

**VILLAGE OF ESSEX JUNCTION
PLANNING COMMISSION
MINUTES OF MEETING
September 18, 2008**

MEMBERS PRESENT: Mark Thibeault (Chairman); Dan Kerin, Diane Clemens, Andrew Boutin, Liza Kilcoyne.
ADMINISTRATION: Robin Pierce, Developer Director.

1. CALL TO ORDER and AUDIENCE FOR VISITORS

Chairman Mark Thibeault called the meeting to order at 7:30 p.m.

Nicolas Court

Eric Fenton, 125 Iroquois Ave., pointed out a light post inside the entryway to Nicolas Court appears to narrow the area so a fire truck cannot access the development. Mr. Fenton is a volunteer firefighter. Robin Pierce will investigate the matter.

2. ADDITIONS/AMENDMENTS TO AGENDA

None.

3. MINUTES

September 4, 2008

MOTION by Dan Kerin, SECOND by Diane Clemens, to approve the 9/4/08 minutes as written. VOTING: 5 ayes; motion carried.

4. PUBLIC MEETING

Mark Thibeault explained the procedure to be followed with applications before the Planning Commission and swore in those individuals to give testimony.

Major Site Plan Amendment for an after-the-fact 31.6'x 13.1' building addition as a new containment structure for biodiesel fuel tanks at 33 Park Street in the R-2 District by Chad Whitehead, Dufresne & Associates, agent for D&C Transportation, owner
Chad Whitehead and Scott Oeschger appeared on behalf of the application.

STAFF REPORT

Robin Pierce reported the biodiesel fuel building addition was done without a permit. There is an existing berm for containment around the existing tanks on the property. A block concrete wall on the outside of the berm is proposed. A large evergreen tree on the site was cut down. The applicant plans to plant a vegetative screen to obscure views of the wall and tanks from Nicholas Court. Some of the parking spaces up against the fence are actually six inches on the neighbor's yard. If the parking is relocated to meet setbacks it will be difficult for large 18-wheel vehicles to maneuver to get to the tanks. The applicant's conditional use application was denied by the Zoning Board because a nonconforming use cannot be expanded. The use is nonconforming and not listed in the Use Chart or in the zone. Mark Thibeault pointed out if a use is not permitted in a zone then that use cannot be brought into the community. Therefore, by definition the applicant's use is nonconforming.

Mark Thibeault asked about lot coverage. Robin Pierce said the applicant's engineer, Chad Whitehead, indicated lot coverage is 45%. Mr. Whitehead was informed the maximum lot coverage allowed in the zone is 40% and the Planning Commission has no ability to waive lot coverage. Mark Thibeault asked about information on access, right-of-way, and easements. Mr. Pierce said he has not seen any documents from the applicant.

Robin Pierce stated both the Village Engineer and Jim Jutras stated that as designed, the storm water did not meet the LDC standards.

Diane Clemens asked about the connection to Nicolas Court. Mr. Pierce explained the property was subdivided by the previous owner to create Nicolas Court. Ms. Clemens observed the property owner could have retained some land to make the lot more conforming.

APPLICANT COMMENTS

Chad Whitehead explained the application before the Zoning Board was reviewed under the conditional use criteria. The use is pre-existing on the property. Any increase in use, specifically floor space, had to meet the criteria. The first criterion is meeting the village plan and the proposal did not meet this criterion because the use is not permitted at the location. If removal of the addition is required that will be addressed, but the focus is on the containment structure. The site plan needs to be revised as a result of the Zoning Board decision. In 1970, the containment structure was built for the fuel tanks. When D&C Transportation purchased the site there were existing trees within the containment structure and that is considered a structure failure by the EPA. The proposal is to move and upgrade the containment berm and add a concrete block structure wall. There will be a concrete pad installed over the gravel drive by the loading area. Mr. Whitehead explained the system to test water drainage for oil. Storm water drainage will be collected in the containment area and sent through an oil/water separator, eventually draining into the village sewer system. Jim Jutras and the state have reviewed and approved the system. There are alarms on the tanks to indicate if there is a leak. These items are required to meet federal standards. There will be plantings of Colorado blue spruce or Norway spruce trees to screen the concrete wall and create a buffer zone to decrease noise and visual impact. The filling station has been moved to the middle of the berm so trucks are farther away from residential houses to help mitigate the noise of idling trucks. Regarding easements, a survey done by Dubois & King shows access and easements. There is a 20' wide access and a 20' wide utility easement.

