

Effingham Planning Board
Meeting Minutes
June 13, 2023

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Members Present: George Bull (Chair); Grace Fuller; Elaine Chick; Chris Seamans (Selectmen’s representative); Nate Williams; Paul Potter; Gary Jewell; Alternates: Mike Cahalane; Linda Edwards; Bridget Perry.

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Others Present: Attorney for the PB, Chris Boldt; Attorney for the abutters, Biron Bedard; Technical consultant for the abutters, Robert Newton, Ph.D.; Northpoint Engineer, Jeff Lewis, P.E.; Horizons Engineer, Mark Lucy P.E.; Agent for the applicant, Mark McConkey; the Applicants, and large public audience.

1. Chair Bull Called the meeting to order at 6:33 PM and continued the Public Hearing for the Meena LLC Application.

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Quorum present.

Board member roll call: Mike Cahalane, Gary Jewell, Bridget Perry, Grace Fuller, George Bull, Elaine Chick, Paul Potter, Nate Williams, Linda Edwards, and Chris Seamans

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2. First order of business: Testing requirements for the 3-4 borings at the retention basin area

The Chair stated **Mark Lucy** had asked for some clarification on the testing requirements at the site. Mr. Lucy forwarded a protocol that has been proposed by a certified Geologist to Jeff Lewis for review.

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- **Mr. Lewis**, although not his area of expertise, this protocol from the Geologist’s would be on the right track, they know what contaminants to look for. Mr. Lewis recommends *any Conditional Approval reference the Env-Or 600 standards*.
- **Mr. Bull** stated for the Board, the proposed plan is for the Geologist /Environmental engineer/specialist to perform 3 or 4 borings in the area of the proposed retention basin, collecting continuous samples down to the groundwater table and 2 -5 feet below collecting samples for lab analysis. This was presented by Michael White who is the Geologist. He will have the samples analyzed for the normal DES parameters involving gasoline petroleum hydrocarbons.
- **Attorney Boldt** was asked to make a recommendation. If you wish to proceed with the protocol put forth by the applicant, *it can be a condition precedent*. The applicant would have to do the testing before the Plan is signed so that you know that it is done, and the results are the way you want it. The issue from the last hearing was, do you place an impermeable barrier at the bottom of the retention basin or only on the sides? If the tests come back clean, then a liner on the bottom is not required. If it does not come back clean, then the applicant needs to come back to the Board to redesign the retention basin to where it would daylight.
- **Mr. Bull** asked Mr. Lewis to comment.
- **Mr. Lewis** stated if the applicant has a recommendation from a qualified geologist, then that would be acceptable. He would be looking for the report from the geologist

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55 simply stating that there are no applicable contaminants above the specified limits of Env-Or 600 in the area below the Bioretention basin.

- **Mr. Lucy** stated this clarifies the question regarding the testing requirements.
- **Mr. Lucy** stated he would be willing to work with Dr. Newton should another plan be required.
- **Attorney Boldt** followed; any other plan other than the one before the Board would require the applicant to come back before the Board for further consideration.
- **Mr. Bull** confirmed that if another plan were to be considered, the Planning Board would be having another hearing just on those changes.

65 **3. Second order of business:** Opened the hearing for Public Comment.

Mr. Bull clarified this is a site plan application, we are not discussing the Variance for the gas station. That has been determined by the court. Public comment will be limited to 3 minutes. The Planning Board has no jurisdiction over anything not pertaining to the Site Plan. Putting it into perspective, the ZBA determines **IF** it is going to happen, the Planning Board governs **HOW** it is going to happen.

70 When you come up to speak, state your name and where you are from. Limit your comments to 3 minutes.

Beginning with the Abutters.

- 75 • **Blair Folts** was asked by abutter, Tammy McPherson, to read her letter to the Board. The letter stated she was happy when the previous gas station closed. She does not want the fumes from the filling station coming in through her windows. She has two small children living in her home and is concerned for their welfare. We are the ones that will be harmed by this gas station.
- 80 • **Attorney Bedard**, counsel for Tammy McPherson, Bill Bartoswicz, and Ossipee Lake Alliance. Your Site Plan regulations, under the purpose section, charge the Planning Board to protect the Public, the Health, Safety and Welfare. Avoid development which may result in negative harmful impacts. Attorney Bedard referenced different sections of the Site Plan which require compliance with the DES regulations. He commented that Meena went ahead without approval from the ZEO or Planning Board. In addition, the well on the property does not comply with the DES regulations. Claiming the well was installed after the prior gas station was closed. He also brought up comments from Dr. Newton, concerns with Steep Slope, High Water Table, Health, and Safety concerns. There is no provision for testing the wells for petroleum leaks in the well on the property or on the wells on the abutter properties.

