TO: Sarah Campbell, City Manager, City of Fernandina Beach DATE: December 29, 2024
Tammi Bach, City Attorney, Fernandina Beach

CC: Technical Review Committee Members
City of Fernandina Beach Commissioners

FROM: John R. Hart, 1553 Geddes Lane, Fernandina Beach

SUBJECT: **Reply to RYAM's Counsel's Memorandum dated December 18, 2024**

This letter, written on behalf of Fernandina Wins, Inc. dba No Ethanol Fernandina (NEF) responds to the submission to you and Tammi Bach dated December 18, 2024, by the law firm of Lewis Longman Walker (LLW) on behalf of RYAM. Page references herein are to LWW's brief.

To be clear, I am writing to you not as an attorney representing NEF, but as a member of the NEF Board who happens to be a retired USAF Judge Advocate, a lawyer. I also have nearly four decades of experience in interpreting language in statutes and contracts, a Master of Laws Degree in Government Procurement Law from George Washington University School of Law (1989), and a JD from Wake Forest University School of Law (1983).

You and your staff may have already identified and examined--or are in the process of examining--much of what I point out below, I simply recall being under the gun in responding to lengthy briefs on complicated matters and appreciating any help I could get. While I am certainly going to advocate, please accept this in that spirit.

As a starter, let's look at two major flaws in LLW's 29-page legal tome.

First, LLW have been compelled to devote some twelve pages to posit that the "plain meaning" of the term "chemical manufacturing" is something other than, well, a plant that produces a hazardous chemical. (Pages 9-20) It is not the length of the logic that makes an argument attractive, but rather, it is the attractiveness of the logic within the argument that counts. LLW is dead wrong about the Plain Meaning Rule and how our Comprehensive Plan (CP) Land Development Code (LDC) should be interpreted.

Second, LLW spill a lot of ink on these same pages trashing the Weiss Serota legal opinion our City Attorney wisely obtained. They then suggest you have no right to rely on it. They would much rather you rely on their legal opinion! There is no reason whatsoever that you cannot adopt the logic of the Weiss Serota opinion as your own in rendering your decision.

I suggest putting this line in your decision document: "I gave this matter careful consideration. In making this decision, I have reviewed and considered X, Y, and Z, and to the

extent my decision incorporates or relies upon the logic, advice, or positions stated in them, or offered by others, I hereby adopt it as my own." Poof! No improper delegation of authority (Pg 27) and no due process violation (Pgs 27-28).

DISCUSSION

The Plain Meaning Rule

RYAM and LLW argue that RYAM's proposed plant to manufacture ethanol, a listed hazardous chemical, is not "chemical manufacturing," prohibited under our CP and LDC. They overreach in doing so. They correctly cite the Plain Meaning Rule, but they misconstrue how it applies in this context. Put simply, words are to be given their ordinary and plain meaning unless the context indicates otherwise. If the plain meaning of words used are clear and unambiguous, courts will apply them, and not look beyond them to other matters.

"Don't Overthink It. The Simplest Answer is Usually the Right One"

Do you really think the drafters of our code sliced and diced and separately analyzed the words "chemical," "manufacturing," and refining" as LLW does on pages 8-12? Or, did our drafters simply wish to prohibit what comes to the mind of most people, plainly and clearly, by the entire phrase, "chemical or petroleum manufacturing or refining" -- a plant that produces either a chemical or petroleum product? I think it is the latter.

Even better, they seemed to have in mind--to guard against crafty interpretations of "salvage yards, "batch plants," or "chemical manufacturing or refining"--that anything "*that generates potentially harmful environmental or nuisance impacts,*" is also prohibited. This italized phrase in both our CP and LDC not only describes other expressly prohibited uses, it also serves as powerful reinforcement for adoption of the the plain and simple definition of "chemical manufacturing." Here's the logic: (1) as LWW points out, "interpretations that create internal inconsistency within the Comprehensive Plan must be rejected, along with interpretations that are irrational or render words meaningless." (Pg 7); (2) however classified, operations at RYAM's proposed ethanol plant, if allowed to be built, will generate *potentially harmful* impacts--there is the potential for an accident, for a spill, for a malfunction, for an explosion; so (3) if you get sold on RYAM's involved interpretation, then you are rendering meaningless this italicized phrase and creating an internal inconsistency in both the CP and LDC.