Scott Oeschger with D&C Transportation stated the containment structure must be in place by October 31, 2008 per EPA mandate. If not, the business cannot continue to operate at the site. The tree that was cut down was in the dyke and had to be removed. The tanks have been repainted. Mr. Oeschger acknowledged the concerns about the trucks. Mark Thibeault asked about the lack of control of trucks on the site. Mr. Oeschger stated dispatch and individual trucking schedules makes it difficult to control the trucks on the site. In winter when business is heavy it would be difficult to operate within a 12 hour window. Also, there are regulations on drivers. Drivers have a 12 hour window when they can be on the road. Mr. Oeschger said he would rather not have a restriction due to dispatching. Andrew Boutin asked if the drivers sleep in their trucks while unloading. Mr. Oeschger said the trucks do not have to idle to off load. There are pumps. The drivers are not supposed to be in the cab or off site when off loading.

Some drivers have a key to the property for access after hours. Robinson Fuels operates their fuel delivery business during the day. For D&C Transportation the site is a through put facility. Several different companies come to the facility. It takes about 40 minutes for a truck to off load. There are up to a dozen loads per day. One large tanker truck fills up the large bulk fuel tank about 12 inches. Other trucks draw from the tank. A ten foot fuel level in the tank is maintained for the most part. There are 20 to 30 delivery trucks per day and two to three large tanker trucks in the night. Mark Thibeault calculated 10 tanker trucks to maintain a 10' fuel level in the large bulk tank and 30 small delivery trucks drawing from the bulk tank equates to 40 trips into the site and 40 trips out of the site (total of 80 trip ends) per day. Robin Pierce mentioned the performance standard in the Code regarding noise from trucks is up to 70 decibels between 7 AM. and midnight, 55 decibels from midnight to 1 AM, 50 decibels from 1 AM to 7 AM. Mr. Oeschger reiterated the home delivery trucks operate between 7 AM and 6 PM. With the site plan amendment the large transport trucks will off load more toward the middle of the containment area. Delivery times can be reviewed to try to avoid deliveries between midnight and 7 AM. The site can be better policed for idling trucks.

Mark Thibeault stated site circulation and designated parking needs to be reflected on the site plan. Mark Thibeault asked about access and ownership of the right-of-way, stressing the Planning Commission needs the site plan to show access and impact on surrounding properties. The site plan needs to reflect true and accurate conditions. Chad Whitehead stated the proposed work will not change the current number of vehicles to the site. Scott Oeschger stressed the facility is existing, not changing; the operation has been ongoing. The proposal is because a new containment wall is needed. Chairman Thibeault stated a baseline of what is happening on the site needs to be shown.

Chad Whitehead reviewed the easements by the Maynard building (10' between buildings and 20' on the other side) which were given to Robinson Fuels by Maynard in 2001. There is a 20' utilities easement to Iroquois Ave. Mark Thibeault stated this information needs to be shown on the site plan. Mark Thibeault asked about the trailer on the cement pad by the Maynard's building. Scott Oeschger confirmed the trailer and pad are Maynard's. Mr. Whitehead said the concrete pad is a containment structure that has been there for a while. Andrew Boutin asked about the age of the tanks. Scott Oeschger estimated the tanks were installed in the early 1970s. The tanks have been tested by an engineer as part of the upgrade and will be tested again in 10 years. Repairs were done to the large tank (steel plate added on the inside bottom of the tank). Mark Thibeault asked about paving on the site. Scott Oeschger said there are no plans for paving at this time. The containment pads in the loading area will be paved.