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Members of the Public comments.

- **Karen McCall** from Tamworth, Reading a letter from Nature Conservancy. The Nature Conservancy has been working to protect the Groundwater Aquifer. They urge the Board to carefully consider protecting the Aquifer.
- 95 • **Tim Otterbach** from Ossipee. Read from a document identifying errors, omissions, and discrepancies he identified in the application in comparison to the Effingham Zoning Ordinance and Site Plan Regulation. Issues with the soil removal, discontinued use of the convenience store and demolition and remodeling in the apartments without proper permits.

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- 105 • **Mr. Bull** responded we cannot satisfy everyone’s requests. Soil is beyond this Board’s jurisdiction. The convenience store is a conforming use. This Board will be going forward with the understanding that the Convenience store use was not abandoned. Demolition predates the Variance, and the Board does not issue permits. The Board will take the comments under consideration.
- 110 • **Noreen Downes** from Madison. The Planning Board is applying too much weight to the NHDES approval. There should be more regulations applied. Now more than ever we need more safety. The site is too small and this site according to the DES was permanently closed. She believes this is a new site. DES does not take any liability. Heed the science.
- 115 • **Jay Buckley** from Madison; he is a member of the Madison Planning Board. But here as an individual not the Madison Planning Board. His concern is the Regional Impact. He complimented the Board stating they were looking at all aspects. The applicant may be doing everything you are asking them to do but, in the end, you need to consider the Health, Safety and wellbeing of the public. Asked the PB to consider rejecting this application.
- 120 • **Stella Lundt** from Ossipee. I’ve grown up on the lake, I swam in the lake, I boated on the lake. The Boyles of 15 years ago is not the same. When I went to school here, I was the only one at the bus stop. You are dealing with a lot more people. The bus stop is at this site for Effingham, Ossipee, elementary, middle, and high school students.
- 125 • **Bobby Boudman** resident Governor Wentworth school district. She did a demonstration about filtering water with diesel. She then offered that the Planning Board should drink some of her filtered water.
- 130 • **Jeff Nichols** of Freedom Conservation, speaking on behalf of the Freedom Selectmen. He read some excerpts from their letter concerns about regional impact and recent extreme rain events. Prioritize the wellbeing of our community.
- 135 • **David Simpson** from Ossipee, concern for regional economy. His prior career was overseeing multiple hazardous waste sites. He raised concerns about the post tank removal borings that were done by the DES and Nobis. Implying that the test borings were not done at locations where the UST were located. There is no guarantee that accidents will not occur.
- **Billie Lundt** from Ossipee, raised the question about what is done in the winter?
- **Blair Folts** from Effingham, this has been going on for 27 months. She raised the for consideration of Environmental Impact statement.
- **Tim Otterbach**, point of order; asked if all of the Board members have read all of the letters that have been sent to them.

 - **Mr. Bull** stated he cannot speak for other board members.
- 140 • **Rich Fahy** from Ossipee, raised a question about the Special Use Permit. He claimed the dirt was contaminated and removed and it was never explained. DOT basin getting run-off we need to talk about the other parts of this. The groundwater goes North. Find out how deep the wells are in the abutting properties.
- **David Riss** from Madison, wanted to acknowledge the good comments that the Public provided this evening.
- 145 • **Karen McCall** from Tamworth, asked why the Planning Board cannot just deny this gas station? If the ZBA came back and say they made a mistake could that happen. Please summon the wisdom and courage.