Slicing and Dicing "Manufactures" Ambiguity Where None Exists

Rather than plainly look at the whole phrase cohesively, as "chemical manufacturing or refining," LWW isolates the word "chemical" and then postulates that the term "chemical manufacturing" is ambiguous because the word "chemical" itself is ambiguous. What do they say? "[I]f for no other reason than the word chemical is often used both as an adjective…and a

noun…" Let's test this approach. Does the phrase "chocolate soda fountain drink" conger up anything? Sure does! And it's perfectly clear (and tasty)! Now break it down, "chocolate" could be a color rather than a flavor; "soda" could be a chemical compound instead of carbonated water; "fountain" could be a place into which you throw coins; and the word "drink" can be both a noun and a verb. "Slicing and dicing" obfuscates the clear meaning of the phrase "chocolate soda fountain drink" to artificially create ambiguity where none exists, just as does LWW's slicing off the word "chemical" from "chemical manufacturing."

Look Here! Don't Look There!

LWW want you to focus on the word "chemical" being an "adjective" not a "noun." (Pg 8) Because, if it is a "noun," then clearly their client loses because ethanol is a noun, a substance, most commonly thought of in its liquid form (but which can easily turn into a gas!) with the chemical formula of C_2H_5OH. So, at the bottom of page 8 they give you *ONLY the two definitions* in the dictionary of the word "chemical" that are adjectives, and they leave out the two that are nouns.

Now, at the top of page 9 they lay on top of this obfuscation a case citation, the *Barco* case, to suggest that there is some legal sanctioning of this half of the definition of the word "chemical" that should be your sole focus. **There isn't.** LWW then conclude, "Thus, both the dictionary definition and the context of the Plan and LDC provisions call for the word 'chemical' in the phrase 'chemical manufacturing or refining' to refer to a manufacturing process that uses chemistry or chemicals in a chemical reaction process to create manufactured or refined items." (Page 9) This is quite a leap of logic.

The ensuing full four pages of LLW's memorandum (Pgs 9-12) rest upon this "look here, not there" basis to argue that a plant that produces a chemical (a noun, ethanol) is not conducting "chemical manufacturing" because it is not employing a "chemical reaction process" but is rather using "natural" and "physical separation" processes. Remember, it's not the length of the logic that makes an argument attractive, but rather, the attractiveness of the logic within the argument is what counts.

When the ordinary Fernandinians who drafted our code were seeking to limit future industrial development in our town, and on our island, I think they were simply and plainly thinking of a plant that either manufactured or refined chemicals. Don't overthink it.

Other Rules of Staturory Interpretation Do Not Support RYAM's Position

The Mischief Rule

This rule that focuses on the problem or "mischief" the statute was intended to address and interprets the statute in a way that remedies that issue. I would argue that the “mischief” that drafters of our code intended to addresshere was a fear that future uses, on land in our city zoned industrial, would be proposed that “generate potentially harmful environmental or nuisance impacts,” and the drafters did not want them to be approved. This is what “salvage yards” batch plants” and “chemical manufacturing and refining” all have in common—potentially harmful impacts. Yet, this rule is not mentioned by LLW’s in any of its 29 pages or argument.

The Golden Rule

This rule stands for the principle that if the plain meaning of the statute leads to an absurd or unjust result, the court may modify the interpretation to avoid that outcome. I would argue that the city’s adoption of LLW’s interpretation of the words “chemical manufacturing” and “chemical refining” would lead to the absurd result that the city would be powerless to protect its citizens from the obvious dangers of manufacturing ethanol on the island and transporting it by truck off the island, Accordingly, under this rule of interpretation, RYAM’s suggested interpretation will not be viewed favorably and may be overturned by a Court to avoid that outcome. This rule is also not mentioned in LLW’s memorandum.

The Intent of the Drafting Body

Legislative Intent is another interpretive tool. Courts may consider the purpose and intent behind a legislative provision, often looking at legislative history and context. Now, LLW does mention this interpretation tool (Pgs 19-21), but its argument misses the mark.

As previously stated, the list of express prohibitions applies to both primary uses, and to ancillary uses, so the drafters were indeed concerned about existing approved industries proposing to augment their operations as RYAM is proposing to do.

