

Village of Liberty Regular Planning Board Meeting September 8, 2011 7:00 p.m.

Present:

Don Nichols, Chairman
Carlton Fritz
Dan Ratner
Steve Green
John Weber

Absent:

Also Present:

Langdon C. Chapman, Village Attorney
Pam Winters, Code Enforcement Officer
Joan Stoddard, Trustee
John Picard, Sewer Supt.
Allan Scott, Chairman, Sull. Co. IDA/Sullivan County Partnership
Walter Garigliano, IDA Attorney
Barbara Garigliano, Attorney
Peter Belgard
Isaac Goldman
Derek Kelly, P. E. Kelly Engineering
Joe Irace, Architect
Zeke Alenin, Pres., Ideal Snacks
Michael Eschenberg

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Chairman Nichols opens the meeting at 7:00 p.m. and leads everyone in the pledge of allegiance.

**ON A MOTION BY CARLTON FRITZ, SECONDED BY DAN RATNER AND UNANIMOUSLY
APPROVED, THE MINUTES OF THE AUGUST 11, 2011 MEETING ARE APPROVED AS
SUBMITTED.**

**Public Hearing for Iberia Capital LLC
9-13 South Main Street
Special Use Permit # 12-11**

Chairman Nichols reads the legal notice into the minutes. For the record, twenty (20) certified notices were mailed out, fourteen (14) were delivered, five (5) were undeliverable, one (1) was of an unknown status and one (1) was refused (Krug). The total fee for the legal notice and mailing came to \$131.80 and was paid in full by Peter at this meeting (CK # 1396). There is no comment from the public.

Chairman Nichols advises everyone that the 239 review from the County has been sent back which states that, "based on our review of the materials provided, DPEM feels that the proposed action will have positive inter-community impacts. Therefore, we recommend approval."

Dan: Do we have to do anything about changing the language of the definition?

Chairman Nichols: Peter, you said you were going to look into the back stairs to see if something could be done that way? Did you?

Peter: I did and it turned out to be more difficult than I thought.

Chairman Nichols: So what do you want to do?

Peter: I'd like to use the existing entrance to the building that services both apartments from the common area.

Attorney Chapman: Can you just clarify for me what's there? You have two storefronts and you want to make two apartments, one for each storefront tenant?

Peter: Yes

Attorney Chapman: And right now they are accessed by one central entrance from a common hallway?

Peter: Yes.

Attorney Chapman: So there is no internal access to the apartments, which would allow us to approve this tonight.

Peter: No.

Chairman Nichols: The concept is there but, the letter of the law binds us, and it doesn't comply.

John: We can change the law or you can do a variance.

Dan: We really don't have a clear definition of what "internal connection" means, right? Can we apply our own semantics to this situation?

Attorney Chapman: Everything is subject to interpretation.

Chairman Nichols: We probably have several buildings that fall into the same situation.

Attorney Chapman: Changing the law is really not difficult to do, if that's what you want, right, Joan?

Trustee Stoddard: It's something we could certainly do if everybody was so inclined.

John: Do you know what the intent of this definition is?

Attorney Chapman: I didn't write your code but I believe the intent was that if you were going to rent a tenant space downstairs, you could live upstairs. I just think that the phraseology of the law unnecessarily limits how it can be done.

The discussion continues. Dan suggests that the Planning Board send a letter of recommendation to the Village Board that the wording of this definition be changed to remove the phrase "internal connection", keeping the intent of the language to mean that whomever rents a storefront downstairs must live upstairs in the same building. The board unanimously concurs.

ON A MOTION BY CARLTON FRITZ, SECONDED BY STEVE GREEN AND UNANIMOUSLY CARRIED, THE PUBLIC HEARING ON THIS APPLICATION IS CLOSED AND THE MATTER IS TABLED UNTIL EITHER THE LOCAL LAW IS AMENDED OR A VARIANCE IS GRANTED.

**# 10-09 RED MEAT PROCESSING PLANT
WILLOW LANE
SITE PLAN REVIEW**

An amended site plan and SWPP has been submitted for review. Copies of the new information have been supplied to all department heads for review and comment.

