

**Effingham Planning Board  
Meeting Minutes  
June 6, 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 applicant, Matt Johnson; 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.

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**1. Chair Bull Called the meeting to order at 6:35 PM and continued the Public Hearing for the Meena LLC Application.**

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The Chair explained how the Hearing would proceed.

- First, the Board will review the conditions of the ZBA Variance.
- Second, the Board will address the 2 waivers listed in the application.
- Third, address the points brought forward in Robert Newton’s letter.

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In addition, the Chair informed the Board that he received an email today from Dr. Newton requesting an opportunity to do a presentation during tonight’s hearing.

- Question: Ms. Chick asked if this presentation would introduce any new information that was not already covered in your previous presentation or in your letter?

Answer: Dr. Newton responded. Yes.

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- Question: Mr. Bull, asked how long would the presentation be?

Answer: Dr. Newton responded. 10 or 15 minutes. Willing to present at the end of the meeting.

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- Clarification: Mr. Bull, stated what the board will do is address the points brought up in your letter. In your email you stated, your presentation was to clarify the points you brought up in your letter. To keep this process going, you can address each point as they are brought up for discussion, as opposed to doing a presentation. The Chair indicated the decision for a presentation would be put to a vote of the Board at the end of discussion.

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- Question: Mr. Cahalane, Is this presentation going to address the issues that we (PB) are looking at as a Site Plan? Or is it in general to try to put forward this is not the place for a gas station as a whole? As that particular issue has been litigated. This Board has limited authority as to what the Board can do.

Answer: Dr. Newton, it does a little of both. It puts the whole thing in perspective. It does look at what the impact could be.

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- Attorney Johnson interjected, The applicant objects to this.
- Clarification: Mr. Bull stated to Dr. Newton, you have had the opportunity to respond to the application with Site Plan specific points. If we do a presentation, it is at the end of the hearing.

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- Question: Dr. Newton asked will the audience have an opportunity to make presentations and ask questions?
    - Answer: Mr. Bull explained public comment will be permitted after the Board has addressed the Waivers, Conditions of the variance and reviewed the points brought up in your letter. Public comment will be restricted to the issues discussed. This is not public comment on the Gas Station in general.
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- **To Clarify:** The applicant was granted a variance and when they were granted that variance, they were granted certain rights. Now this Board must work within those parameters. For example: We cannot just arbitrarily decide that we think this is a bad idea and deny the application.
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2. **First order of business:** Establish the applicant meets the conditions of the ZBA Variance. The 2 conditions in the ZBA Notice of Decision are:

- A Stormwater Management Plan, per NH DES guidelines
  - A Spill Prevention Control and Countermeasure Plan, Per NH DES guidelines
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Jeff Lewis of Northpoint Engineering, LLC is present tonight. Northpoint Engineering was brought in at the request of the Planning Board as an independent consultant. Mr. Lewis submitted the 4<sup>th</sup> review, dated 4/24/2023, to the Board with the following:

- Regarding the Stormwater Management Plan: In this review he stated, this (bioretention) basin has been designed in compliance with the NH Stormwater Manual and is appropriate for the subject site. Mr. Lewis confirmed that this meets NH DES guidelines.
  - Regarding the Spill Prevention Control and Countermeasure Plan. In this review he stated, The SPCC Plan has been updated to include additional provisions for a Source Control Plan in accordance with the NH Manual. Mr. Lewis confirmed that it is his opinion that with these provisions the SPCC plan now meets NH DES Guidelines.
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Chair Bull asked the Board members if they had any questions regarding these conditions. No questions or comments were raised by the Board.

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3. **Second order of business:** Waiver requests submitted with the application.

There are 2 waiver requests to be addressed:

- A. **6.2.B.11 Landscape plan:** See aerial view enclosed on our plan. Clearly the existing vegetation exceeds the Town's requirements. I respectfully ask that you waive this requirement.
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- Attorney Johnson commented that on the final plans we added some landscaping detail to make it a little clearer why we are asking for this waiver.

Ms. Chick commented, based on the plan presented, the descriptions included, and the photos provided there is sufficient vegetation. With the removal of the second driveway, you have identified there will be additional vegetation added in that area. Since that is close to an exit you will need to keep the vegetation low to protect the line of site when exiting. Based on this information she recommends the waiver.

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Mr. McConkey was asked which sheet number addresses the vegetation. Sheet E1 addresses landscaping.