LLW singles out a provision that was in an early version of the CP, but ***not included*** in the final enacted version of the CP. Based on this **deleted provision**, it nonetheless argues that the sole thing the drafters intended to address in creating the list of express prohibitions, such as ‘chemical manufacturing or refining’ was to “prevent the types of environmental and public safety hazards posed by traditional, stand-alone chemical and refining plants rather than existing facilities wishing to augment their existing production process…” (Pgs 19-20) That deleted provision stated, “These uses typically generate heavy truck traffic, require significant acreage, are difficult to screen and buffer from residential areas, and therefore should be located in more sparsely developed unincorporated areas.” To me, this phrase indicates that some drafters wanted to push new industry into the unincorporated areas of Nassau County, but let’s see if it lends any support at all to LLW’s reading.

What Should We "Take Away" From Something being Deleted?

What conclusions are typically drawn from the deletion of draft language? One, it was made deliberately to exclude its meaning or application from the final bill. This suggests that the final version was meant to have a different scope or effect than the draft. Two, it was made to simplify the language so that the final version could reflect a more precise expression of what was intended. Three, there may have been some debate over how the term might be interpreted in the future (for instance, perhaps like the one LLW is now suggesting), and so a compromise was made by the drafters, and it was deleted. None of these take aways embrace LWW's conclusion that its deletion "nevertheless serves as a clear indication of the original intent." (Page 20). In fact, just the opposite is true.

A Wide Lens Was Intended and Is Necessary

Equally illogical, LLW then argues that the drafters of our code were concerned solely with heavy truck traffic, significant additional acreage being developed, and proper screening and buffering, and nothing else. (Pg 20) That is quite convenient because it fits nicely with its ensuing assertion that all of these limited concerns are satisfied. The plant is proposed to be squeezed into the existing plant site, so no new acreage being used. And it is screened by "trees and other natural barriers that already exist." And three trucks a day is not "heavy traffic." Are we to allow any and all possible types of industrial uses if the site already possesses natural barriers and doesn't pose traffic concerns?

Three trucks a day--DOT #406 vertified tanker trucks capable of carrying as much as 8,000 gallons of ethanol each--should be of great concern to you and the city. The transport of ethanol though our town—7.5 million gallons annually—would be extraordinarily dangerous. So, RYAM and LWW have crafted the narrowest of lens for you and our technical review committee to look through that allows both RYAM and LLW to avoid any mention of the danger presented, and the planning or precautions the city must take to protect citizens from the dangers of ethanol-related traffic accidents.

Ethanol Transit is a Major Concern

Three trucks a day talleys to over 1,000 annually, carrying 7.5 million gallons annually through our city. It would be reckless for the city to not prepare for an accident involving one of these trucks. RYAM and LLW both acknowledge the applicability of the US Department of Transportation's 2024 Emergency Response Guidebook (DOT Guide) for planning guidance. They acknowledge the guide's designation of an 800-meter evacuation zone *in all directions* for incidents involving ethanol, but they brazenly and callously examine only the potential for an incident to occur at its plant site, not during transport. You don't have that luxury. You should

make them apply the guide as intended for both stationary tanks at its site and "*highway tanks*" and address the consequences in a resubmission of their application.

> *US DOT Suggests Drawing a Mile-Wide Circle Around All Accident Sites Involving "Highway Tanks" And Evacuating Everyone Within That Circle*

RYAM did not address the potential evacuation of thousands of Fernandina "residents" living along the route it will transit ethanol to market in its Pre-brief to the TRC. And LLW does not mention it in the 29 pages it devotes to convincing you and your staff that there is nothing to worry about in green lighting their project.

For ethanol incidents, the DOT Guide says: "if a *highway tank* is involved in a fire, ISOLATE for 800 meters (1/2 mile) *in all directions*; *also, consider initial evacuation* for 800 meters (1/2 mile) *in all directions*." So, even if there is no immediate fire or spill, caution may dictate an evacuation. Why? Because among the dangers this guide lists for ethanol incidents are:

- Vapors may form explosive mixtures with air.
- Vapors may travel to source of ignition and flash back.
- Vapors will collect in sewers & basements causing hazard indoors & outdoors
- Runoff to sewer may create fire or explosion hazard.