Barbara Garigliano: Good evening everyone. I'd just like to begin by making a comment with regard to the February 14, 2011 Village Board minutes; there was a comment said that there would be a transfer the tank and tangible property. It's not a transfer; it's an easement. I just want to clarify that.

Attorney Chapman: I don't know if the Village wants to own the tank or not.

Chairman Nichols: Quite frankly, I still have slight problem with the fact that we're going to get a second system down there, but when?

Trustee Stoddard: It's in the works. We anticipate the funding to come through and work on the plant should begin next spring.

John Picard: I haven't heard any of this yet.

Trustee Stoddard: Well, that's what's planned.

Walter: If the ultra-violet goes down, that facility (tank) that's dedicated for the storm drainage system hasn't been used in over forty (40) years. And we've had this discussion before; the tank is not part of your SPDES permit.

John Picard: I disagree. The plant is designed to chlorinate and de-chlorinate in that tank. The piping and everything was put in the plant and in the permit.

Walter: We're still back to that issue and if this is something that not going to be able to be done, we should let the world know that.

Trustee Stoddard: I don't think this is an issue anymore. The only issue at hand is whether the tank is going to be owned by the Village or it's an easement.

Barbara: That was my only issue-the minutes appear to be inaccurate.

Walter: And that's not what was discussed in the past. An easement is what was discussed because this is not part of the subdivided lot. It has other limiting factors involving the Route 17 taking line. What we discussed when we met with the Village is that they would transfer to the IDA the subdivided lot which is 5.54 acre in size and an easement to such other land as is necessary in the area of this tank and the piping that's used with the tank.

Barbara: The logistics of the tank make it that you can't subdivide it.

Attorney Chapman: I don't think that this board had an understanding that you were simply getting an easement. I thought this board understood that you were going to take personal property title to the tank.

Walter: We can take personal property title to the tank but we can't real estate title to the tank.

Attorney Chapman: You're going to take personal property title and have an access easement to certain infrastructure.

Walter: That's right. We'll have a bill of sale for it. The infrastructure will still sit on Village-owned land because, if the infrastructure breaks, we're responsible for it, not the Village.

Chairman Nichols: In the local newspaper, they mentioned something about needing additional land. Is that what they're talking about?

Walter: Yes, because the easement area is expanded because of the outfall of the tank because to make this work, they had to change the elevation of the outfall of the tank and the water won't run uphill so there needs to be an easement, which we can show you on the map. The outfall location was originally expected to be right at the tank, right here. The easement now needs to run out to here to make it work. This map depicts the lot here. There's a Village street in between, there's a salt shed in between, and this map depicts the easement area here which is along this pipeline, the square around this tank and the discharge box. The extra land you read about in the paper is the distance from that line to there. It's not three (3') feet wide because it has to be a maintenance easement but it's surely not in an area that the Village is going to use. Chairman Nichols: Well the Village Board has OK'd this though I have nothing back from the Village Board saying so.

Walter: It's a matter of record in their minutes. What we intend to do, with Langdon's assistance, once you're OK with this is get a description of the area, prepare the easement, send it to Langdon to review and he'll take it to the Village Board.

Chairman Nichols: Fine but I have a question about this pond. Is that just collecting water from the hill?

Barbara: It's called the green pond. If you look at all the piping here, it goes into here.

John Picard: This pipe runs from here to here, it makes a left hand turn here and that needs to be discontinued from that tank per orders of John Sansalone at the DEC. There can be no connection between our effluent line and the tank.

Barbara: That would be part of our permit. That would be taken care of.

Dan: It's reflected in the minutes, Langdon.

Walter: We expect that'll have to be rerouted.

Chairman Nichols: When do we shut down the UV?

John Picard: Probably around the end of October.

Steve: I'm just looking at the grading for the road area near the retention pond. It's substantial.

Walter: There's going to be a substantial change in that entire area between the current grad and the final grade.

Steve: The retention pond is in the road. The road in on map C.

Walter: The road is part of the 5.26-acre lot.

Steve: But you're going to give that back to the Village.

Barbara: Eventually.

Steve: Which means that the retention pond is in the right-of-way to the Village. Now you're also cutting grading on both sides along the road.