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- **Mr. Bull** explained that we as Board members cannot just deny something without cause, we are bound by the Site Plan Regulations and the ZBA decision has already been upheld by the courts.
 - **Bob Newton** from Massachusetts. Sent a letter today bringing up the AoT permit again. Concern about erosion into the DOT steep slope. Need to do a slope analysis.
 - **Mr. Bull** had forwarded the letter to Jeff Lewis. Mr. Lewis has looked at the spillway and the slope and it may be worth looking at that area further. Normally will extend riprap further down but is in DOT ROW. We should take a further look at the area. Good suggestions for protecting existing slope. Although I am not super concerned about the slope, easily addressable issue. Less concerned about the seepage at the bottom since it was not constructed on the slope; it is really just to slope of an excavated retention basin there.
 - **Dr. Newton** interjected that the erosion sediment would end up in wetlands.
 - **Mr. Bull** advised that he had just received this document (from Dr. Newton), and that the applicant needs an opportunity to review this. Not an item to be resolved tonight. Offered opportunity for either Mark or whomever will review to respond.
 - **Mr. Lucy** inquired of Mr. Lewis whether the slope was vegetative; the response was that it was. Mr. Lucy advised they would like an opportunity to review the letter.
 - **Mr. Bull** inquired if any other public comment.
 - **Marie Hanson of Freedom** stated that at a previous session, the tank installation was described as the best possible. However, Dr. Newton has suggested other tweaks that could be done; Ms. Hanson expressed concern that there are other items that could be implemented.
 - 2nd concern was about the letters received by the Planning Board; inquired whether letters had been read into the record for the public. Mr. Bull responded that they had been put into the record. Ms. Hanson inquired which Board members had read them. **Ms. Chick** advised that she read them all and kept them in a separate file along with all supporting communications. **Ms. Fuller** advised she had read them all except for completing review of Mr. Otterbach's recent letter. **Mr. Cahalane** advised that he had been on the review of this request since ZBA review, and has stayed current on all data and. **Mr. Jewell** advised that he has read many but not all. **Mr. Potter** advised that he has read all except for anything that may have been sent today. Noted that some people make very good comments, and many do not understand the Planning Board process. He advised he has read them all. **Mr. Seamans** advised that he is Selectmen's representative since this spring and has read all correspondence and documents received since then, except for any sent today. Is very familiar with the case. **Ms. Edwards** advised she is new and has read all documents sent to her. **Mr. Williams** advised he also is new and has read everything sent to him. Ms. Hanson expressed thanks for that information and frustration at being limited to scope of comment.
 - Last comment: stated that if she had built an addition and put-up sheetrock without inspection, she would be required to take down sheetrock for inspector to review electrical work beneath. She alleges that the tanks were put in before permitting and no one was there for oversight. Believes that the tanks should be taken out and started as a new situation.
 - **Ms. Corey Lane from Porter Maine**. She asked the Board to reference the preamble

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- 195 of Section 101 for the Planning Board which states its purpose is to promote the health, prosperity, and general wellbeing of the citizens of Effingham; feels that this proposal is trying to fit a square peg in a round hole. Feels this does not meet the guidelines voted on by people of Effingham.
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- Inquired whether anything received from applicant today; when questioned as to the time by Mr. Bull who explained that correspondence is received from applicant all the time, speaker declined to pursue.
 - She asked for Board to look at section on waivers. She then moved to the wetlands map and 25' buffer. She stated that the wetland buffer extends into the Meena property; Mr. Bull was unable to confirm this. Speaker stated that there are items prohibited to be done in the buffer and has not heard the Planning Board discuss this. Asks the Planning Board to review. She alleges that the stormwater drain-off could not flow into this area. Mr. Bull advised that the Board would take this into consideration, but it does not appear to be as speaker has described.
 - The speaker started to address waivers, which Mr. Bull explained had been approved by the Board. She referred to the original waiver request which had requested a landscape plan waiver and which she alleged that the applicant had not provided a landscape plan; Mr. Bull repeated several times that the applicant had provided a plat. The speaker alleged that this was not provided by a certified surveyor. Mr. Lucy explained that he was not a licensed land surveyor, so he did not provide a seal on the plan. Mr. Lucy reiterated that they are open to any input from Mr. Lewis, Dr. Newton, and the public.
 - The speaker alleged that the Phillips Brook rendition on the plans did not show a 150' buffer, and that the wetlands buffers overlap. She recommended that the Board deny this permit.
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- **Mr. Bull** advised that unless there was new information provided, we will be wrapping up public comment. He confirmed that the meeting would continue beyond 9:00.
 - **Jeff Wright, Parsonsfield** Asked for each Planning Board member to guarantee that this is the best alternative and to guarantee safe drinking water. Mr. Bull explained that there are no guarantees in life. Speaker inquired if the ZEO was required to attend Planning Board meetings; Mr. Bull advised that she is not prohibited from attending but is not required to attend. Speaker stated that scientists who were attending meeting would deny this permit; recommended that the Board “go down fighting” to preserve safe drinking water.
- 225
- **Blair Folts, Effingham** Inquired if the town was paying for the Board’s attorneys; Mr. Bull advised that the costs were borne by the applicant. Ms. Folts alleged that the plat was illegal because there were no stamps on it; confirmed by Ms. Chick, Mr. Bull, and Mr. Potter that there were stamps from a certified surveyor on it and that the plat was legal.
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- **Mr. Bull** stated he would be closing public comment and asked Attorney Boldt for his opinion. Mr. Otterbach interrupted with a point of order demanding public right to comment if additional information received. Mr. Bull advised that he was closing the public comment, not the hearing.
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4. Third order of business: Closed the hearing for Public Comment.