(And if a fire is caused immediately, or ignites later from vapors)

- Containers may explode when heated.
- Fire may produce irritating, corrosive and/or toxic gases.
- Vapors may cause dizziness or asphyxiation
- Runoff from fire control may cause environmental contamination

Eighth and Gum

Should a logging truck heading South on 8th, lose its brakes, run the light at Gum, and broadside a fully loaded tanker pulling slowly out to head South, a ½ mile zone, *in all directions,* a mile-wide circle laid over our street grid, as planners typically do, would cover some but not all of Beech Street to the North, Lime Street to the South, and 14th Street to the East. However precisely defined (not an easy task), undoubtedly included in this zone is Southside Elementary, the Peck Center, Elm Park Rec Center, and the City's wastewater facility. Just to mention a few thorny issues, how would our plan address school children? Our lower income residents lacking means to evacuate?

Eighth and Sadler

For this very busy intersection, the recommended evacuation zone would stretch North beyond T.J Courson to the parking lot in front of Walmart and East along Sadler beyond Beall's nearly to the Post Office. All the businesses in our busiest shopping district both North and South of Sadler would need to close, and shoppers flee home, if allowed to do so.

The City Needs to Have a Contingency Plan or Plans

Can you imagine the chaos if the city doesn't plan in advance? And, do you get a feel for the critical yet delicate decisions to be faced crafting an evacuation zone? Mind you, I'm not addressing above a catastrophic event necessitating a wider evacuation zone, just a routine traffic incident, and still, thousands of Fernandinians would be impacted. The military and other organizations have "standing plans" or "contingency plans" in place before an incident occurs because they help them prepare, reduce confusion and panic, identify resources that may be needed, and prescribe roles and responsibilities.

Not Planning Risks Lives, and Exposes the City to Liability

A public nuisance is an act or omission that obstructs, damages, or inconveniences the rights of the community at large. We all have a right to be safe in our homes, and for our community to be able to evacuate safely and efficiently if ethanol is brought to our island. If our city does not pre-plan for potential evacuation scenarios due to the risk of an explosion at the plant, or an accident along our roads, it cannot effectively do so when the need arises. Any omission or lack of detail by the city in planning to facilitate an orderly evacuation potentially raises a public nuisance impacting all of us and subjecting the city to liability. The first step to take to establish a proper contingency plan is to require RYAM to submit a traffic analysis report squarely addressing this issue. You'll be accused of a due process violation if they aren't allowed to comment, so give them one.

A Thorough Traffic Analysis Report From RYAM Addressing Off-Site Accidents Is Imperative

Paragraph 11.01.06 of the LDC describes the requirement for applicants to submit a Traffic Analysis Report for an area of impact agreed by the applicant and the city as part of the pre-application conference. The area of impact here in Fernandina Beach should be the entire route for ethanol transport on and off the plant site that falls in the city, the remainder of the route is the county's concern. And the scope of the analysis should address what is obviously missing thus far, an accident in the city involving a DOT #406 ethanol tanker truck. Should RYAM's submitted traffic analysis not address this area, and this concern, then you can and should determine its application to be incomplete.

In accordance with LDC, paragraph 11.01.06, RYAM is required to conduct and submit to you "a traffic analysis report…prepared by a licensed traffic engineer" (Para A). It must address "for both on-site and off-site traffic impacts" (Para C) eight listed requirements, the last one

being “other transportation factors.” The US Department of Transportation’s 2024 Emergency Response Guidebook (DOT Guide). ERG2024 PDF – Accessible (English) | PHMSA addresses ethanol incidents, stating: “if a highway tank is involved in a fire, ISOLATE for 800 meters (1/2 mile) in all directions; also, consider initial evacuation for 800 meters (1/2 mile) in all directions.” So, even if there is no immediate fire or spill, caution may dictate an evacuation.

Accordingly, as to “other transportation factors“ under Paragraph 11.01.06 (C)(8) meriting examination NEF recommends you identify a few intersections of concern to you and require the study to provide you with specific recommendations as to how the city should respond to US DOT recommendations in the event of an ethanol-related incident at the identified on and off-site site locations.

You might also require that the licensed traffic engineer address whether existing means of transport are adequate along Gum Street (including that portion of Gum on and off the mill site) for egress of mill employees complying with an ordered evacuation and ingress of first responders to the incident site. Lignotech, Eight Flags, and proposed additional ethanol plant workers should be included in this analysis.

Isn’t this just a bit more important than whether our roads can manage the weight of RYAM’s trucks? Or whether an additional three-trucks a day unduly burdens traffic? I’m surmising that this is about the extent of any existing RYAM traffic study.