Walter: We anticipate that the easement will be comprehensive enough to handle that. There's going to be a lot of triggers on the Village property. That's a very minor issue down there. It's a very substantial issue everywhere else.

Chairman Nichols: Have you taken title to this?

Walter: We have taken title to anything yet. The title will be to this whole thing.

The conversation continues regarding the road, cuttings, title, maintenance, and the creation of Willow Lane with municipal grants. etc.

Multiple inaudible conversations are going on here.

Attorney Chapman: Where does Willow Lane end?

Walter: The answer is that no one really knows. It ends wherever the public funds ran out.

Chairman Nichols: I think we're set now.

Walter: If that's the case, then what we'd like to do is prepare a resolution to you as soon as possible for you to act upon.

Barbara: What we need are two (2) resolutions, one for site plan approval and one for subdivision approval.

Walter: We'd like to draft them ourselves and bring them to you because we have to submit them to several agencies involved in this project. We'd actually submit them to Langdon first for his review. It will recite all of the steps that we've gone through.

Alan Scott: We'd like to fast-track this if at all possible and, if necessary, have a special meeting.

Barbara: When is the next meeting?

Pam: October 13th.

Chairman Nichols: We need to get this to Mike Weeks to review.

Pam: He already has it. Barbara sent it to him three (3) weeks ago.

Chairman Nichols: Can you ask him for a letter saying he's reviewed the site plan and is either OK with it or indicate if it needs some tweaking someplace?

Pam: I'll e-mail him in the morning.

The discussion continues regarding the subdivision, which still isn't filed yet.

**# 11-11 Ahavath Israel LLC
66 Old Monticello Road
Preliminary Site Plan Approval**

Derek Kelly and Isaac Goldman are here and they're presenting a revised site plan.

Derek: Ahavath Israel actually owns sixty (60) acres so they have enough acreage to do what he wants to. The Village Code says that he's not allowed to have duplex units; he can only construct single units. If we constructed the units that way, he'd be spread out all over the place and that doesn't make any sense.

So we're proposing one road in, a circular road, in such a way so as to allow for emergency vehicles with the units around the road. It'll have a walking path to the parking areas. He wants to utilize his existing sewer and make the pump big enough to handle the number of units going in.

We've spoken to Albert Picard regarding the water. He seems to think it's going to have to be a 4' line to here. What we plan on doing at this point is prepare a variance application to present to your ZBA regarding the duplex unit issue.

Steve: And it has to meet our subdivision regulations.

Derek: But he doesn't want to do a subdivision. He doesn't have to.

Steve: According to our code, he does. We have no rules or regulations for a bungalow colony.

Derek: But this summer camp is pre-existing.

Attorney Chapman: This application needs to be clarified more. They're apartments?

Isaac: They're apartments for our staff and teachers.

Pam: I think you're confused because the application says subdivision on top but I use the same application for site plan approval also. He's seeking site plan approval for a non-conforming use. I'll fix the application and send them a revised one.

Attorney Chapman: You'll need to amend your application accordingly to show that you want to construct ten (10) duplex units for seasonal use.

Isaac: OK.

Chairman Nichols: I don't see how you can apply for a variance. I don't see where you have a hardship.

Derek: The hardship is that there's no need to utilize all of the property for just a few units.

Dan: With regard to the duplex units, there are four (4) areas of criteria that need to be met to grant a variance and I don't see how you can meet them because you have ample land to develop with single units.

Attorney Chapman: That's for them to prove. If they want to lay this out in this fashion as duplex units, they can. But the burden of proof is theirs to show the ZBA who'll ultimately decide on the variance.

Chairman Nichols: We can't approve this as is.

Derek: I know. This plan is just for preliminary approval.

Chairman Nichols: These units are for staff. Where are the campers?

Isaac: On the other side of the road.

Attorney Chapman: Are these units intended for year-round occupancy?

Isaac: No, just for the summer.

Attorney Chapman: And what size are the units?

Derek: I believe they're 27' X 64'. What's my next step?

Pam: I've already given Isaac a variance application. He needs to fill it out with any supporting documentation and return it to me with the fee. I'll review it and forward it to Judy. She'll then schedule a meeting [Note: Initial meeting is set up for 9/29/11 @ 6:30 p.m.]

