

THE STATE OF NEW HAMPSHIRE

CARROLL, SS.

SUPERIOR COURT

No. 212-2021-CV-00151

GREEN MOUNTAIN CONSERVATION GROUP, OSSIPEE LAKE ALLIANCE,
WILLIAM BARTOSWICZ, AND TAMMY McPHERSON

v.

TOWN OF EFFINGHAM and
TOWN OF EFFINGHAM ZONING BOARD OF ADJUSTMENT

ANSWER

The Town of Effingham and the Town of Effingham Zoning Board of Adjustment (collectively referred to as “Town”), through counsel, submits this answer to the Appeal of Zoning Board of Adjustment Decision Pursuant to RSA 677:4, stating:

1. The Town admits the factual allegations contained in paragraph 1.
2. The Town admits the factual allegations contained in paragraph 2.
3. The Town admits the factual allegations contained in paragraph 3.
4. The Town admits the factual allegations contained in paragraph 4.
5. The Town admits the factual allegations contained in paragraph 5. By way of further answer, the Zoning Board of Adjustment (“ZBA”) is a department of the Town of Effingham and not a separate legal entity.
6. Paragraph 6 contains conclusions of law to which no response is required.
7. Paragraph 7 contains conclusions of law to which no response is required.
8. The Town admits the factual allegations contained in paragraph 8 with respect to the address listed. The Town denies that the Plaintiff is directly affected by the ZBA’s decision.

9. The Town admits the factual allegations contained in paragraph 9 with respect to the address listed. The Town denies that the Plaintiff is directly affected by the ZBA's decision.

10. The Town admits the factual allegations contained in the first and second sentences of paragraph 10, but denies the allegations contained in the third sentence of the paragraph. By way of further answer, the Town affirmatively states that the Ossipee Lake Alliance (OLA) does not have standing to appeal the ZBA's decision.

11. The Town admits the factual allegations contained in the first and second sentences of paragraph 11, but denies the allegations contained in the third sentence of the paragraph. By way of further answer, the Town affirmatively states that the Green Mountain Conservation Group (GMCG) does not have standing to appeal the ZBA's decision.

12. The Town is without sufficient knowledge or information to admit or deny the factual allegations contained in paragraph 12, and therefore denies the allegations at this time.

13. The Town admits the factual allegations contained in paragraph 13, and further affirmatively states that the Zoning Ordinance speaks for itself.

14. The Town admits the factual allegations contained in paragraph 14, and further affirmatively states that the applicant had the right to seek a variance in order to operate a gasoline station on the subject property.

15. The Town admits the factual allegations contained in paragraph 15 to the extent a variance was sought to operate a gasoline station within the Groundwater Protection District. The Town is without sufficient knowledge or information to admit or deny the remaining allegations in the paragraph, and therefore denies the allegations at this time.

16. The Town admits the factual allegations contained in paragraph 16.

17. The Town admits the factual allegations contained in paragraph 17. By way of further answer, the Town affirmatively states that the New Hampshire Department of Environmental Services (NHDES) conditionally approved the tank installation.

18. The Town admits the factual allegations contained in paragraph 18.

19. The Town admits the factual allegations contained in paragraph 19.

20. The Town admits the factual allegations contained in paragraph 20.

21. The Town admits the factual allegations contained in paragraph 21.

22. The Town admits the factual allegations contained in paragraph 22 to the extent a stratified drift aquifer model was used during the ZBA hearing. The Town is without sufficient knowledge or information to admit or deny the remaining allegations in the paragraph, and therefore denies the allegations at this time.

23. The Town admits the factual allegations contained in the first sentence of paragraph 23. The Town is without sufficient knowledge or information to admit or deny the remaining allegations in the paragraph, and therefore denies the allegations at this time.

24. The Town admits the factual allegations contained in paragraph 24.

25. The Town admits the factual allegations contained in paragraph 25. By way of further answer, the ZBA's decision not to declare the project as one of regional impact was neither unlawful nor unreasonable.

26. The Town admits the factual allegations contained in paragraph 26.

27. The Town admits the factual allegations contained in the first sentence of paragraph 27. The Town admits the factual allegations contained in the second sentence of the paragraph with respect to the allegation that there are approximately 20 homes within 1,000 feet of the proposed gasoline station.

28. The Town admits the factual allegations contained in paragraph 28. By way of further answer, the Town affirmatively states that the ZBA was under no obligation to seek a third party review of the variance application, and the Board's decision not do so was reasonable under the circumstances.

29. The Town admits the factual allegations contained in paragraph 29.

30. The Town admits the factual allegations contained in paragraph 30.

31. The Town admits the factual allegations contained in paragraph 31. By way of further answer, the Town affirmatively states that the ZBA's decision was neither unlawful nor unreasonable.

32. The Town admits the factual allegations contained in paragraph 32.

33. The Town admits the factual allegations contained in paragraph 33.

34. The Town admits the factual allegations contained in paragraph 34. By way of further answer, the Town affirmatively states that OLA and GMCG do not have standing in this matter.