Inapplicability of the EPA Ruling under the Clean Air Act

How far will LLW reach to contort the plain meaning of a simple phrase to suit its client? On page 8 they ask you to look to an arcane 2007 EPA ruling to interpret language that is clear and unambiguous on its face. They refer to a ruling issued by the Federal EPA in 2007 to reclassify how the Federal EPA regulated fuel ethanol plants under the Federal Clean Air Act (CAA) passed in 1970. It’s a red herring. This rule change was pushed by Senator John Thune of South Dakota to support the then burgeoning first generation (1G) fuel ethanol industry in his state, and other the Midwestern “corn belt” states. The rule change was made for the express and limited purpose of moving ethanol plants out of certain definitions of importance under the CAA as to whether a particular pollution source is “a major emitting facility,” or “a major stationary source,” or “a major source.” The air emissions emanating from sources falling under these “source categories” were, and still are, subject to greater scrutiny by the EPA under the various CAA programs. Not only did this rule change occur in the context of air emission regulation, while we are dealing with land use regulation, but this occurred in 2007, so it has no bearing on what drafters of our municipal code intended back in 2000-2002.

In drafting our land use codes, the City focused, quite properly, on the potential harmful environmental and nuisance impacts of certain industries, and it determined to exclude certain types of industry from our industrial zones. The city was in no way focused on what should or

should not fall within the technical CAA definition of a "chemical process plant." The city's focus was land use, impacts to the land, to the community, and to adjacent landowners.

Ethanol Is Not an Ancillary Use But Even if it Were Its Subject to the Same Express Prohibition

Our LDC permits approved industries to add ancillary activities but only so long as the ancillary activity itself is not expressly prohibited under our code. "Chemical or petroleum manufacturing or refining" as well as "other uses generating potentially harmful environmental or nuisance impacts" are both expressly prohibited ancillary uses in both our CP and LDC. So, it matters not (Pgs 6-8) whether RYAM's use of SSL from its pulp mill--to produce an entirely new and distinctly different product--is an "ancillary use." Given the context in which the term is used in the LDC, I believe the definition RYAM cites of "providing necessary support to primary activites or operations" (Pg 6) fits best. And RYAM's mill has operated just fine for over many years without the necessity of adding ethanol. Consequently, adding ethanol production is more akin to what RYAM itself calls it, a "second-generation (2G) use," or a new use. It really isn't "ancillary" to its pulp mill like a road for the logging trucks, a crane to hoist logs, machinery to debark and chip the logs, a parking lot for its workers, a rail line to ship out product, etc. etc. No, a new $50M plant to undertake a whole new line of business is not ancillary to the existing use at all. But it matters not, so let's move on, ancillary or not its expressly prohibited.

Fermentation, Distillation, Dehydration and Purification are All Common Processes Used in Chemical Manufacturing and in Ethanol Production

RYAM seeks to distinguish fermentation because it is a natural or biological process (Pgs 9-11); distillation because it involves physical separation (11-12); dehydration because it too is physical (Pg 12); and Purification, well, it is not really discussed. All these processes are used in ethanol production and all of them fall under the broad definition of "chemical manufacturing" because they involve the transformation of raw materials (here, the SSL) into a different product, the chemical ethanol. Fermentation turns sugars into carbon dioxide and alcohol; it changes the chemical nature of the raw material into two new materials with two different chemical structures. Distillation is a form of refining to achieve a higher level of purity of ethanol, a chemical, so it is best considered chemical refining, also a prohibited use.

Dehydration and Purification are also refining techniques. During regular distillation, ethanol and water form an azeotrope at about 95.6% ethanol and 4.4% water. This mixture has a constant boiling point and thus cannot be further purified by simple distillation so various forms of dehydration and purification are used. LLW claims that "the project **anticipates** using molecular sieves to separate ethanol and water molecules from one another." (Pg 12) The use of molecular sieves is the most expensive method of breaking up this azeotrope, both in terms of its initial cost and ongoing maintenance. There are two other methods, Azeotropic Distillation and Chemical Dehydration, but both processes use chemicals and would then render the entire process to be "chemical manufacturing," even under RYAM's definition. At a minimum, the TRC must ascertain how certain RYAM is that its *anticipated method* to achieve 100% pure ethanol will be installed and used throughout the life of the plant. Interestingly, to NEF's knowledge, the first mention of the use of molecular sieves is in LLW's brief.