ON A MOTION BY JOHN WEBER, SECONDED BY CARLTON FRITZ AND UNANIMOUSLY CARRIED, THIS APPLICATION IS TABLED AND THE APPLICANT IS HEREBY REFERRED TO THE ZBA FOR A VARIANCE.

**# 13-11 Ideal Snacks LLC
89 Mill Street
Site Plan Approval**

A preliminary site plan has been submitted for review. Zeke Alenik, business owner, Mike Ehrenberg, employee, and Joe Irace, architect for the project are present in this matter.

Joe: I'm Joe Irace, architect, and I'm here on behalf of Ideal Snacks. The property formally known as Grossman Tire is being purchased by Ideal Snacks. Their intention is to demolish the existing garage and construct a new two-story building in its place connecting it to the existing warehouse over the stream. The new building will be used initially as storage but may also be used for production purposes on down the line. It's more of the same factory usage. We want to create a connection over the stream about twenty foot (20') wide walkway that would be ramped so that you can get to the upper level. The new building proposed will be a two-story one, with a footprint of 23,000 square feet, so the total square footage of the building will be 46,000 square feet.

We're maintaining a twenty-foot (20') setback on the front. The current building is back more than twice that distance back so we're going to be pulling it up a little closer to the sidewalk. The sideline setbacks are zero (0') but we're going to keep a little distance there for maintenance purposes.

Steve: It should be twenty-feet (20') from the edge of the road ROW and not from the edge of the property line.

Joe: I don't know where the ROW line is.

Steve: Where's your survey?

Joe: It's currently being prepared by Jeff Roberts. Once we have a survey, we'll adjust the placement of the building accordingly. Jeff just sent us over a digital boundary survey so we'd have a preliminary site plan to show you for this meeting. We fully intend to comply with the setbacks.

Dan: You may need a variance.

The discussion continues regarding the NYS ROW, the existing sidewalk and the proposed building placement.

Zeke: If we don't get this placement or this same square footage for the building, there's no point in going forward.

Joe: We'll wait to see what the actual survey shows.

Inaudible person: What's the building going to be used for.

Joe: It's going to be more of the same use as what's there now. This existing building is currently used for storage of pallets of products. Over here they manufacture puffed wafer products for several different

companies and package them for delivery. The packages are bundled and stored over here in the warehouse portion/loading dock area.

Zeke: This area here could be used to expand our production line if needed.

Attorney Chapman: From what I can see, you're going to have to submit a long for EAF as part of your application, and part of the environmental review has to address the discharge. I will tell you that the Village Board had instructed me to send Ideal Snacks a letter requesting a list of discharge information (sent 4/5/11), which was ignored. When Pam tried to follow up on this with her letter, she was invited down to Ideal Snacks at which time this gentleman here promptly tore the letter to pieces in her face. So that was Ideal Snacks reaction to trying to work with the Village. We're going to have to know just exactly what is being discharged into our system and respond to the DEC's request. Otherwise, the Village can be fined by the DEC.

Zeke: We're discharging nuclear waste.

Attorney Chapman: Is that on the record?

Zeke: Yes, nuclear waste.

Attorney Chapman: OK. I just want to be clear. Then you'll definitely need a long form EAF with your application.

Joe: OK. We've done that before. We'll also be working with Glenn Smith. He'll be designing our site plan to ultimately work out the storm water management and site issues. Again, we just want to see if the project is viable in your eyes before we go any further.

Chairman Nichols: The concept of what you want to do is fine. What's your plan where you stopped coming down the street?

Zeke: As far as what?

Chairman Nichols: As far as reconstructing the brook walls.

Zeke: We're going to continue to the end of our property.

Joe: Ideal recently renewed our permit with the DEC to work in the stream. This connection to new building will be incorporated into the work. There will probably be a covered ramp for a forklift. Also this back property line will be eliminated and the Grossman parcel attached to this existing one. That'll eliminate the question of maintaining the thirty foot (30') rear setback requirement.

Dan: Didn't you split this parcel (Root 52 parcel) off?

Zeke: Yes

Dan: And now you have it back?

Zeke: Part of it. It's used for parking.

