

Approved: _____ Approved with changes: 8/17/2023 Minutes are draft until approved.

**Effingham Planning Board
Meeting Minutes
August 7, 2023**

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Members Present: George Bull (chair); Elaine Chick; Gary Jewell; Paul Potter; Grace Fuller; Chris Seamans (Selectmen’s Representative); Linda Edwards (Seated for Nate Williams); Michael Cahalane (alternate) Bridget Perry (alternate)

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Members Not present: Nate Williams

Others Present: Attorney, Chris Bolt; Attorney, Matt Johnson; Prince Garg; Mark McConkey; Jim Oulette; Members of the public.

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Meeting called to order at 6:32 pm. Quorum present.

Chair Bull explained the purpose of this meeting is to clarify two points.

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- Notice of Decision (NOD), paragraph 12, the installation of the new Underground Storage Tanks (UST) at the former Boyles Market location.
- Payment of Attorney’s fees for Chris Boldt. Mr. Bull explained that he misspoke at one of the hearings.

1. Notice of Decision, paragraph 12 states:

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After removal of the prior underground tanks, etc. and discussion with Town personnel, Meena LLC began reinstalling the underground storage tanks, etc. in the spring of 2021 with the Town’s Board of Selectmen’s approval.

Board discussion

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Mr. Bull explained that the Town Office was unable to locate any supporting documentation regarding the Board of Selectmen’s (BoS) approval. Mr. Bull suggested, because no supporting documentation can be found, the Planning Board (PB) consider striking the statement: ‘With the Town’s Board of Selectmen’s approval’.

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Mr. Jewell asked who said with the ‘With the BoS approval’?

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Mr. Cahalane responded that he made that statement. He was on the BoS in 2021 at the time the applicant requested approval to move forward. He also stated he confirmed with the other two selectmen that were on the BoS at that time, Mr. Charles Fuller and Mr. Thomas Hart, both of whom confirmed that they recall the conversation as they were present during that discussion with the Zoning Enforcement Officer, Rebecca Boyden. Mr. Cahalane further explained the BoS would not have received that documentation but that the ZEO would have received a written statement from Meena, LLC, for her records, stating they, Meena LLC, would assume all liability in the event the PB required any changes or alterations.

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55 *Attorney Johnson* raised the point that based on Mr. Cahalane's statement, the BoS had knowledge of this action. He explained why this statement matters: his client has been beaten up in the Media and by the opposition for a long time over this topic suggesting he did something 'Under the Cover of Darkness' without approvals and without knowledge. Why this is important is the BoS knew what Meena was doing. It wasn't until later that someone realized there was a Groundwater Protection Ordinance that required a variance.

Ms. Chick suggested changing the wording in paragraph 12 to: With the Knowledge of the BoS.

60 *Mr. Cahalane* added that both of the other Selectmen are willing to provide sworn statements if needed.

Mr. Bull asked if the board is in agreement or has any other comments.

65 *Mr. Potter* added that refines what happened and does not change the original intent of the statement, it just clarifies it.

Motion was made by Ms. Chick to modify the Notice of Decision, paragraph 12, changing the work 'Approval' to 'Knowledge'. Seconded by Gary Jewell.

70 **Grace Fuller, Elaine Chick, George Bull, Paul Potter, Gary Jewell voted in favor. Chris Seamans and Linda Edwards voted nay. Passes with 5-2 vote.**

2. Attorney's fees

75 **Chair Bull** read from the Zoning Ordinance, Site Plan Review, Section 6.5 B. The cost of any required publication, cost of posting notices, ... This section references that the applicant is responsible for attorney fees at the time of filing the application.

80 *Mr. Bull* explained that he was not the chairman of the Planning Board (PB) at the time the BoS was approached by the then sitting PB Chair for approval to allow the PB to secure independent council for the PB. He further explained that he believes the former Chair went before the BoS and got approval for Attorney Boldt to represent the PB and the BoS was willing to pay for council. It was never discussed by the Planning Board that there was an expectation for the applicant to pay for Attorney's fees and it was never discussed with the applicant that this was an expectation.

85 *Ms. Chick* stated she was present at the PB meeting when Chair Swanick came to the PB explaining why she requested separate council. One of the reasons was, at that time, the Town's Attorney was representing the Zoning Board of Adjustment (ZBA) during litigation and the PB should have our own council separate from the ZBA. There was nothing stating we were going to pass those fees on to the applicant.

95 *Ms. Fuller* stated she concurs with Ms. Chick's statement. This is how she

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remembers that discussion.

Mr. Jewell agreed that this makes sense, the PB does not typically pass on their legal fees to the applicant especially since it wasn't stated earlier.

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Mr. Bull restated that PB has never asked the applicant to pay Attorney's fees, especially up front. We have in the past had applicants pay engineering fees. Attorney Boldt was representing the PB. The Town's Attorney cannot represent both the PB and the ZBA for the decision of one board and the decision of the other board for the same case at the same time. The PB had no alternative, we had to defend litigation against the Board.

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Ms. Edwards asked if the PB has enough funds in the budget to cover the Attorney's Fees.

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Mr. Bull explained that this is not coming out of the PB budget. This is coming out of the Town's budget which is why the PB had to go to the BoS for approval.

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Mr. Seamans stated he was present as a member of the public when Ms. Swanick approached the BoS for permission to obtain separate council. At no point in time at that meeting nor since that time, in his presence, has any member of the BoS or PB made mention that Meena LLC would be paying for the PB legal fees.

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Mr. Bull reiterated that this was not stated for the record, and this clarifies that question. He also stated it is unfortunate that the town has these Attorney's fees.

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Ms. Edwards asked if it is public knowledge how much these Attorney's fees are.

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Mr. Bull stated he does not know to what degree the Town Administrator has determined the total invoiced amount. None of this has come to the PB. The expenses for Northpoint Engineering are being paid out of the Town's General Fund, however that will be reimbursed by the Applicant as one of the Conditions of Approval.

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Mr. Bull commented that this is not something that the Board needs to vote on.

Attorney Boldt suggested the Chair ask if any members of the Board disagree with this conclusion.

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Mr. Bull asked the PB if any Board members disagreed with this conclusion: The Attorney's Fees are to be paid for by the Town.

Mr. Bull also commented that he is not happy that we have to pay an Attorney to have a discussion about who pays for Attorney's fees.

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Ms. Fuller suggested that when we have a work session to review the Site Plan that we address some of these comments and concerns and make some changes to address these as part of the application.

All Board members were in agreement of this conclusion: The Attorney's Fees are to be paid for by the Town.

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Attorney Johnson asked if he could give the Chair some documents related to the Meena LLC conditions of approval. Chair Bull accepted those from Attorney Johnson.

Motion to adjourn by Elaine chick. Seconded By Grace Fuller. All in favor.

Meeting Adjourned at 7:12 PM

Minutes prepared by Elaine Chick

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