The False Equivalency of Beer to Fuel-Grade Ethanol

I'm not going to waste much of your time here. LLW says, the primary concern of the project is the flammability of ethanol." We could not agree more. We disagree that this "is a fact of life whether you are brewing beer or making ethanol for fuel." (Pg 21) Fuel-grade ethanol is highly flammable, beer isn't. It is a false comparison, period.

The False Equivalency of a $50M Industrial Facility to a Small-Batch Commercial Distillery

RYAM's proposed 2.5-acre tangle of pipes, processing tanks, vapor recompression equipment, motor control equipment, and a cooling tower is quite different than Marlin and Barrel's small operation. And the dangers presented by producing 100% pure ethanol fuel on site, and trucking 7.5 million gallons of this highly-flammable product off-site every year, are quite different than selling whisky and spirits on-site with some take away business.

And, like its argument that you cannot rely on advice from outside counsel secured by your own in-house attorney fails, so too does its argument that you cannot prohibit operations in an industrial zone when they run contrary to express prohibitions pertaining only those zones. Commercial development has its own distinct restrictions tailored to commercial uses. Industrial development has its own restrictions tailored specifically to industrial uses. They are different for a purpose, and that is logical, and prohibitions are enforceable provided they pertain to the use at issue, even if, for good reason, no such prohibition exists for another use category. RYAM is overreaching. The city is not bound to approve a large 2.5-acre chemical manufacturing facility in our industrial zone because First Love brews and serves beer.

Our CP is clear and unambiguous. It expressly prohibits chemical manufacturing as well as chemical refining in our industrial zones. Our LDC is equally clear and unambiguous. It parrots verbatim the same express prohibitions.

Lignotech's PM Emissions Will Be Become Worse and Cause Detrimental Health Effects

RYAM bullied its way into avoiding having to address this matter in securing its air permit. Lignotech's emissions are at present two and a half times the amount projected in its application to the city. To NEF's knowledge the city has never held LignoTech accountable for this failure to live up to its promises. Now, the city is at another juncture where, unless it requires more information from the applicant, we are being asked to approve RYAM's proposal and sanction RYAM changing the composition of the SSL it will provide to LignoTech without allowing for a thorough examination of how this change will impact Lignotech's emissions.

The Removal of Sugars from the SSL Will Increase Lignotech's PM Emissions

RYAM erroneously ignores the impact on particulate matter (PM) emissions caused by sending "modified SSL" to be processed further by Lignotech. RYAM provides no data to support

their claim that processing of "modified SSL" will not affect PM emissions, thus the application is incomplete. Particulate matter is a hazardous air pollutant.

NEF Can Demonstrate That RYAM's Unsupported Claim is Wrong

As you may know, a chemical expert sits on NEF's Board with unparalleled access to technical and engineering data concerning Lignotech's operations from an advisory role he performed when the city first permitted Lignotech's plant. Our chemical expert strongly believes this change will result in Lignotech's emissions becoming worse. On behalf of NEF, he is ready to demonstrate that the removal of sugars from the SSL via fermentation and distillation will necessarily affect the particle size and distribution thus increasing particulate matter emissions with detrimental effects to the health of the community.

Consistency with City Objectives

Pages 23-28 of LLW's memorandum extoll the virtues of the proposed development, as seen by RYAM. Quibbling with these many assertions is possible, but not relevant. Everything LLW says on these pages may be true, and it can all be either determined not necessary to be considered in ascertaining the plain meaning of the express prohibition of "chemical manufacturing or refining." If the plain meaning of words used are clear and unambiguous, courts will apply them, *and not look beyond them to other matters.*

The CP is clear and unambiguous. The LDC is clear and unambiguous. And there is not a spec of daylight between the two. Also, all the virtues of 2G Ethanol can be accepted as gospel but outweighed by the potentially harmful environmental or nuisance impacts generated by RYAM's proposed plant. In short, the risks outweigh the benefits.

Now, it is in these pages that LLW tugs, sometimes subtly, sometimes strong and hard, on threads of argument threatening the city with claims of lack of due process or deprivation of use rights. (Pg 26) As to the latter, the city has already afforded RYAM, through its interest in Lignotech, a second-generation use of its SSL. A promised second phase for Lignotech, where some $22 million was to have been invested to process an additional 50 million tons of SSL annually, was never pursued, so RYAM can always fulfill this promise and increase the SSL it sends to LignoTech. And, as addressed in Tom Budd's article in the NewsLeader, "Don't Cry for Me, Fernandina," RYAM's mill is doing quite well without ethanol.