105 No other comments or discussion

**Motion:** by Elaine Chick to accept the Waiver of the Landscape plan. Seconded by Grace Fuller. All voted in Favor.

110 **B. 6.1.B.4 Estimate of peak period Traffic Impact:** Mr. Bull stated 6.1.B.4 is for a Minor Site Plan and is not required for a Major Site Plan and would like some clarification on why this was requested.

Attorney Johnson responded, if this was entered in error, they will withdraw that Waiver request.

115 Attorney Boldt concurred that this is not a requirement.

Waiver withdrawn.

**4. Third order of business:** address the points brought forward in Dr. Robert Newton's letter.

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- At the last hearing, May 17, 2023, Dr. Newton was granted an opportunity to submit in writing a list of concerns. The letter was received on time.
  - Horizon Engineering were forwarded the letter from Dr. Newton. They also responded in the timeline required.
  - Northpoint Engineering was provided with Dr. Newton's letter and Horizon Engineering's response, and they also responded in time for this meeting.
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Chair Bull would like to go through the issues raised by Dr. Newton and the responses from both Horizon and Northpoint.

130 1. **Regional Setting-** Neither Horizon nor Northpoint responded to that issue. Chair Bull stated the ZBA issued a variance for a gas station at this location. It is not an option to put it somewhere else. That is not what this hearing is about.

135 2. **Public Water Supply-** Dr. Newton referenced Regulation Env-Or 407.06 Underground Storage Tanks must be located more than 500ft from a Public Water Supply

140 Mark Lucy responded for Horizon Engineering: It is the DES that is responsible for interpreting and enforcing its own regulations, not the planning board. The DES has determined that because the location was an existing facility it was subject to the lesser distance requirement in the regulations.

145 Jeff Lewis responded for Northpoint Engineering: NHDES has approved both the public water supply (PWS) and the fueling station Underground Storage Tanks (USTs). The applicant has satisfactorily addressed this issue and any concerns should be directed to the NHDES.

**3. Reconstructed Pavement-** Dr. Newton raised concerns about 2 different symbols on the plan labeling reconstructed pavement. There is some confusion about whether the areas are to be repaved or removed.

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Mr. Bull commented that the plans may not be as clear as they could be.

Mr. Lucy responded for Horizon Engineering: At the Planning Board’s discretion the plans can be re-labeled to indicate this intent more clearly.

Mr. Lewis responded for Northpoint Engineering: Recommend Horizons clarify the intent of the pavement removal on the final plans as suggested.

*Condition of Approval*

**4. Diesel Pump Canopy and Diesel Pump Location**

Mr. Bull interjected based on the questions raised regarding the Canopy for the Diesel Pump and the Diesel Pump Location. These should also be further clarified on the plans as Horizon Engineering stated they could do. Northpoint Engineering agreed a simple clarification on the plan is recommended.

Mr. Lucy stated that these can be conditions of approval. Mr. Bull agreed they can be *conditions of approval*.

**5. Non-conformance with Env-Wq 1508.02 and 1508.07** -Dr. Newton states the

bioretention basin does not conform to the specification laid out in *Env-Wq 1507.02 criteria for permanent methods of protecting water quality*. Problems with design and location. USTs are on the site of the grave of the old tanks. Infiltration of groundwater could release contaminants left behind in the removal of the old tanks. Need to be at least 50 ft from steep slopes. *Env-Wq 1508.07 filtering practices (bioretention basins) are not allowed in areas of hydrologic soil group A soils without an impermeable barrier*. The proposed bioretention basin was not designed with an impermeable barrier.

Mr. Lucy responded - Sited are regulations that govern Alteration of Terrain (AoT) permits. Meena is not required to file for an AoT permit. There is long-standing guidance from DES. As long as there is a source control plan in place, canopied fuel dispensers, concrete fueling pad with positive limiting barriers and an oil/water separating treatment device, the High Load Area restrictions do not apply. The bioretention basin will be installed on a flatter area on the site adjacent to a steeper area off-site. The applicant is willing to install an impermeable barrier on the side walls of the basin if preferred.

Mr. Lewis responded- With the implementation of the Source Control Plan the project will not be considered a High Load Area and infiltration of stormwater is normally acceptable. With regards to the installing of an impermeable barrier on the sides of the basin, that is an appropriate measure. Mr. Lewis also mentioned Dr. Newton’s concern of infiltrating stormwater where there could be contaminants in the soil. That would be his only remaining concern.

200 Mr. Bull commented that it appears the project is in conformance as it stands. Is an impermeable barrier a better way to go? Any other comments or questions from the Board.

