A special meeting for the Pleasant Prairie Plan Commission convened at 1:00 p.m. on September 17, 2012. Those in attendance were Thomas Terwall; Wayne Koessl; Jim Bandura; John Braig and Larry Zarletti. Michael Serpe, Donald Hackbarth, Andrea Rode (Alternate #2) and Judy Juliana (Alternate #1) were excused. Also in attendance were Mike Pollocof, Village Administrator; Tom Shircel, Assistant Village Administrator, Jean Werbie-Harris, Community Development Director and Peggy Herrick, Assistant Zoning Administrator.

1. CALL TO ORDER.

2. ROLL CALL.

3. CITIZEN COMMENTS.

4. OLD BUSINESS.

   A. CONTINUED CONSIDERATION OF A REVOCATION OR SUSPENSION OF CONDITIONAL USE PERMIT #01-11 that was approved by the Village Plan Commission on June 25, 2001 that allows BP Amoco to operate the gasoline station and convenience store located at 10477 120th Avenue. This hearing specifically relates to the written complaint filed by the Village Zoning Administrator regarding BP Amoco’s noncompliance with the terms of said Conditional Use Permit and their violation of Village Ordinance Section 420-145 G., as it relates to “standards for conditional uses” and specifically Section 420-38 D., Water Quality Protection performance standards.

Jean Werbie-Harris:

Mr. Chairman and members of the Plan Commission and the audience, this is a meeting today as a continued consideration of a revocation or suspension of conditional use permit. As you know, at our last Plan Commission meeting we did close the public hearing, and we thought we’d be ready for further deliberations today. However, we have been meeting with counsel and representatives from BP, and we are almost there. We have put together a stipulation and settlement agreement, and we are finalizing some of those details. We just have not got it completed.

At this point one of the stipulations is going to be that the petitioner needs to file for a new conditional use permit and a new planned unit development for this particular site and location. And because of the requirements for the publication and the hearing notice we weren’t able to put that together for the meeting today. So we are requesting that this matter be continued or tabled until October 15th at three o’clock. And at that time the Plan Commission would take up the
settlement agreement, the conditional use permit as well as the planned unit development. And the last two items would require a public hearing. But we are working with them diligently. They have come up with some temporary solutions to implement, and they’re going to be implementing some of those this week. Mike Spence and Mike Pollocoff have been meeting with the attorneys on a regular basis, and it looks like we hope to wrap things up in the next week or so and be ready for that meeting on the 15th. Again, they are going to be implementing some temporary measures starting this week.

One of the things that you’ll see out there, and I’m going to just give you some brief information, Mike Spence is more knowledgeable about this, but basically they’re going to be installing a frac tank which is a steel vessel on wheels designed to hold up to 21,000 gallons of water. The water is going to be pumped out of the tank basins and stored in the frac tank for the next couple of weeks. And eventually the water from the frac tank will be pumped out through a carbon filtration system to be cleaned. The goal is to lower the groundwater levels in the tank field so that they can replace the catch basin and install the clay collar in front of the discharge pipes and lower the risk of having this water flowing into the ditch during these repairs. So it’s kind of a brief summary. And, again, Mike can probably go into a little bit more detail. But those are some of the things that our experts, their experts, we’ve been sitting down talking, working through all of those details.

John Braig:

You refer to experts. Are these consultants specialized in the field?

Jean Werbie-Harris:

Yes.

Tom Terwall:

Mike, either one, are you convinced that when we’re done that we’re not going to have slim flowing past Culver’s anymore?

Mike Spence:

Mike Spence, 9915 39th Avenue. We’re dealing with two professional consultants, environmental consultants on this project. One has been hired by BP, and as you know the Village has hired another one. So those two consultants as well as myself have been talking on a regular basis. The approaches that they are taking I think are reasonable approaches and approaches that ultimately should eliminate any discharge to the ditch.

