

Approved: _____ Approved with Changes 10/6/22 *Minutes are Draft until approved*

Effingham Planning Board

Meeting Minutes

August 22, 2022

Members Present: Theresa Swanick (chair), George Bull, Grace Fuller, Paul Potter, Dave Garceau, Elaine Chick, Lenny Espie, alternate Gary Jewell

Members Absent:

Others Present: Matthew Johnson (atty for applicant), Prince Garg, Mark McConkey, Patricia and Robert Pustell, Linda Habif, Susan Marks, Steve Seege, Lee Seege, Ruth O’Neal, Donald Bouchard of Horizon Engineers, Bill Elliott, Sheldon Perry, David Tanner, Laura Robertson, Merrill Tanner, Anita Fahy, Marie Lamagat, Tim Otterbach, Bobbi Boudman, Vicki Garceau, Rebecca Boyden (ZEO), Christine Buchanan Johnson, Corey Lane, Matt Howe, Biron Bedard (atty for abutters), Paul Elie, Bill Bartowicz, Ron Larrivee, Anne Cunningham, Sandra and Todd Ringelstein, Emily Robertson, Jeff Nicoll, William Winter, Hans Anker, Cobi Jordan-Anker, Perry Tine, Theresa Sousoures, Nick Grant, Geoffrey Cunningham, and others.

Zoom Registrants: Eric Hollister, Don Hamill, Bryan Berling, Carol Gartland, Maura Kennedy, James Misercola, Chase McCabe, Todd Dickinson, Edwina Boose, Jason Earle, Paul Tung, Dana Simpson, Sylvia Scott, Karl Ogren, Peter Zack, Robert O’Neal, Tracy Maidment, Jacob McConkey, Blair Folts, Jerry Knirk, Tina Fahy, David Coleman, Linda Hatfield, Bryant Guerin, Peter Beatrice, Doug Brown, Sue Avery, Mary Cronin, Mehra Teikmanis, John Bent, Keith Randino, Knute Ogren, Colin Shaheen, Pete Schiller, Susan Wiley, Nancy Walser, Leonard Witt, Katherine Thorndike, Virginia Heard, Cathy Bedard, Maureen Fowler, James Bush, MJ Magna, Kyle Copeland, Elizabeth Chadwick, William Marsh, Jeanne Vidler, Roberta MacCarthy, Janice Zecher, Lisa Louttit, Patricia Riker, Judith Previer, Kelly Dobrowolski, Jane Hobbs Champney, Linda Taylor, John Hieber, Mark Eisner, Linda Mailhot, Mark Depew, David Tanner, James Dietterich, Christian Fahy, Alexis Currier, Judith Smith, Sherry Merrow, Chris Elliot, David Tursky, Shana Aisenberg, Leehobbs Steege, Brian Taylor, Noreen Downs, Lorie Dunne, Tara Schroeder, Robert Newton, Richard Fahy, David Smith.

Meeting called to order at 6:32pm, the Chair introduced the board.

Continued Public Hearing Meena Site Plan

The chair began by informing the public that this is a special meeting of the Planning Board just to review the Meena case.

The applicant once again failed to submit documents in a timely manner for it to be sent to the third-party reviewer to report to the board prior to reconvening the hearing.

Chair asked the Board how best to move forward. There are a couple issues we should address.

[**At this point it was learned the audio was not on for the zoom, and it was turned on.**]

Chair noted that one of the issues still needing to be addressed, regardless of the lack of timely submission, is that of whether a Special Use Permit (SUP) should be required. Mr. Potter asked what the Zoning Board had to say about it. Chair reminded that the Zoning Board granted a Variance for the use of a gas station at that location. So, the argument on one side is the requirements for a Variance are more stringent or no less stringent than that for a SUP. Further, it was appealed to Superior Court which wrote a dozen page decision upholding the Variance.