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- 245 • **Ms. Chick** made a **MOTION** to close public comment. Seconded by Grace Fuller. **Ms. Folts** interjected by asking if she could submit a letter; **Mr. Bull** advised that she could. Motion passed unanimously.
- **Mr. Bull** advised the Board would review other aspects of the site plan based on our site plan ordinance, by going through the ordinance and determining if each point has been met or not. Starting with 6.4, General Standards.
 - 250 • **Ms. Fuller** asked for clarification on what we would be reviewing and how much of her notes needed to be referred to, many of which are not here at the hearing. Mr. Bull stated that the hearing would be continued to allow Board members to digest what has been presented and may open up to public comment if more information received; will be doing review at macro level tonight.
 - 255 • **Mr. Bull** advised he wants to cover issues that are not a sticking point, starting with 6.4 for Major Site plan. He read the information from 6.4. Ms. Fuller inquired if the Board is doing an onsite walk, to aid with review of questions. Mr. Bull advised that could be done. Review could be tabled, and the Board can schedule a site walk.
 - 260 • **Attorney Boldt** advised that site walk can be scheduled, and the Board can start reviewing provisions. Site walk may be beneficial to the Board. If site walk is scheduled tonight, then no need to provide additional Notice to the Public, but just continue tonight’s hearing.
 - 265 • **Ms. Chick** advised that some items noted on the plat have not yet been constructed. Attorney Boldt advised that the plat should address issues noted.
 - **Mr. Bull** advised that those Board members unable to attend may go individually to site, with permission of applicant.
 - **Ms. Fuller** advised she is unable to attend any date next week, since she is out of the area.
 - 270 • **Mr. Bull** suggested Monday, June 19 at 6 pm. Applicant agreed. Mr. Lewis advised he was unable to attend but recommended that Mr. Lucy provide an overview of the retention basin and also requested that the Board review the back of the site which appears to meet the drainage requirements but requesting additional spot elevations marked.
 - 275 • **Mr. Bull** recommended that the hearing be continued to Monday, June 19 at 6 pm at 41 Route 25. Asked the Board to review Major Site Plan Review section 6.4, to determine which questions may apply or need clarification.
 - 280 • **Attorney Bedard** inquired whether there would also be a meeting on that date;
 - a. **Mr. Bull** advised that this was just for a site walk.
 - 285 • **Attorney Boldt** reminded the Board that the Board must also set a date for the continuation of the hearing.
 - **Mr. Bull** agreed; advised that the public could attend the site walk, and questions pertinent to the site walk could be entertained.

5. Continuation of the Public Hearing.

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- **Mr. Bull** made a **MOTION** to continue the hearing to Monday, June 19 at 6 pm to 41 Route 25 for a site walk for the Board members. Seconded by Gary Jewel. Passed unanimously. Grace Fuller will notify applicant when she can do a site walk.
 - **Mr. Bull** reminded the Board that a date must be set for the next hearing. Discussion held on possible dates. **Mr. Bull** made a **MOTION** to continue the hearing from the site walk on June 19th to Tuesday, June 20 at no earlier than 6:30 pm at the Effingham Elementary School. Seconded by Gary Jewel. Passed unanimously.
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300 **Mr. Cahalane** provided an update to statement made earlier by participant that the chemical MBTE was mentioned, but that chemical was only used from 1987-2005 and has been outlawed in US since 2005.

305 **Attorney Boldt** reminded Board members to stay together during the site walk so that all are seeing the same thing and hearing responses to questions; also, that minutes need to be kept of the meeting.

Motion to adjourn by Mike Cahalane. Seconded by Nate Williams. All in Favor.

Meeting adjourned at 9:15 PM

310 Minutes prepared by Elaine Chick

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