35. The Town admits the factual allegations contained in paragraph 35. By way of further answer, the Town affirmatively states that the ZBA's decision was neither unlawful nor unreasonable.

36. The Town admits the factual allegations contained in paragraph 36.

37. Paragraph 37 does not contain factual allegations that require a response.

38. Paragraph 38 contains conclusions of law to which no response is required.

39. Paragraph 39 contains conclusions of law to which no response is required.

40. Paragraph 40 contains conclusions of law to which no response is required. To the extent a response is required, the Town denies the allegations.

41. The Town admits the factual allegations contained in paragraph 41.
42. The Town admits the factual allegations contained in paragraph 42.
43. Paragraph 43 contains conclusions of law to which no response is required.
44. Paragraph 44 contains conclusions of law to which no response is required.
45. Paragraph 45 contains conclusions of law to which no response is required. To

the extent a response is required, the Town denies the factual allegations.

46. Paragraph 46 contains conclusions of law to which no response is required.
47. Paragraph 47 contains conclusions of law to which no response is required.
48. Paragraph 48 contains conclusions of law to which no response is required.
49. Paragraph 49 contains conclusions of law to which no response is required.
50. Paragraph 50 contains conclusions of law to which no response is required.
51. Paragraph 51 contains conclusions of law to which no response is required.
52. The Town admits the factual allegations contained in paragraph 52 to the extent

the citizens of the Town voted to adopt the Groundwater Protection District, which includes a prohibition on gasoline station use within that district.

53. The Town admits the factual allegations contained in paragraph 53 to the extent the former gasoline station ceased operation approximately 6 years ago.

54. Paragraph 54 contains conclusions of law to which no response is required. To the extent a response is required, the Town denies the allegations.

55. Paragraph 55 contains conclusions of law to which no response is required.

56. Paragraph 56 contains conclusions of law to which no response is required. To the extent a response is required, the Town denies the allegations.

57. Paragraph 57 contains conclusions of law to which no response is required.

58. The Town admits the factual allegations contained in paragraph 58 to the extent the ZBA discussed current technology and its impact on the safety of underground storage tanks for the proposed gasoline station.

59. Paragraph 59 contains conclusions of law to which no response is required.

60. Paragraph 60 contains conclusions of law to which no response is required.

61. Paragraph 61 contains conclusions of law to which no response is required.

62. Paragraph 62 contains conclusions of law to which no response is required. To the extent a response is required, the Town denies the allegations.

63. Paragraph 63 contains conclusions of law to which no response is required.

64. The Town admits the factual allegations contained in paragraph 64 to the extent Dr. Newton made the statements ascribed to him.

65. The Town admits the factual allegations contained in paragraph 65 to the extent Dr. Newton made the statements ascribed to him.

66. Paragraph 66 contains conclusions of law to which no response is required. To the extent a response is required, the Town denies the allegations.

67. Paragraph 67 contains conclusions of law to which no response is required.

68. Paragraph 68 contains conclusions of law to which no response is required.

69. Paragraph 69 contains conclusions of law to which no response is required.

70. The Town denies the factual allegations contained in paragraph 70.

71. Paragraph 71 contains conclusions of law to which no response is required. To the extent a response is required, the Town denies the allegations. By way of further answer, the Town affirmatively states that the ZBA's decision was supported by the evidence and should be affirmed.

72. Paragraph 72 contains conclusions of law to which no response is required. To the extent a response is required, the Town denies the allegations.

73. Paragraph 73 contains conclusions of law to which no response is required. To the extent a response is required, the Town denies the allegations. By way of further answer, the Town affirmatively states that this issue was not raised in the Plaintiffs' motion for rehearing.

74. Paragraph 74 contains conclusions of law to which no response is required. To the extent a response is required, the Town denies the allegations.

75. Paragraph 75 contains conclusions of law to which no response is required.

76. Paragraph 76 contains conclusions of law to which no response is required.

77. Paragraph 77 contains conclusions of law to which no response is required. To the extent a response is required, the Town denies the allegations. By way of further answer, the Town affirmatively states that this issue was not raised in the Plaintiffs' motion for rehearing. In addition, the Plaintiffs do not have standing to raise this claim.

78. Paragraph 78 contains conclusions of law to which no response is required.

WHEREFORE, the Town of Effingham respectfully requests that this Honorable Court:

- A. Dismiss this Complaint in its entirety; and
- B. Grant such further relief that is just and equitable.

Respectfully submitted,

TOWN OF EFFINGHAM

By Its Counsel,

DRUMMOND WOODSUM &
MacMAHON

Date: December 8, 2021

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CERTIFICATION

I hereby certify that a copy of the foregoing was this day forwarded to Biron L. Bedard, Esq. and Meaghan A. Jespen, Esq., counsel for the Plaintiffs, via the Court's electronic filing system.

/s/ Matthew R. Serge
Matthew R. Serge