205 Mr. Cahalane stated the applicant appears to be willing to add the impermeable barrier that seems to be the better way to go. The question for Jeff Lewis regarding putting an impermeable barrier below, it seems inconclusive as to why we would do that? Should there be some testing done to determine if there are contaminants?

210 Jeff Lewis responded to the Board to ask the applicant what, if any, assessment has been done for existing contaminants?

Mr. Bull asked the applicant if they would like to address the question of contaminants.

215 Mr. McConkey responded for the applicant. There are two reports available on the NH DES One-Stop one is the closure report from 2015 with a recommendation for further ground water study. In 2016 there were 4 monitoring wells installed on the site and ground water testing was done. It was monitored and tested, and all levels of VOCs were below minimum standards. Based on the soil and groundwater monitoring, analytical results do not indicate and presence of VOCs in the soil or groundwater ... No further action.

220 Dr. Newton rebutted the response from Mr. McConkey. In 2015, the analysis identified Naphthalene 19 parts per million where the standard is 5 parts per million. At that time no remediation was required. Following the Stormwater Manual, filtering practices are prohibited where contaminants in the soil are above site-specific standards.

230 Mr. Cahalane stated it is likely that those monitoring wells would be coming up clean over by the retention area. I recently learned that the State's new acceptable level for Naphthalene has changed, it is now 28 parts per million not 19 not 5. The point is, is it reasonable to be looking at that retention area as contaminated to require another liner, is it necessary given the level of contamination we have seen?

235 Mr. Bull interjected that the applicant is willing to add Impermeable liners on the sides. There is more of an issue with the bottom.

240 Mr. Lewis commented, you make a good argument to just let the stormwater runoff into the DOT land. The applicant has a stormwater control plan and retention basin. But the best way to prevent any infiltration into the groundwater is to just let it go. What we are trying to do is, what is the best we can get for treating that runoff? There are two ways you could make sure that groundwater infiltration is not happening where contaminated soil exists. 1. do some additional testing of the soil where the retention basin is going and verify that there is no contamination there. 2. If they put an impermeable liner on the bottom to satisfy the concern.

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Mr. Seamans asked since the four test wells have come back clean, where do you go from here?

250 Mr. Lucy asked Mr. Lewis, If we are going to line the bottom of retention basin, why have it?

255 Mr. Lewis responded, lining the bottom of the basin creates other problems as you would need to be so far down in the ground you would need to go directly into the DoT area. If they bring the whole system up, then they would need to get rid of the pretreatment options and have to just daylight it.

260 Mr. Bull commented that we would like to keep as many of these mitigation processes in place.

Mr. Lewis recommended that the applicant test the areas below where the retention basin would be installed for contaminants.

265 Attorney Johnson stated every time the DES permits UST installation, soil testing is required. None of the testing that has been done has come back with any contaminants. The applicant agrees as long as it is a condition of approval to provide soil testing in the area of the retention basin.

270 Mr. Seamans commented that the soil where the proposed retention basin would be installed has not been disturbed or tested to date.

275 Mr. Bull restated the conditions of approval, 1. Retention basin sides will be lined with impermeable liners. 2. If the soil is not contaminated under where the retention basin is, the bottom would remain as designed, permeable. If the soil is contaminated, then the applicant would come back to the Planning Board with a different plan.

280 Attorney Chris Boldt interjected you are not really supposed to do an either-or plan. If there is contaminated soil in the area of the retention basin, then the applicant would come back to the Board. Then your options may be, the applicant may have to remediate the soil, or they could do a daylight deal with the DOT. You are on the right track with a **Condition of Approval** requiring testing of the soil of the bioretention area. If there are no contaminants, go with the plan as currently presented with the system of checks. If there is contamination then it is clear they come back to the Board, it is a **Condition precedent** to signing off on the plan.

290 Mr. Bull asked, what would be the appropriate parameters for how one would test?

295 Attorney Johnson suggested if the applicant is to be held to test, let's be  
consistent, testing should be to NH DES soil remediation standards, the threshold  
and condition would be; can't exceed published standards of the NH DES.

300 Mr. Lewis recommended taking right out of the Stormwater management  
regulations and DES regulations ENV-OR 600, complying with Stormwater  
management regulations. If the applicant can get a letter from Nobis or other  
agency confirming, there are no contaminants above those specific standards then  
that would comply with Stormwater management regulations.

305 Mr. Bull asked, does that make sense to the applicant? Attorney Johnson replied,  
it does.

Mr. Bull stated, as a **Condition of Approval**, the applicant will have a third party  
test the soil for contaminants, only under the retention basin, to make sure it  
complies with ENV-OR 600.

