

May 8, 2023

Via Electronic Mail
mserge@dwmlaw.com

Matthew R. Serge, Esquire
Drummond Woodsum
670 N. Commercial Street, Suite 207
Manchester, N.H. 03101

Re: Rebecca Boyden's April 20, 2023 Letter to my Client

Dear Attorney Serge:

I am writing you in your capacity as counsel for the Town of Effingham to object strongly to the inappropriate correspondence my client received from Rebecca Boyden, the Code Enforcement Officer for the Town of Effingham. In her letter, she incorrectly claims that my client has lost the grandfathered status for the store portion of Boyles Market. Nothing could be further from the truth.

Since May 13, 2021, Meena has been unable to open the store because of a cease and desist order imposed upon it by the Selectmen. This related to the installation of upgraded underground tanks for the use when the gas station portion of the property once it was approved and permitted. The cease and desist order came about in large part because Ms. Boyden gave inaccurate information to my client. My client asked Ms. Boyden specifically before beginning the underground tank installation work whether there were any overlay districts that needed to be considered. Ms. Boyden said no. My client relied on this response when deciding to move forward with installing tanks. Only later was Meena advised of the existence of the groundwater protection overlay district. The cease and desist order was a direct result of Ms. Boyden's inaccurate information.

Twice my client has sought permission from the Board of Selectmen to pave over the underground storage tank openings to make the driveway and parking lot safe for vehicles and foot traffic so that Meena could open only the store. At no point in time has my client sought to open the gas station before it is fully permitted. In both instances, the Selectmen have refused to allow Meena to cover up the tanks to allow Meena to open the store.

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In addition, several of the opponents of my client's project appealed one of the planning board decisions to the Superior Court on September 20, 2022. By doing so, a stay was imposed by the Superior Court. That stay was only lifted on April 14, 2023, when the opponents declined to appeal the Superior Court decision to the New Hampshire Supreme Court. Thus, my client has been prevented by both town and court orders from being able to operate the store from May 13, 2021, through April 14, 2023. The store was operated up to the cease-and-desist order. The limited customers were the construction workers. Even if Ms. Boyden's analysis was proper, which it is not, the 2 years will not be up until May 13, 2023 at the earliest. For these reasons, there is simply no fair, equitable or just argument that my client has lost the grandfathered status of the store.

My client's interest in having the store opened as soon as he was allowed has been demonstrated by the maintenance of all state licenses required to operate the store. He wanted to be ready as soon as he was able to open the store.

In light of Ms. Boyden's April 20, 2023 order, my client will have no choice but to appeal this decision to the Zoning Board of Adjustment within the 30 days unless the Selectmen or Ms. Boyden issue a letter retracting her prior correspondence.

Additionally, if this letter is not retracted by May 15, 2023, I will be serving a right-to-know law request demanding that the Town produce all communications, including all electronic communications, that have occurred between Ms. Boyden and any members of the Green Mountain Conservation Group, the Ossipee Lake Alliance, or other members of the public concerning in any way my client's application. A representative of my client has personally observed Ms. Boyden communicating directly with individuals affiliated with these groups during public hearings so it will be revealing to understand why the zoning enforcement officer felt the need to communicate with opponents of the project.

Please promptly advise me as to the Town's position regarding a retraction of the April 20, 2023 letter. If I do not hear from you promptly, I will have no choice but to file an appeal before the Zoning Board of Adjustment and serve the right to know law request described above.

If you have any questions, please call me directly at (603) 695-8727.

I await your response.

Very truly yours,

/s/ Matthew R. Johnson

Matthew R. Johnson

cc: Christopher L. Boldt, Esq. (via email)

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