It’s been a little bit more involved because as you know from the hearing the site is contaminated so there’s a lot of issues at play here. As Jean mentioned, the installation of the frac tank which I’m planning on going out there today, they were supposed to deliver that today, and what they’re doing is they’re going to be pumping out the sump field around the existing piping and the tanks. Because that water is contaminated, and it’s basically pushing – it’s got a head on the groundwater and it’s pushing it toward the ditch. So that’s the initial step to try to get that water
out of there and reduce the head. And then they’re going to be putting in the carbon systems for actually treating the water that they take out, the clay dam that Jean mentioned.

The other thing that’s at play here on this site is that when you have a pipe that’s discharging to the ditch there’s also the sanitary sewer. When it was backfilled it’s backfilled with granular material, and when there’s water in the groundwater that acts as a conveyance. So part of the plan is actually to put like a concrete collar around these pipes to prevent the lateral movement of water. So I guess that’s a long answer, but I feel confident that the steps being taken if implemented properly will address this situation.

Tom Terwall:

Has the Village or anybody taken soil samples east of Culver’s to determine how far east this contamination has gone? Do we know that?

Mike Spence:

There were samples that were taken a while back, but part of the plan right now that we’re working on in the settlement agreement is to actually do a comprehensive investigation program. So the environmental consultant for the owner as well as our consultant will agree to a plan to go out and monitor the soil. It may be like an iterative process because what they’ll do is they’ll go out and take certain samples. And if the perimeter samples still have evidence of contamination then we keep expanding the area that we look at. That plan hasn’t been developed yet. That’s one of the things we’re working on.

Larry Zarletti:

It was my understanding at the last meeting that it could be determined if it was an old contamination or new contamination. Has there been any testing or will there be any testing to determine the contaminant that’s in the ground is it caused by the station that’s there because they sprung a leak somewhere? Or, is this contamination from a previous time that had been capped and now is resurfacing?

Mike Spence:

There have been sampling events over the past year, and I know that’s been an item that’s been disputed by the owner. And I know at the last hearing the owner or the owner’s counsel was saying that it was an old release. That’s still up for debate. Because some of the concentrations that we’ve seen out there are relatively high. And the contaminants that we’re dealing with are called volatile contaminants, and that means with time they volatilize and the concentrations would actually go down. So when you have a high concentration that’s more indicative of what you’d say a recent spill.

Larry Zarletti:

And the reason I ask the question is if, in fact, it is a new situation then what has been done to figure out where it’s coming from? Because from what I’m hearing is we’re remediating a problem that’s in the ground now, we’re trying to get rid of what’s there. But if we don’t
determine that it was already there and we’re just fixing it versus it’s still coming from something that’s broken or not functioning properly on the property.

Mike Spence:

We’re actually addressing both items of that concern. The pumping of the groundwater now is dealing really with a potential or with the overall site being contaminated. But there’s other items that are going to be taken such as replacing the manhole at the northern end because there’s water getting in there. So that’s going to be replaced. So whether it’s old or new the steps being taken are basically going to button up the whole site. We’ve had some conversations with the DOT, and they’re convinced that the previous work done on the site basically isolated the contaminants. And I believe it’s their feeling that any high readings right now are evidence of a new leak.

Larry Zarletti:

But I’m back to the question of where’s the leak coming from? I’ll be more clear. If the tanks that are in the ground for the existing station had a crack in them or something that was causing fuel to leak out of there, we’re fixing what’s in the ground but we’re not identifying where it actually came from. That’s my question.

Mike Spence:

It’s coming from contaminants that are in the soil. It’s not that the current tanks are leaking. The owner replaced all the supply piping, and they did checks of the tightness of the tanks. That work has all been done. So the infrastructure on the site is being buttoned up. I don’t know how else to answer that at this point.

Mike Pollocoff:

I think what Mike is saying is they have to do a complete systemic evaluation of the entire site. And what might be defined as a new leak could still be in the soil. It may be new relative to what was described as a much older leak. But given the fact that this site has sat as long as it did without anybody, without the owner taking steps to get after it, he’s bearing the burden now of having to go after everything. Just kind of like the buckshot approach to catch whatever might be out there because it’s, in fact, happening on an ongoing basis and they’ve got to be able to deal with it. So even though he’s replaced all the piping and the current tanks have been verified to be leaking, that leakage that would have occurred at some point within the last year and a half would still qualify as a new leak.