310 Mr. Potter asked, compared to the original Nobis drillings, of which there were 4,  
How deep would these new test holes be? Mr. McConkey responded that the test  
holes were between 11 and 19 feet, which is well below where this new retention  
basin would be built.

315 Mr. Bull asked if the Board should vote on the above condition.

320 Attorney Boldt recommended, since there have been a great many conditions of  
approval that you have discussed, that the Board allow Attorney Boldt to  
wordsmith a Notice of Decision that has what you have discussed. Then come  
back at another meeting after the public hearing has closed, for the board to  
discuss in a public meeting.

325 Mr. Bull confirmed that the Board is in agreement with Attorney Boldt's  
recommendation.

330 **6. HydroCAD Modeling:** Dr. Newton's letter raises a few concerns, sub-  
catchments are not crossing contour lines at right angles, a catchment boundary  
going between the apartment building and the store where there is no elevation  
data to support this, and the catchment size is underestimated so the modeled  
stormwater is less than what the actual stormwater amount would be moving  
through the system.

335 Mr. Lucy responded – Dr. Newton relies on LiDAR for his data. LiDAR is not as  
accurate as onsite surveying was done under a licensed surveyor. HydroCAD  
Modeling is a drainage software. Dr. Newton is correct that stormwater will back  
up into catch basin #2. Backing up in a closed drainage system isn't typically a  
concern, it happens all the time. We did have a hood on catch basin #2 but that  
was removed. We can put a hood on the outlet of Catch basin #2

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345 Mr. Lewis responded, generally because of the pipes coming into catch basin # 2  
a hood becomes less effective. I have no objection to adding a hood on catch  
basin #2. As for Dr. Newton's concern about drainage directions, Mr. Lewis  
agrees with Mr. Lucy that the survey data is much more accurate than the LiDAR.  
However, recommends some additional spot elevations be added in the area  
between the apartments and store. Points out, this whole system serves multiple  
things, treatment, stormwater management flood control. Not to increase flood  
run-off from this site. As with any system, in a big storm event backup can occur,  
350 that is why it is important to have periodic maintenance to remove debris and  
floatables.

355 Dr. Newton agrees that survey work is more accurate than LiDAR. His concern  
remains the stormwater back flow. His recommendation is to make some  
adjustments to the system so that they don't get backflow.

360 Mr. Bull summarized that there could be a little clearer topographic information  
added to the plan and the addition of the hood might be an improvement and the  
applicant doesn't have a problem adding the hood.  
Recommended as a *condition of approval* that we get some additional spot  
elevations and that the hood be added back.

Mr. Jewell asked what the issue is with the contours?

365 Mr. Lewis responded that the contours are very flat in that area so the contours  
are not as accurate as they could be. Adding some additional spot elevations.

370 Mr. Newton stated the issue is not only with the contours not being identified but  
that the watershed divide lines are not crossing the contours at right angles.

Mr. Lucy responded, all the modeled stormwater goes to the same place and some  
of these drainage divides are on pavement that must be replaced.

375 **5. Continuation of the Public Hearing.**

Mr. Bull commented that as best we can, we have addressed all of the points  
brought forward by Dr. Newton and we have also addressed the waivers and the  
conditions of the ZBA variance. At this point it is 9:00 so we are going to have to  
continue this Public Hearing.

380 Point of Order raised by a member of the public, will there be time for Public  
Comment?

385 Mr. Bull, we are not going to be closing the hearing, we are Continuing the  
Hearing.

Attorney Johnson asked if the time limit could be extended beyond 9:00 PM.



390 Mr. Bull will confirm with the school superintendent if we can go beyond 9:00.  
However, to Grace Fullers point, there needs to be a time limit to public  
comment, and we have to keep public comment focused to the point of this  
application.

395 **Motion:** by George Bull to Continue the Public Hearing to Tuesday June 13,  
2023, at 6:30 PM at the Effingham Elementary School, 6 Partridge Cove Road.  
Seconded by Grace Fuller. All in Favor.

400 Mr. Cahalane stated as clarification for the record: At the last meeting May 17,  
2023. A speaker stated there was an UST leak at the Abbotts Staples gas station  
down the road. That statement was incorrect, that was not the case, there was no  
leak that was annual maintenance.

6. **Motion** to adjourn by Nate Williams, Seconded by George Bull. All in Favor.

405 Meeting adjourned at 9:10 PM

Minutes prepared by Elaine Chick

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To Do List:

- Update Subdivision Regulations: Number of Plat Copies
- Add Dates to applications and forms.
- Home Occupation/Cottage Industry Checklist/application

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