Moreover, the city can and should remain open to future proposals RYAM may present for other second-generation uses. RYAM is constantly conducting research and will hopefully discover a better second-generation use that does not violate our LDC and CP. Passing on this pitch does not mean that we can't take a swing at a better one. Enforcing our code when threatened, but remaining open to other proposals shields the city from liability.

RYAM's lack of due process claims (Pg 28) fall short as well. It's hard to take these claims seriously when RYAM has planned and is still executing a Christmas Eve blitzkrieg, as brazen as, but hopefully not as successful as General Washington's attack on the Hessians at Trenton. If RYAM is keen on more due process, it should find our next suggestion unobjectionable.

Allow Time for Rebuttal and Surrebuttal by Both Outside Counsel

I've already addressed your ability to rely on Weiss-Serota's opinion just as you can advice you obtain from Ms. Bach, provided you adopt it for your own. Right now you have only the opening salvos from both sides. Allow these legal experts to get a look at the battlefield as it is now unfolded, adjust their sights, and return volley. The sharpened fire from both sides will provide you with a much clearer understanding of the issues and arguments, and their relative strengths and weaknesses. To assist in that regard, impose a page limit on both parties, it forces attorneys to hone their argument. As you know, we are a wordy bunch.

While RYAM is preparing its amended submission, provide Weiss-Serota with LLW's memorandum and permit Weiss-Serota the opportunity to respond to argument advanced by LLW. To be fair, then provide Weiss-Serota's reply to RYAM and allow RYAM time to secure and provide you with a reply. Taking time to allow for "rebuttal and surrebuttal" would help in several ways. It will sharpen the legal focus. Spurious arguments tend to be exposed in these replies, parties focus on their best arguments, and those best arguments are more properly formed. It will provide a sounder basis for your decision however you decide. Finally, this approach, if adopted, would provide RYAM additional due process, assist Ms. Bach greatly in evaluating this matter and providing you advice, and benefit you in deciding and defending it.

RECOMMENDATION

Don't be bullied and don't be rushed. You have an entire community behind you.

Determine RYAM's application to be incomplete. To whatever extent its current application does not address the following, require it to be amended to include or address all the following:

(1) "A traffic analysis report…prepared by a licensed traffic engineer" addressing "for both on-site and off-site traffic impacts" the "other transportation factor"under Paragraph 11.01.06 (C)(8) meriting examination--off-site ethanol transportation incidents. Ensure the Police Department has representation on the TRC to evaluate evacuation plans.
(2) Ask for RYAM to identify "the local fire officials" it claims it collaborated with, what recommendations were made, and require RYAM to provide you with any documents or analyzes that were provided to local fire officials during that collaboration.
(3) Ask RYAM to identify its expert safety consultant. Require RYAM to submit the independent evaluation that RYAM says was conducted. Ask RYAM to submit all other

safety evaluations or risk analys conducted by RYAM, its insurance company, any other insurance company consulted, or any other third party.

(4) Ask RYAM for substantiation of its claim that LignoTech's emissions will not be impacted if the plant is approved. Permit NEF to evaluate RYAM's reply and provide comment.

(5) Ask RYAM to disclose whether any GMOs will be used in any of its processes, and identify (a) the type and quantities of all GMOs to be used, (b) bio toxicity characteristics, and (c) handling and disposal procedures.

(6) Ask RYAM to submit all engineering analyses and vendor marketing projections relied upon in its projection and claims as to the efficiency of its plant and emissions from it.

Take the time to be fully informed before you make a decisoion. Inform RYAM that given the complexities of its application, and the importance of this matter to all parties, you feel the need for it to be briefed more fully from a legal perspective.

Thank you for listening to me on this matter. I do not envy the position you are in, nor the lack of decision-quality information you have at this point, nor the lack of time to examine this important issue. I hope this has been worth your time. I can't promise that this letter, or arguments made herein, won't find their way into the public domain, but I can assure you that NEF will assist you in any manner you deem appropriate.

Very Respectfully,

John R. Hart

John R. Hart
Board Member of Fernandina Wins, Inc. dba No Ethanol Fernandina