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**Effingham Planning Board
Meeting Minutes
May 17, 2023**

Members Present: George Bull (chair), Elaine Chick, Paul Potter, Grace Fuller, Nate Williams, Chris Seamans (Selectmen’s representative)

Members Absent: Gary Jewel; Bridget Perry (alternate); Leo Racine (alternate)

Alternates Present: Linda Edwards, Mike Calahane

Others Present: Chris Bolt, attorney; members of the public

Meeting called to order at 6:34 pm. Quorum present.

1. Planning Board Chair Bull advised that this meeting was the continuance of the Public Hearing. Applicant: Meena LLC. For a Convenience Store, Apartments, and a Gas Station. Map 401 Lot 5.

2. **March 3, 2023, letter from Attorney Biron Bedard to the Effingham Planning Board.** Board Chair Bull advised that the meeting would first address the letter submitted to and received by the Planning Board (“Board”) from Attorney Biron Bedard, representing abutters Tammy McPherson, Bill Bartoswicz and Ossipee Lake Alliance, with multiple issues raised.

- a. Attorney Biron Bedard 1st apologized for the incorrect the date on the letter. It should be dated today, **May 17, 2023**. He proceeded to outline what the applicants are requesting in the letter including:
 - i. that the hearing may continue but ask that the PB reserve any final decision on the matter until the appeal period for anyone appealing the withdrawal of the Zoning Enforcement Officer’s letter, for 30 days. The letter, sent to applicant’s agent by the (“ZEO”) dated April 20, 2023, states the convenience store use was abandoned by the applicant;
 - ii. Attorney Bedard referenced a deadline set by the PB that all submissions from the applicant were required to be submitted by September 9, 2023, but they were submitted after that date; (Attorney Bedard’s clients) were unaware of when that deadline was changed and could find no reference to a change;
 - iii. Abutters Tammy McPherson, Bill Bartoswicz and Ossipee Lake Alliance have retained Dr. Robert Newton as an expert consultant, they are requesting additional time for review of the applicant’s documents and provide an analysis, and
 - iv. that Board member Nate Williams and alternate Mike Cahalane should recuse themselves because they sat on the Zoning Board of Adjustment that approved the variance. Attorney Bedard and client believe “they prejudice by virtue of that fact”.

- 55 b. Attorney Matthew Johnson, representing the applicant, Meena LLC responded with the following, including:
- 55 i. that the abandonment argument presented by Attorney Bedard was a complete red herring and is not valid; Therefore, there is no reason for the PB to delay their decision;

 - 60 Attorney Johnson also stated, his client has not abandoned his property. There are two reasons his client has not used the property. First, a cease-and-desist order from the Board of Selectmen. Twice his client asked for relief from the cease-and-desist, so they could pave over the area just so they could open the Convenience store and second, the stay ordered by Superior Court in response to the appeal filed by
 - 65 Attorney Bedard’s clients, prevented the applicant from doing anything with the property. During this entire time period, the applicant has kept all food licenses and permits up to date;

 - 70 ii. that there is no reason to delay the PB decision for a review of a plan by Dr. Newton. Dr. Newton is not licensed in New Hampshire as an engineer, architect, septic designer, or land surveyor, and therefore has zero relevant experience on what is before this planning board; reviewing the application;

 - 75 iii. that Northpoint Engineering was hired by the PB and has conducted 4 independent reviews of the applicant’s submission;

 - 80 iv. Finally, there is no basis for recusal of Mr. Williams or Mr. Cahalane, since the Superior Court has already ruled that one person was on both the ZBA and the PB did not create a conflict of interest. There is no basis for any PB member to recuse themselves;

 - v. There is no reason for delaying this process.

 - 85 c. Board Chair Bull requested comments from the Board’s attorney, Chris Bolt. Attorney Bolt advised that in doing so, the Board would be waiving Attorney-client privilege for this answer and that answer only.
 - 90 i. **MOTION:** Board Chair Bull made a motion that the Board agreed to waive attorney-client privilege on Attorney Bolt’s commentary on the request to delay review of the Meena application. Seconded by Grace Fuller. Passed.
 - d. Attorney Bolt opined the following, including:
 - 95 i. that the letter from Zoning Enforcement Officer (“ZEO”) Boyden does not stop Board for review in of this application; that a cease-and-desist had been in play and that the client had no intention for abandonment as evidenced by keeping licenses up to date;