Pam: Are those propane tanks going to stay there or is it your plan to relocate them elsewhere?

Zeke: They'll be relocated to the other side of the bridge.

Chairman Nichols: That'll have to be put onto the site plan so we know where they'll be.

Steve: What are you doing about landscaping?

Joe: We haven't even given that a thought at this time. We'll come up with something across the front here to make it look attractive. It'll be masonry and we'll add windows in the building and lighting.

John: Where will your loading docks for the new building be?

Joe: Right now our loading docks are here. For the new building, they'll be over here. There will be no loading from the front.

Zeke: We're still ironing out the details.

John: The only other concern is the smell emanating from the plant. You have two stacks of smoke which discharge odors that have been stronger than usual lately. My wife and I can smell it from our house.

Zeke: This is the first time anyone has complained about the smell.

Carlton: I love the smell.

Zeke: I don't know that I can do anything about that.

If I can address the issue about the letter incident, we've spent a lot of money trying to address this issue. We've repeatedly said, show us that we're the problem and tell us how to fix it. Do you have idea what the place look like before I bought it?

Dan: But still, we have to take into consideration the problem. We understand that everybody likes to be good neighbors and we have to work together but if the sewer plant is becoming deteriorated, we have to address it for everyone. You have a tremendous investment here. If our sewer plant fails, your investment is out of business. It's in the best interest of both of us to get this problem resolved. I'm sure there's an amicable solution to the problem.

Zeke: I agree. We've invited everybody from the Village to walk inside the plant at any given time to see what we do. Let's look at it during the day; let's look at it at night. We operate 24/7. Come inside, show us what we're doing wrong and tell us how to fix it. We've spent a lot of money trying to remedy things every time there's been an issue.

We've hired Sheeley's to pump all of our tanks once a month. We've hired Glenn Smith to review our operations. We've done all we can. You tell us what we need to do.

Dan: You agree to work on the solution?

Zeke: We always have.

Dan: Amicably?

Zeke: We always have. It's never been an issue.

Attorney Chapman: Excuse me sir but we've requested certain information from you that you've failed to provide to us. You tore up the letter. With all due respect, I fail to see how that qualifies as cooperating with the Village.

Zeke: I don't even know who you are.

Attorney Chapman: I am the Village Attorney, sir. My name is Langdon Chapman. I sent the letter to you.

Zeke: And I'll tell you again. It's not about the letter. Come inside. Tell us what to do. We've already spent money. We've installed additional tanks. We've changed baffles. It's still not enough for you. I'll spend more but you need to tell us what's wrong. And I don't want to hear DEC; that's not us.

Attorney Chapman: The DEC is asking questions. I'm simply trying to respond to their questions. Your choice is not to help us. I'm asking you again right now for this information.

Zeke: I'm not responding to that question. That's not what's going to happen. Bring somebody in, which we're offering to pay for, an engineer, an independent engineer, that'll come in and say spend \$100,000 to fix this problem and I'll do it.

Pam: Zeke, sitting behind you is John Picard who runs our sewer plant. He periodically takes samples from the manholes and sends them away for testing. When he receives the lab results back, he sends me a copy of the results, which I forward to you. Have you ever looked at them, because there are levels indicated in the results that exceed what is acceptable?

Zeke: Pam, I told you this very clearly several months ago. We have another facility in Lubbock, Texas. If you guys want us to downsize, we will downsize. If that's what it takes, we will. We want to be good neighbors. We've said to tell us what it takes to fix this, so to throw out lab results at us or for him send us letters in the mail means nothing to me. Give me a something constructive so that we don't have to have these issues any more. But if we're not welcome here, just tell us. We'll downsize. Watch us.

Attorney Chapman: I think part of the solution is to provide information so that we can share that with the DEC.

Zeke: The information is not on any letter. The information is in your sewer. Bring in an engineer. We said we'd spend the money on it. Let's find an independent engineer that will come in with a solution. Instead, you're (to Langdon) busy with your papers. We're going in circles.

Joe: You (to Zeke) need to hire an engineer.

Zeke: We did. We hired Glenn Smith.

Joe: You need someone to analyze all of this.

Zeke: So find him. Bring him in.