Larry Zarletti:

So we feel the event is over? The event that caused the contaminant to be put in the ground is over, now it’s just dealing with what’s in the ground?

Mike Pollocoff:

Well, I don’t think we’ll know if it’s over until we can go through a period of time and do the frac testing and see what comes off that tank to see what we have.
Mike Spence:

Right. I mean as part of this plan, too, to be sure that what we’re doing is ultimately going to address the problem, the ultimate plan is going to include continued monitoring so that we know that if there’s any increases in contaminants then they’re going to have to address that as continued compliance monitoring is part of the program.

Tom Terwall:

Mike, do you and the experts feel that any contamination leaving the site is leaving it to the east, or can it be going in other directions as well? I mean the groundwater would flow east from there would it not?

Mike Spence:

The groundwater does flow in an east/northeast pattern. That’s a good question. Another thing that we’re probably going to recommend is some isolated monitoring wells on the east side of the BP property to ascertain if there’s any contamination going due east. But we know for a fact that the groundwater does go to the northeast, and that’s what’s caused the problem in the ditch.

Mike Pollocoff:

And we’ve been in a relatively dry year so the groundwater is not what it normally is.

John Braig:

I’ve got three concerns on this, and I think it probably represents what we all feel here. I’ve got full confidence that the staff is working on it and will achieve it eventually. But obviously one is to clean this place up, solve the problem. Two is the Village has got to come out of this thing financially whole. It shouldn’t cost the Village anything for this problem. And the third one if it is one is we hope we get these peoples’ attention, and the next time there’s a problem we get good response from them promptly. And I’m sure staff is working on this, there’s no question.

Tom Terwall:

I had somebody question me about are you guys going to relieve him of the $80,000 in fine. I said, first of all, that’s not a Plan Commission decision. If you want my recommendation I’d be more than happy to make one. But that’s between him and the judge is it not?

Mike Pollocoff:

As part of the consent order we could make a recommendation. Again, like you said, it’s up to the judge of what we think it should be reduced to. But any reduction has to be tempered by the expenses that the Village has incurred to handle this. That would probably I’m assuming be the most contentious negotiation of the consent.
Mike Spence:

And I can also add to that in our meetings the owner’s attorney has acknowledged the fact that we are incurring expenses and that he has indicated that that would be a reasonable expense that would have to be [inaudible].

Wayne Koessl:

Through the Chair to Jean. If we table this until October 15th is that going to be a continuation of the revocation or suspension or a new conditional use permit?

Jean Werbie-Harris:

We actually have to take some action specifically on this item. We’ve started the item, we’ve held the public hearing, you have not had your final deliberations, and typically that will come after a presentation by the staff and by the petitioner. So we will continue this item, and then we’ll also put those other specific three items on the agenda. So those will be the only four items that will be on that agenda for the Plan Commission on October 15th at three o’clock.

Wayne Koessl:

Do you think everything will be in place by the 15th of October?

Jean Werbie-Harris:

Yes.

Wayne Koessl:

Okay, thank you.

Tom Terwall:

Anybody else? What’s your pleasure?

Larry Zarletti:

Mr. Chairman, I would move we table this until the 15th of October.

John Braig:

Second.

Tom Terwall:

All in favor signify by saying aye.
Voices:

Aye.

Tom Terwall:

Opposed? My compliments to the staff for your diligence in this project. It seems like we couldn’t get this guy’s attention until the word revocation came up. And now all of a sudden he hired an attorney. I appreciate your patience, but I think it’s gone far enough.

Mike Pollocoff:

We have some more productive things we could be doing.

Tom Terwall:

I’m sure Mike’s got other things he’d rather do, too.

5. ADJOURN.

John Braig:

So moved.

Wayne Koessl:

Second.

Tom Terwall:

All in favor say aye.

Voices:

Aye.

Tom Terwall:

Opposed? We stand adjourned.