- 100 ii. with respect to the deadline issue, that was determined in August 2022, for the applicant to submit application materials prior to a public hearing to be held in October 2022. Once the appeal was filed, the stay was in place and there was no requirement for the applicant’s paperwork to be updated and filed;
- 105 iii. With respect to hiring Dr. Newton, he has been involved with this process for some time and had asked to give a 15-minute presentation; This is not a basis to stop the work this board must do;
- 110 iv. Finally, regarding the request for recusal, NH law is very clear as it expressly states that a Planning Board member may also serve on the Zoning Board of Adjustment (“ZBA”). Judge Ignatius also upheld this. The 2 new members are no longer on the ZBA; they are now on the Planning Board with different statues and regulations and not a conflict. Each board member has the option to recuse themselves, although the Board is not able to require that a member recuse themselves.
- e. Board Chair Bull advised that:
- 115 i. ZEO Boyden does not represent the PB, is not an agent for the PB and does not have jurisdiction over Site Plan. The letter was an FYI, not a notice of violation and not enforcement action, therefore there is no need to wait 30 days for a potential appeal;
- 120 ii. that Chair Bull does not feel there was abandonment;
- 125 iii. that with regards to the deadline date, in the August 22, 2022, meeting, the minutes reflected the board used the October 2022 meeting date and worked backward. Prior to the October meeting there was a stay in place from the Court and therefore the Board was unable to move forward with the application. Chair Swanick gave a brief update of the case and advised that she had given permission for the engineers (from Horizon and Northpoint) to communicate directly with each other. Deadlines were moot due to the stay.
- 130 1. Board member Elaine Chick advised that today’s hearing is what had been planned for the October hearing. This is the first hearing of this application.
- 135 iv. Topic of recusal, ultimately it is up to the board member to decide if they can be fair and reasonable;
- v. that the Board had agreed that Dr. Newton could speak for 15 minutes. Since he is not an applicant, nor a licensed engineer, he is not eligible for the equivalent time given to the applicant.

vi. that on May 10, 2023, Attorney Johnson provided a folder of the applicant's materials to Attorney Bedard and to the Board and others.

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f. Board member Nate Williams advised that he is serving on the Planning Board, not the ZBA; he lives in the community and wants to contribute to the community – he feels he can make a fair judgment on this case, therefore he will not be recusing himself.

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g. Alternate Board member Mike Cahalane advised he has also been asked to recuse and that he had been a member of the Planning Board previously when the Meena plans were first discussed. All had been in open discussions with no demonstration of bias. He will not be recusing himself.

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3. Assignment of alternate to open seat on Board for tonight's meeting:

a. Board Chair Bull stated in light of the implied conflict of interest, he would like to appoint Linda Edwards to fill Gary Jewell's seat for tonight's hearing.

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b. Elaine Chick recommended seating an alternate with more experience, Ms. Fuller concurred with Ms. Chick. Mr. Williams as a new member did not have a position. Mr. Potter and Mr. Seamans agreed with Chair Bull to appoint Ms. Edwards. Chair Bull appointed Linda Edwards to fill the vacant Board seat.

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4. Rollcall for Board attendance: Chris Bolt (attorney to represent Board), Nate Williams, Elaine Chick, Grace Fuller, George Bull, Paul Potter, Chris Seamans, Linda Edwards

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5. Guidelines for tonight's hearing: Board Chair Bull advised that the hearing had access for the venue of Effingham Elementary School only until 9 pm. Required speakers to use the mic at the front of the seating area and address their remarks to the Chair. He advised that discussions will be only on info received since September 9, 2022. The focus of the hearing is for the site plan, not re-litigating. Order of presentations: First the Applicant or Attorney Johnson, and/or Horizons Engineering. Next Attorney Bedard on behalf of the Abutters. Then Dr. Newton may present for 15 minutes followed by public comment. Chair Bull stated, public comment is to be limited to 3 minutes and to only on what is presented tonight.

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6. Applicant's attorney presentation:

a. Attorney Matt Johnson introduced; Mark Lucy and Don Bouchard from Horizons Engineering as well as Mark McConkey, consultants for the applicant to answer any technical questions.

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Attorney Johnson reviewed the final materials provided to the board.

i. Updated Application for Site Plan review

1. Reduced waivers to Two

a. Waiver for Formal Landscaping Vegetation plan

b. Waiver for traffic Study

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ii. Conditions of the Variance

1. Storm water management (Drainage plan)
2. Spill Prevention plan (SPCC)

iii. Inspection and Maintenance manual

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b. Attorney Johnson advised that the Board had hired Northpoint Engineering to review the materials; there have been 4 technical reviews by Northpoint.

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i. Horizons Engineering, on behalf of the applicant, have addressed all issues raised by Northpoint Engineering.

ii. Attorney Johnson reiterated the points noted in the last Northpoint letter of April 26, 2023.

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1. Item 5. The submitted materials appear to meet the applicable criteria of the Town of Effingham Site Plan Regulations and the Town of Effingham Zoning Ordinance Section 2210 Performance Standards of the Groundwater Protection District. In addition, the submitted material appears to meet the general industry standards and to be in compliance with the NH Stormwater Manual.