Andrew Boutin asked how the oil/water separator works. Chad Whitehead explained major leaks are held in the dyke. The drainage valve is always turned off. Visual inspection of the pooled water will reveal an oil leak. If a leak is detected the emergency plan is put into action. Excessive snow will be removed from the site if necessary to avoid too much ponding of water. The water will be drained in the springtime after an inspection shows no oil. There is a chamber that holds oil from the oil/water separator. When the chamber is full an alarm will sound and the tank is emptied. Less than one part per million (of oil) is allowed to pass through the separator.

Robin Pierce mentioned the proposed tree plantings, noting the trees will grow to 80' in height and put the residential lawns in shade. The applicant's property is an industrial use and the buffer for industrial to residential is 50'. The setback is 25'. Chad Whitehead stated the setbacks meet the zoning requirement. Mark Thibeault advised anything that can be put in place to reduce noise will be good. Liza Kilcoyne stated a dense solid material is needed, such as a wall or privacy fence with plantings in front.

Diane Clemens asked how the applicant will address exceeding allowable lot coverage. Chad Whitehead pointed out the 45% coverage is there presently. A change is not being requested. Mark Thibeault said the Planning Commission will have to discuss if a pre-existing condition allows maximum lot coverage to be exceeded. Mr. Whitehead said he will see where reductions can be made, but it may not be possible to get below 40% coverage.

Liza Kilcoyne asked if the trucks stack in a line waiting for fuel. Scott Oeschger said during the day there may be stacking, but not at night. D&C Transportation owns their trucks. The facility is a through put facility so other trucks coming to the site are not under the control of D&C Transportation. Ms. Kilcoyne asked about control of the site. Mr. Oeschger said the gates can be locked at night and opened at 7 AM. Ms. Kilcoyne suggested the applicant reflect their offers on the revised site plan. Mark Thibeault suggested the applicant look at paving and striping the lot. The paving can be phased if necessary. Andrew Boutin asked about delivery to the tanks by rail. Mr. Oeschger stated this would be preferred if access by train is possible. A neighboring resident noted the train rattles the houses in the area so the noise issue will be even more widespread.

Diane Clemens asked about the water line that was to be complete in 2006. Mr. Oeschger said the water line is there and connection can be made any time. The line by the sewer must be removed. Mark Thibeault stressed any requirements of previous permits must be in place and in compliance. Robin Pierce stated the water line issue needed to be resolved by October 31, 2008.

PUBLIC COMMENT

Eric Fenton, 125 Iroquois Ave., stated the tanks are visible from his backyard. Mr. Fenton asked if there is a clean up fund if needed should operation cease at the site. Mark Thibeault said he was not aware of a requirement for such a fund. Mr. Fenton stated there are five trucks per day going down Iroquois Ave. from the site. Robinson Fuels trucks are the worst offenders for speeding, but all the delivery trucks tend to speed on the roads. The trucks use Route 2A and enter the lot from Iroquois Ave. through the parking lot by Rocky's Pizza. Also, the fence does not totally encircle the property. There is a gate which is never closed. If the non-permitted biodiesel fuel structure remains and a generator is necessary to pump the fuel the noise of the generator needs to be considered, said Mr. Fenton. Mark Thibeault stated the structure must be removed because addition to a nonconforming use is not allowed. Mr. Fenton spoke about the noise from the trucks, noting in the summer truck noise (air brakes, idling, honking horns) is heard day and night. Mark Thibeault observed an ongoing incremental approach to resolving the noise problem may be necessary. Mr. Fenton suggested there be a lock on the drain valve. Mr. Whitehead agreed a hand wheel and lock can be installed. Mr. Fenton asked if there is a record of the number of spills and leaks by D&C Transportation or the previous owners on the site or at other sites. Dan Kerin noted only a certain sized spill requires reporting. Scott Oeschger said the

information is public. An environmental company monitors the wells on the site. Liza Kilcoyne added the proposed improvements are to help avoid spills/leaks.

