

March 7, 2022

Mr. Jeffrey Hayes, Executive Director
N.H. Lakes Region Planning Commission
Meredith, N.H. 03253

****BY EMAIL****

Dear Mr. Hayes:

On February 24, the Effingham Planning Board voted 5-2 that a site plan application to construct a gas station in the town's Groundwater Protection District is a Development of Regional Impact (DRI) per NH RSA 36:54-36:58.

The applicant is Meena LLC, a limited liability company in Conway, NH. The agent for the applicant is Mark McConkey, whose business offers general contractor services and septic system designs and installations. Mr. McConkey is additionally a State Representative and a Commissioner representing Freedom on the Lakes Region Planning Commission (LRPC).

Effingham will, or already has, contacted you about its DRI vote regarding the proposed development, which is predicated on an August 2021 zoning board approval for a variance to construct a gas station in contravention of the Groundwater Protection Ordinance that was established as town law in 2011.

The ZBA decision has been appealed to Superior Court by residential homeowners who abut the proposed site and our two organizations. In the meantime, the planning board's review of the site plan application has commenced.

The LRPC is deeply invested in the protection of the Ossipee Aquifer, making it uniquely qualified to help Effingham and the DRI-designated communities assess how the proposed development will or may affect the health and safety of their residents.

Working through Green Mountain Conservation Group, LRPC helped six towns write their groundwater protection ordinances, including the Effingham ordinance. Planners were sent to monthly meetings, minutes were kept, and aquifer protection ordinance templates were shared.

By virtue of this work, the LRPC understands the uniqueness of the Ossipee Aquifer, the largest stratified drift aquifer in the state, and the source of drinking water for the six above-referenced towns and beyond. It is because of the uniqueness of this aquifer, including its highly transmissive soils, that the groundwater protection ordinances were written.

It is our view that the Meena LLC application poses a threat to the region because the proposed site is a former gravel pit that sits atop the Ossipee Aquifer on the border of Effingham and Ossipee. It is also proximate to residential wells in both towns and along Phillips Brook, which flows north to empty into Ossipee Lake. Effingham's ruling that the application is a DRI is consistent with our view.

We believe the following information will be useful to the Commission as it reviews the Meena LLC application to determine how best to advise and assist Effingham and the DRI-affected communities:

- The proposal presents unique challenges. The environmental questions posed by the site being in a former gravel pit comprised of highly transmissive soils and located over a stratified drift aquifer are beyond the reasonable experience of a typical volunteer planning board member. The Commission's professional expertise is vital to the ability of the communities in question to assess the health and safety risk to their residents.
- Liability questions should be answered. We hope the Commission will help the affected communities understand what is known and what is unknown regarding the liability of the applicant and the state in the event that gasoline penetrates residential wells and the aquifer. We note that the application contains technical documents purportedly prepared for business entities that include Meena LLC, Aloha LLC, Effingham Aloha LLC, Ramco LLC, and combinations thereof, such as Aloha Effingham & Ramco LLC. The ZBA last year asked the applicant to explain the unusual number of liability-protected entities referenced in the application, but the information was never provided.
- The site plan application contains an alarming waiver request. The "Building Data" page requires the name of NH-licensed professionals—engineer, land surveyor or architect are the options—who prepared the Plats. Cristopher Williams is noted to be the certified engineer responsible for the Underground Storage Tanks Plat. But a waiver from this credential requirement is requested for Mr. McConkey, whose company prepared the Stormwater Management Plan, a key document the ZBA required in its variance approval. The application does not explain the nature of the waiver request or the rationale for why it should be granted for this technically complex proposal.
- The applicant partially constructed a gas station at the site without a site plan review and without building permits. Underground gas tanks and piping were installed in April, 2021, and construction was well underway when the town zoning officer discovered the impermissible work and issued a cease-and-desist order. The applicant conceded in a subsequent public meeting that it knew its actions were illegal. In November, 2021, it requested the Select Board's approval to conduct limited additional work without site plan approval and was turned down.
- Commissioner McConkey's conflicts should be considered. Mr. McConkey could have addressed the planning board's confusion about its DRI responsibilities at the February 24 meeting after several members suggested newspaper coverage of the matter made a DRI determination moot. Acting as Meena LLC's agent, he instead addressed the board to state the application's opponents had "cast a wide net" of awareness among neighboring town officials, whom he said had "refused" to ask Effingham officials to declare the project a DRI. "The Town of Freedom has not sent you a letter, nor has the Freedom Conservation Commission given you a letter stating that this is regional impact. Just a statement of fact. Groups have tried very hard to get people to do that. It has not happened to date," he said.

Commissioner McConkey clearly understands it is not the responsibility of potentially-impacted communities to request a DRI designation; that is the sole responsibility of the

board reviewing the application, per state law. His failure to correct the planning board about its legal responsibility when presented with the opportunity should alarm the Commission. His actions may help explain why two planning board members voted against the DRI designation by claiming newspaper coverage was sufficient. We note also that the planning board did not debate which of the DRI criteria pertained to the application, and did not identify which towns would be impacted, both lapses that Mr. McConkey could have helped prevent.

Our organizations have worked diligently to ensure that factual information is readily available to the public about this application. That includes publishing the site plan and other public documents from all parties in this issue.

We also helped produce a video by noted Ossipee Aquifer expert Dr. Robert Newton of Smith College. The video uses non-technical language and high-tech LIDAR graphics to explain why the Meena site is the "worst possible location" for a gas station, and why it will threaten dozens of residential wells in Ossipee and beyond. The video may be viewed at this link: <https://bit.ly/effinghamgas>.

We appreciate the LRPC's historical contribution to the protection of our groundwater resources through intelligent, equitable, common sense planning. We trust the Commission will continue to do so with the Meena LLC application. Please let us know if we can help in any way you feel will be useful.

We appreciate your time and consideration in this matter.

Very best regards,

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cc:
David Jeffers
Susan Slack
Jean Marshall
Tracey Circello

Attachments:

Maps follow



The Star shows the proposed gas station site, and the heavy Black line shows the Ossipee-Effingham town border. Dozens of residential wells on Leavitt Bay, Broad Bay and Phillips Brook (which flows north and empties into Leavitt Bay) would be in harm's way from contaminants that enter the groundwater from the site due to spills and as a consequence of the applicant's proposed Stormwater Management Plan. *Map: Dr. Robert Newton*

MORE



LIDAR (Light Detection and Ranging), an established remote sensing technology that measures distances with reflected laser light, graphically shows the extent to which the proposed gas station site was mined for gravel, making already-transmissive soils hyper-vulnerable to contamination. *Map: Dr. Robert Newton*

END