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2. He advised that the applicant is willing to address Item 6A (request that the Existing Conditions Plan contain the seal of the certified wetland scientist identified on the plan)

3. He advised that the applicant is willing to address Item 6B (request that the I&M Manual be a recorded instrument at the Registry of Deeds)

7. General Overview of the Plan by Mark Lucy, Senior Project Manager of Horizons Engineering.

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a. Mr. Lucy advised he has been involved with the project for past 8-10 months.

b. Mr. Lucy advised that the laundromat is no longer on site.

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c. He advised that the applicant removed one driveway on Leavitt Road; this area will be revegetated. No change in access off route 25

d. Tanks are in place, Canopy is in place, dispensing pumps have not been installed.

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e. Mr. Lucy provided an overview of the storm water/surface water run-off with a deep sump catch basin with a hood over the outlet collecting floatable debris. The oil-water separator has 2 chambers; oil separator materials flow to the bio-retention basin, with a filter median, vegetation aids in extraction of anything that we don't want in the soil and crushed stone. Beneath the canopies, concrete slabs with Positive Limiting Barriers (PLB) (4 -5 grooves all around the at edges of pads which is sloped slightly higher near the pumps for any spill to be captured in the groves). SPCC Spill Protection Control and Countermeasure, employees will have to be trained in this process.

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i. Question: Mike Cahalane: does the vegetation in the bio-retention basin change the chemical nature of the hydrocarbons that flow in?

1. Answer: The retention basin area is not intended to receive any of the hydrocarbons, that would be a worst-case scenario. The vegetation will deal with the grit and the grime in the stormwater; soil and plants would be removed and replaced if any fuel or oil comes in.

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ii. Question: Nate Williams: does the bio-retention media need to be changed every so often?

1. Answer: It could be cleaned out but he's not aware of any that have had to be replenished, although the Inspection and Maintenance Manual may have more information.

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iii. Question: Grace Fuller: how is excess water, such as experienced 2 weeks ago, handled?

1. Answer: Oil-water separator the first flush (1-2") of water would have washed impurities into the chambers, the balance of water flowing through is already clean, flushed.

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iv. Question from Board member Paul Potter: What does the system do to compensate for winter weather, what happens with freezing icy temperatures, frozen pipes?

1. Answer: designing for a fully thawed ground condition, Engineers designed for a heavy onslaught of high amounts of snow or rain at a high flow rate to prevent pipes from freezing; Smaller diameter pipes are insulated to prevent freezing. Chris Seamans advised that culverts have frozen and have needed to be thawed out.

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v. Clarification requested from Nate Williams: Looking at the plan noticed, shading differently, is the entire area paved?

1. Answer: some of the different shading on the plan is existing gravel, dirt, and vegetation.

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vi. Clarification question: Mike Cahalane. What is the pitch in the pipe, asked about the potential for standing water? Also noted various numbers on the plans for different levels of rainfall and flow numbers.

1. Answer: Time of concentration is the time it takes for the rain to hit the parking lot and reaching the drainage pipe

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vii. Question: George Bull inquired regarding the multiple plan revisions. Chair Bull commented that the plan appears to have the most up-to-date strategy and design; is a better option available?

1. Answer: Northpoint would provide alternatives; the design was collectively developed. This is the best option.

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viii. Question: Linda Edwards: would the soil that needs to be replaced be tested?

1. Answer: Plants if they die do need to be replaced

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ix. Question: Linda Edwards: If the plants are contaminated do they get replaced

1. Answer: Prince Garg, any spill over 1 gallon is reported to the DES, Fire Department and Town. Area is tested. DES requires in their regulations. There are annual and monthly inspections; company policy requires morning and evening checks.

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x. Clarification by Mr. Garg; Should the soil or area be saturated with Hydrocarbons; DES holds the gas station operator liable. DES hires individuals to come out and inspect. Does annual inspection they regulate and monitor and enforce.

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xi. Question: Elaine Chick: positive limiting barrier (PLB) are often filled with sand and dirt does that have to be cleaned out to be effective?

1. Answer: Mr. Lucy, indeed. From Mr. Garg: Our maintenance policy requires cleaning annually, monthly, and daily.

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8. Attorney Johnson requested waivers for landscape plan and traffic study.

a. Does the Board have any other questions about the site plan?

b. With regards to Vegetation- Since this is an existing site much of the vegetation already exists. On the plan, it is identified areas where additional re-vegetation will take place.

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c. With regards to a Traffic study- this is an existing site and with the removal of the laundromat there will be decreased traffic and DOT and Town have already approved the driveway access.