Grace Fuller said it seemed we don't need a SUP based on the Variance being upheld in court. George Bull said he tends to agree with that. Chair said it is an arguable matter. The abutter's attorney opined about the need to require a SUP, and the applicant's attorney argued the other side. So, we should decide this one way or the other.

George Bull pointed out that per Article 22 (Groundwater Protection), there are four instances that require a SUP; the first being the storage, handling and use of regulated substances, which is the issue by default dealing with a gas station; and he noted the variance was given to a gas station so it applies to one. If you look at 2, re increasing impervious surface; they are not really adding any impervious ground. 3, they are not blasting, and 4, they aren't putting in a car wash. So based on what is being proposed and based on the Variance that was granted, it applies to 1.

Elaine Chick said she agreed with that. The other piece is that the ZBA already granted a variance for a gas station which then makes it a permitted use based on the nature of the Variance. So, it would be redundant to require a SUP if it is already considered a permitted use. She thinks it already meets the requirements based on the Variance.

Someone in the audience interrupted. The chair asked for quiet and asked if Elaine Chick was done and summed up that she agreed not to require a SUP. Dave Garceau stated that he agreed with that, that the ZBA granted the Variance and it was upheld by the court system and didn't think anything should go around that.

Chair added that part of her thinking is that the conditions of the variance are in line with what a SUP would require; that hoop has been jumped through and it would be redundant to require a SUP, a Special Use Permit for this use as a gas station.

MOTION by Grace Fuller that this application for the gas station does not require a SUP based on the relief provided by the ZBA decision and the Superior Court. George Bull seconded. All in favor, the motion passed.

The Chair raised that there was a second argument put forth for a SUP under the wetland ordinance, paraphrasing, if the normal course of water is diverted. Article 16 is wetlands.

George Bull said that with wetlands, it varies per application. Chair said this application requires a stormwater management plan, but 1607 says no change to the normal flow of water.

George said there are two potential SUP issues, one for putting anything in the 25' buffer, and one for changing the natural flow of water. Chair said that by requiring a stormwater management plan we are expressly asking for the natural flow of water to be altered. Grace Fuller said that since they have that requirement already, it would be redundant to require.

George Bull said that we can't require them to get a SUP for something we are requiring them to do. Chair said it would be giving us similar information so it seems redundant.

What we are requesting of them right now re changing flow of water is as strict or stricter than a SUP. George said the engineering is the same for both.

Grace Fuller asked if we needed a motion on this. Board agreed there was consensus on that.

Grace said she would like to talk about a deadline for submission of materials. George said and maybe to have time to get a question asked and answered for clarification if needed. Chair said that previously we have asked for submissions to come in early enough to be able to go out for third-party review and a report to come back to the board for review – at least a week ahead of time, and even that is too close timing. Those requests have not been met in July and not met with this special meeting.

Chair asked what is a better strategy? One is to say more time. Maybe a firmer, agreed-upon deadline for documents. Sometimes things need to go back and forth and back and forth (thinking of past cases of subdivisions, driveways) surely more than a week is needed. Grace Fuller suggested clear dates, a minimum of three weeks. Elaine suggested that if it needs to go out for review, how much time for that to come back to us and the applicant and possibly go back again and out to the attorneys.

The Chair said the other thing is that there are many people representing the applicant and asked that one and only one of the applicant's representatives be point person for all communications going forward. She asked for that person to be Atty Johnson, and he agreed. Communications will be expected to come only from him to the Chair and clerk Nate Fogg. Communications going out will go to both attorneys Johnson and Bedard (for abutters).

The chair made it clear that no submission should go to the third-party reviewer directly. George Bull emphasized it is standard practice for all communications to go through the chair.

Grace Fuller asked if we should set the dates? Chair said that given the lack of document production, the board will set a date for continuance. The Chair pointed out that this meeting had been requested as a special non-regular meeting for full attention to the application, and here we all are without being able to make use of this time. The chair said she is not inclined to grant another special meeting. She noted the next regular meeting is September 1st which is too

soon, the next regular meeting is October 6th which sounds about right for material to go back and forth between engineers.

