identified hazard, danger, harm, noxiousness, offensiveness, nuisance or other adversity or inconsistency that would endanger the public's health, safety or welfare related to the proposed project have been reduced but have not been sustained for a minimum of one year; and
- f. The proposed and applied for use on this particular parcel is not inherently inconsistent with the B-4, Freeway Service Business District in which it is located or the adjoining Zoning Districts or neighborhood.

So with that the staff does recommend a one year extension of the conditional use permit. Again, as we mentioned earlier this evening with the agreement of amendment number 3, and if that doesn't get -- if they don't want to abide by that, that they can go back to amendments number 1 and 2 and the conditions set forth in that agreement. And, again, this conditional use permit then is subject to the payment of the invoices and interest charges that have been charged to this property.

The conditional use permit would be valid until June 14, 2016. In order for the facility to continue to operate after June 14, 2016 an application for an extension of this conditional use permit would need to be reconsidered by the Plan Commission at a regularly scheduled meeting prior to that date.

And in order for this conditional use permit to be valid I think that the Plan Commission should set a date certain by when the delinquent and outstanding invoices and interest charges should be paid. Since this has been ongoing for a very long time, the staff initially had a date of June 10th, but that's Wednesday of this week. So it's up to the Village Plan Commission if they want to go with the staff, recommendation, and if they want to set a specific date for which those payments need to be made in order for this conditional use permit to be valid. The concern I have is that it does expire tomorrow, so we need to give a specific date.

John Braig:

Is the Commission the final authority, or does this go before the Board?

Jean Werbie-Harris:

Conditional uses have the final authority with the Plan Commission.

Tom Terwall:

Does somebody want to set a date?

Michael Serpe:

Before the next Board meeting.

Tom Terwall:

Plan Commission meeting you mean?

Michael Serpe:

No.

Wayne Koessl:

The Village Board meeting, is that what you're saying?

Tom Terwall:

This doesn't go to the Board, right?

Jean Werbie-Harris:

It does not.

Tom Terwall:

We're going to meet in two weeks, right?

Jean Werbie-Harris:

Correct.

Tom Terwall:

Then I would set that as a date certain.

Michael Serpe:

What day is it?

Jean Werbie-Harris:

June 22nd.

Wayne Koessl:

Can we do that legally?

Tom Terwall:

Certainly.

Jean Werbie-Harris:

It's a condition that they would have to meet in order for the conditional use permit to be valid.

John Braig:

Okay, it's not an installment. Alright.

Wayne Koessl:

You want a motion for June 22nd?

Tom Terwall:

Please.

Wayne Koessl:

I so move.

Jim Bandura:

I second.

Tom Terwall:

IT'S BEEN MOVED BY WAYNE KOESSL AND SECONDED BY JIM BANDURA TO EXTEND THE CONDITIONAL USE PERMIT FOR ONE MORE YEAR SUBJECT TO ALL OF THE TERMS AND CONDITIONS OUTLINED IN THE STAFF MEMORANDUM AND SUBJECT TO PAYMENT OF OUTSTANDING FEES BY JUNE 22, 2015.

Jean Werbie-Harris:

At five o'clock p.m.?

Tom Terwall:

Five p.m., yes.

Wayne Koessl:

Jean, I have one issue. What you read for the conditional use permit, item d, the project does not create stormwater flooding in so forth. What happens during the term of this one year now if we find we're having a problem with that?

Jean Werbie-Harris:

I don't know that we've ever had a stormwater problem.

Mike Pollocoff:

We haven't had flooding.

Wayne Koessl:

It says in here gasoline in here also.

Mike Pollocoff:

Yeah, there's another part of it. If there is a discharge or sustained discharge then that's going to keep us embroiled in this. I think our Village Engineer said it the best. At some point we need VIDHYA to take ownership of this problem and get it managed and get it corrected. Otherwise when from the Village staff's standpoint we can't recommend any conditional use permit that just stays out there forever. Until we know that they can manage it for a year and we can evaluate that whether or not they're really making a serious effort or if it's just going through the motions that's what we have to deal with. So if they do violate it, if we think it's a critical one, the staff could recommend a revocation of the conditional use permit in addition to citations and court.

Tom Terwall:

All in favor signify by saying aye.

Voices:

Aye.

Tom Terwall:

Opposed? So ordered. I guess I just can't believe that the DNR walks away from this deal with their skirts clean. They should hang their head in shame for the way they turned their back on this thing long before VIDHYA got involved in this thing. Instead of worrying about allowing pink deer hunting clothes, maybe they ought to concentrate on what their job is, but that would be something new.

Wayne Koessl:

Chairman, you're right, they never wanted to get involved in it.

Tom Terwall:

No, they never did.

6. NEW BUSINESS

C. Consider Plan Commission Resolution #15-13 to initiate a Zoning Text Amendment to clarify the conditional use provisions and definitions for a gasoline station and a truck stop.

Jean Werbie-Harris:

Mr. Chairman, Plan Commission Resolution 15-13 is to initiate zoning text amendments. The Plan Commission may initiate a petition for the amendment of the zoning ordinance which may include rezoning or property, change in zoning district boundaries, changes in the text of the ordinance. The Village staff is proposing to amend Section 420-152 of the Village zoning ordinance as it relates to conditional use provisions and for definitions for gasoline stations and truck stops. The Village staff is not bringing these presentations of these new text items before you this evening. The Village Plan Commission is only initiating and petitioning to re-evaluate and clarify these provisions and these definitions. And the proposed changes in the text will be referred to the Village staff for study and recommendation and will be brought back for a public hearing before the Plan Commission at a subsequent meeting.

Michael Serpe:

Move approval of Resolution 15-13.

Judy Juliana:

Second.

Tom Terwall:

**IT'S BEEN MOVED BY MICHAEL SERPE AND SECONDED BY JUDY JULIANA.
ALL IN FAVOR SIGNIFY BY SAYING AYE.**

Voices:

Aye.

Tom Terwall:

Opposed? So ordered.

Michael Serpe:

Tom, one other item. If you saw the paper today we had a past Plan Commission member pass away, Jim Fonk. And for Wayne, Tom and myself and Mike and Jean BP is gone, but if Jim was on this Board when BP was going through these hearings it would not have been this nice. Trust me.

Tom Terwall:

It would have been shut down long before this.

7. ADJOURN.

John Braig:

So moved.

Judy Juliana:

Second.

Tom Terwall:

We stand adjourned.

Meeting Adjourned: 8:21 p.m.