Mary Sorrentino, 3 Nicolas Court, expressed dismay that the large pine tree was felled. Ms. Sorrentino said there is a six foot high chain link fence on the site with barbed wire and a gate that is never closed or locked. Children have been seen climbing the stairs on the large bulk tank. The owner was informed. There is no one at the site monitoring the site. The neighbors have tried to work with D&C Transportation for the past three years on the noise issue. The intent of the neighbors is not to close down the business, but to have quality of life. Trucks idle for 45 minutes each all throughout the night, some so loud the house vibrates. The property owner said he would look into the matter, but there have been no changes. Ms. Sorrentino cited an incident with a trucker making a night delivery and ignoring her husband's request to shut off the engine. In fact, the trucker revved his engine four times as he left the site. Ms. Sorrentino contended the truckers and the owner do not care about the neighbors. There are two large dump truck parked on the site as well. The dump truck idles in the morning and again at night when returned to the site. Per the 1993 Planning Commission approval the new storage tanks were allowed, but not parking fuel trucks for extended periods of time, however, the trucks are there. Ms. Sorrentino asked if other trees will be removed when the cement wall is built, noting it will take a long time for new trees to provide a buffer. Chad Whitehead said there is an oak tree on the berm that will be removed. Liza Kilcoyne reminded that the tree needs to be noted on the site plan along with what will replace it. Ms. Sorrentino referred to Chapter 8 – Nonconforming Use and contended the biodiesel tank and berm are an expansion of the business. The Planning Commission is allowing the use to occur if any expansion including the containment wall is allowed by the Planning Commission.

Rich Hamilton, 1 Nicolas Court, echoed the comments by the other residents in attendance. The trucks at the site between 10 PM and 7 AM are the most bothersome because they wake everyone up. Each truck is there for nearly an hour. It is worse in winter, but the engine noise can still be heard in summer.

Tim Tremblay, 123 Iroquois Ave., pointed out (housing) density has been increased around the tanks. The noise associated with the business is heard day and night. Headlights from the trucks shine into the houses. Noise echoes in the neighborhood. Fire safety is an issue especially with dense housing around the site. There is little to no supervision at the site and lots of fuel being transferred and stored on-site. Andrew Boutin asked if the truckers can be told to shut off their trucks and someone could be at the site to monitor the gate. Scott Oeschger said Robinson Fuels runs the bulk plant. A representative from D&C Transportation is not at the site.

Mery Moran, 2 Nicholas Court, said the headlights from the trucks shine into her windows throughout the night and early morning hours which is very disruptive.

There were no further comments.

MOTION by Dan Kerin, SECOND by Liza Kilcoyne, to close the public portion of the application for 33 Park Street. VOTING: 5 ayes; motion carried.

DELIBERATION/DECISION

Major Site Plan Amendment, Biodiesel Fuel Building and Containment Structure, 33 Park Street, D&C Transportation

The Planning Commission wanted more information on the following:

- Supervision of the site
- Management of people accessing the site
- Depiction of what will be done on the site (fencing, screening, landscaping)
- Demolition plan
- Impact on surrounding structures relative to what is to be done on the site
- Legal plat showing easements, right-of-way, access
- Site plan accurately reflecting what is existing and planned on the site
- Plan to address lot coverage and increase in nonconforming use
- Plan to address the building that was constructed without a permit
- Concerns expressed by neighbors about noise, headlights, hours of operation, safety, buffers, landscaping

MOTION by Mark Thibeault, SECOND by Dan Kerin, to table the application by D&C Transportation for 33 Park Street pending further information from the applicant.

VOTING: 5 ayes; motion carried.

5. OTHER PLANNING COMMISSION ITEMSMeeting Start Time and Process

Following discussion the Planning Commission changed the meeting start time to 7 PM. Robin Pierce will research the meeting process and the requirements for executive session.

Increase Number of Members

There was discussion of increasing the number of members on the Planning Commission from five to seven people. It was noted there has not been a problem to date in having a quorum present with five members on the commission.

Joint Meeting with Trustees

Robin Pierce will schedule a joint meeting with the Planning Commission and Board of Trustees.

6. ADJOURNMENT

MOTION by Mark Thibeault, SECOND by Dan Kerin, to adjourn the meeting. VOTING: 5 ayes; motion carried.

The meeting was adjourned at 9:25 p.m.

RScty: M.E.Riordan