The Board's work session rescheduled to the 19th when everyone available. It was suggested to start at 6pm. So, working backwards, the deadline for submission for all parties suggested to be by the 9/9 by 5pm, beyond which no further material would be considered for the application.

Nate Fogg asked if the deadline is just for digital submission? Chair said, right, she noticed no paper was submitted today at the meeting so no hard copies were submitted at all.

Board agreed that September 9, 2022 would be the deadline for submission of digital and hard copies of documents for review. Atty Johnson asked how many paper copies. George Bull said it is in the ordinance; we are not asking for anything beyond what is in the ordinance.

September 19, 2022 the board will have a 6:00pm work session in which it will review status of documents.

Motion made by Paul Potter to continue the hearing of the Meena site plan on October 6, 2022 at a time no earlier than 7pm. Seconded by George Bull. All in favor. Motion passed.

Point of Order: Tim Otterbach said the Board voted to get a comprehensive third-party review of the application. There are 80-some documents in the previous submittal and only 9 of them have been reviewed. Chair responded that she addressed this with him a month ago. He said a comprehensive third-party review hasn't been done of the entire application. Chair said that was the instruction to the reviewer, and copies of the review will come back for response.

Procedure for the Continued Hearing

Chair said we could speak re the procedure for the next public hearing. Grace Fuller asked if we wanted a presentation. Chair said she would appreciate a presentation from the applicant's design engineer; it's pretty technical stuff. There was a specific request for Dr. Newton to give a presentation. Chair said since she has read the letters and seen a video presentation, that she didn't personally think she needed another presentation, but she could see it being helpful to the board and the public. In other words, we could let it in and give it the weight it deserves.

Grace Fuller asked if after the applicant presents and we have opportunity for questions, would it open up for public comment? Chair said yes, then we could have this particular presentation at that time. Then open it up to additional public comment? Chair said yes, BUT there are way too many people to have everyone testify. Anyone who hasn't already may submit a statement in writing. The board has received and reviewed a lot, and will be reviewing again. Mr. Bull said he did not think it was appropriate for either side to have an expert take up hearing time when the information was already submitted, and a video was shared with the board.

George Bull acknowledges that there are a lot of people who could provide a lot of information on both sides. George said, "We as board members or at least me, I have researched both sides of this and I am trying to inform myself and I think that's incumbent on all board members."

George Bull said that once we start opening the door to either party bringing in people who do not have a direct interest... this is not an abutter who is speaking; this is a representative expert. He feels there is no way that this board can balance that fairly; the board needs to know this stuff and it has been given to us and made available to the public.

Point of Order: Tim Otterbach suggested that Dr. Newton has standing. But the board disagreed as he is not a representative of a regional town (as Selectmen are).

Point of Order: Mr. Otterbach said that the information in the presentation is new information from the earlier video presentation, with technical details about the aquifer and groundwater. Chair Swanick said this is the first time she has heard that it would be new information.

Chair Swanick said she thinks the Board should entertain the new information and limit the presentation. Dave Garceau agreed as said this is new information.

Atty Johnson for applicant then requested copies of the information. They would try to respond at the same meeting. It was agreed Dr. Newton will deliver document re presentation by 9/9.

George Bull said we can have a 15 min. presentation, then give the applicant 15 minutes.

Chair said lastly that any wish to appeal re the SUP issue may appeal to the ZBA within 30 days.

Chair said the next substantive steps will be at the Continued Public Hearing.

Motion made by Grace Fuller to adjourn. Seconded by Lenny Espie. All in favor. Motion passed.

Meeting adjourned at 7:32pm.

Minutes prepared by Nicole Maltese and Theresa Swanick

To Do: Update subdivision checklist re number of plat copies.