Chairman Nichols: I don't know that there's anyone around here locally that can do this for you.

Joe: He needs someone like Advance Testing. There are companies that do this sort of thing.

Dan: John, do you have anyone you'd recommend?

John: We're dealing with Delaware Engineering right now.

Dan: Do they perform this type of service?

John: I believe they do.

Zeke: I don't know what the labs say but we do not discharge anything. Anybody can come in at any time, unannounced, to see our production line and how it operates. I'll give you the code for the door. We don't have a clue as to where this is coming from. We don't fry. We don't fry anything. We don't have oil in our product. None. Zero. It's always been that way.

Dan: So what does it take to get to the bottom of this?

Trustee Stoddard: We have a board meeting Monday night. I have no problem in suggesting that we find an engineer who is capable of doing this. I don't know if Delaware Engineering does this. If they don't, we'll find someone who does and trace it back and be done with this once and for all.

Chairman Nichols: If they analyze the discharge, they'll be able to tell if it's coming from Ideal or not.

Dan: You're agreeable with that?

Zeke: One hundred percent.

Trustee Stoddard: You're willing to pay for the engineer to do this?

Zeke: I've always said we would share the cost in finding out what the problem is.

Trustee Stoddard: It is not our responsibility to pay to figure out your problem. We believe that this is where the problem lies.

Zeke: You believe?

Trustee Stoddard: Yes.

Zeke: Nobody is a hundred percent sure, though.

Dan: But if it is determined....

Zeke: If it is determined that there is a problem, we will solely pay for the problem to see that it doesn't happen again. You need to prove to me that we're causing this problem.

Attorney Chapman: You have to respond to the DEC's request then.

Dan: I haven't seen this letter. Is that a hard thing to respond to?

Zeke: With all due respect to the board, we've been dealing with this issue for the last five (5) years. It's not like we've ignored the Village. Three (3) years ago we agreed to a plan to install additional equipment and we've done it, have we not?

Pam: You installed some sort of Trapzilla gadget on one (1) line.

Zeke: At who's suggestion was that?

Pam: Not mine. I've never even heard of this thing before.

Zeke: It was agreed upon by your people, Pete, and Glenn Smith and they designed it and put it in.

Pam: The Village made no recommendation as such. You collaborated with Glenn Smith.

Zeke: So what do we do now?

Chairman Nichols: So let's refer this to another engineer as see what they have to say.

Trustee Stoddard: And let's be clear about where the payment for this service is going to come from.

Zeke: I said we will share. Any kind of work on our side that needs to be done, it's 100% ours.

Trustee Stoddard: We see if Delaware does this type of work.

Joe: And they should also analyze the sample right at the edge of the facility, not all the way at the sewer plant.

Chairman Nichols: Conceptually, I don't think any of us here have a problem with what you're proposing.

Joe: What is the approval process? Do we need a public hearing? Our next step is to hire Glenn Smith to do the site plan, get Jeff Roberts involved to get you the survey you need, we'll storm water management, landscaping and all of the details on the site plan we've discussed. We'll conform to whatever the DEC requires at the rear of the parcel. If we show up at the next meeting will all of this info, do you then set up a public hearing? We just need to know.

Pam: You'll also need 239 review. I'll have to send a copy of the site plan to the County for their review and comment. I'm sure they'll consider expediting the application. Heather Jacksey reviews most of our paperwork.

Attorney Chapman: And don't forget the long form EAF.

Joe: Of course. What is the submittal date for all of this?

Pam: October 3rd.

Zeke: Is this project contingent upon fixing the Village discharge problem:

Chairman Nichols: Yes. It's part of the SEQR process. And I don't know why this can't be resolved.

More discussion continues about the infiltration problem, testing sites, testing results, potential solutions, cleaning of the tanks, the amount of oil used in the processing lines, etc. The end result of the conversation is that no one in the room tonight is an engineer and none present are qualified to come up with a solution.

Joe: Thank you.

ON A MOTION BY JOHN WEBBER, SECONDED BY DAN RATNER AND UNANIMOUSLY CARRIED, THE MEETING IS ADJOURNED AT 8:40 P.M.

Respectfully Submitted,

Pam Winters, Clerk

Dated: October , 2011