9. Presentation by Dr. Robert Newton:

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a. Provided background: Professor emeritus Smith College taught since 1978; owner of GeoScience Solutions LLC; formerly on commission studying the Barnes Aquifer committee in western Massachusetts. Evaluated projects just like this one.

b. Dr. Newton advised that:

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i. This issue is about groundwater, not stormwater. a principal recharge area; with a gas station – it needs a higher level of protection;

ii. Bio-retention area is to provide anerobic bacteria and produce carbon dioxide.

iii. that any public water supply should be at least 500' away;

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iv. that tanks are being presented as replacement tanks, but the previous tanks were removed in 2015, and the facility was officially closed by the DES;

v. that there should be more information about the canopy over the Diesel Tanks design;

vi. that he will provide a written list of issues;

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vii. that the bio-retention basin does not meet NH code for bio-retention basins and is therefore an illegal plan.

1. Interjection by Mark Lucy that this is an irresponsible statement.

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c. Attorney Bedard added:

i. Is there going to be another meeting after this public hearing to allow public comment?

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ii. Attorney Bedard stated his clients are aggrieved that a gas station is in a Groundwater Protection area with Class A hydro soils;

iii. Requested that local wells are monitored and tested regularly;

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iv. Opined that there is not a complete design of the canopy, which has roof water draining onto the pad.

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d. Question: Mike Cahalane to Dr. Newton: were these environmental concerns in your original information?

i. Answer from Dr. Newton: no, the information has changed. Bioremediation is good, but not in this environment.

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e. Follow-up question: Nate Williams, How is that soil different from the gas station at the boat marina; will this be in the information provided?

i. Chair Bull advised that the Board will be reviewing just the Meena site, not others.

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f. Question: Mike Cahalane, When you respond to these concerns can you provide some possible solutions?

i. Answer: Dr. Newton, from his perspective a gas station should not be located here.

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g. Attorney Bolt reminded the Board that if the Board is keeping the information gathering open, they must provide a date for Dr. Newton's letter, and time to distribute to Northpoint and Horizon for responses, and the Board.

h. Mark Lucy, Horizon Engineers, explained that he is a professional engineer with much experience. Although he respects Dr. Newton, Mr. Lucy noted that it was not appropriate to declare this plan was illegal.

i. Board Chair Bull advised that geological surveys are not required for Site Plans and the Board must rely on licensed professionals in the state of NH to base our decisions upon.

350 j. Attorney Johnson advised that the UST tank engineer was present at the meeting; Are there
any questions for that individual? Grace Fuller asked if said individual had anything
additional to add. He had no additional comments.

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10. Public Comment:

- 360 a. Billie Lunds, Ossipee: explained she was frustrated at not being able to speak previously.
She inquired where did the contaminated soil go that had been removed from the site?
Where did it go? She stated that Phillips Brook was one of the worst contaminated
waterways in NH; stated that no one has been discussing the wetlands.
- 365 b. Blair Foltz, Effingham: inquired how many people in the audience were from Effingham
(2-3); stated repeatedly that she has not seen the application; inquired about the 91A; stated
there is no transparency.
i. Board Chair Bull stated that the applicant has presented their application and all
documents have been available at the Town Office, as well as available digitally.
- 370 c. Richard Fahey, Ossipee: complained that the box of documents compiled for the 91A
request were compiled on Sunday and Monday without adequate time for people to review;
asked at what hour the Meena application was available for the public to view.
i. Board Chair Bull advised that the files were available on April 26.
- 375 d. Marie Hanson, Freedom: concerned that she hasn't been able to speak for 2 years and
doesn't feel that it's appropriate that they can't address other items. Inquired if the station
will be allowed to pump gas 24 hours a day? Elaine Chick explained that that has not been
requested by the applicant.
- 380 e. Brian Taylor, Freedom: recommended that the retention tank/basin should be able to hold
an entire load of gas being delivered (worst case scenario).
- f. End of public comment period at 8:56

11. Continue Meena LLC Public Hearing for a Date and Time certain:

- 385 a. Discussion held on possible future dates.
- b. Decision: Dr. Newton to provide his documentation of issues to the Board within 1 week –
May 25 by 5PM; Horizon Engineering and Northpoint Engineering firms must respond by
June 2 by 5PM; next Public Hearing date – June 6, 2023.
- 390 c. **MOTION to Continue:** Board Chair Bull made motion to continue this hearing to
Tuesday, June 6, 2023, no earlier than 6:30 pm at the Effingham Elementary School at 6
Partridge Cove Road and;

Approved: _____ Approved with changes: 6/1/2023 *Minutes are draft until approved.*

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- i. May 25, 2023 is the last date for Dr. Newton to submit documentation by email to the Board via Chair George Bull and Land Use Clerk Nate Fogg, and for the engineering firms or the applicant to submit their responses by June 2. Seconded by Chris Seamans. Passed

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12. MOTION made to adjourn by Elaine Chick. Seconded by Grace Fuller. Passed.

Adjourned at 9:14

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Minutes prepared by Grace Fuller