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Effingham gas station abutters lose in court

Daymond Steer

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The old Boyle's Market is the proposed site for the Meena gas station in Effingham. (FILE PHOTO)

EFFINGHAM — A Superior Court judge has ruled against two abutters of a proposed gas station on Route 25 by affirming decisions by the town's planning and zoning boards earlier this year.

The proposed gas station, at the site of the former Boyle's Market, is controversial because environmentalists say it is situated in a sensitive area above the Ossipee Aquifer.

William Bartoswicz of Ossipee has a well only 310 feet from the gas station's underground fuel storage tanks.

Cases that were in Superior Court were William Bartoswicz and Tammy McPherson v. Town of Effingham and Town of Effingham Zoning Board of Adjustment and also William Bartoswicz and Tammy McPherson v. Town of Effingham and Town of Effingham Planning Board.

Judge Michael Klass of the state's land use court heard both cases. He presides in Hillsborough County Superior Court North in Manchester. He issued his order siding with the planning board and ZBA on Oct. 1.

The abutters were represented by Biron Bedard of Ransmeier & Spellman P.C.. The town was represented by Christopher Boldt of Donahue, Tucker & Ciandella and Christopher Drescher of Cronin Bisson & Zalinsky P.C.

Attorney Matthew R. Johnson of Devine Millimet was an for Intervenor for Meena.

Johnson told the Sun Tuesday that the abutters still have some cards to play.

"They have 10 days to ask for reconsideration," said Johnson. If they do that, then they get 30 days from the date the court denies the motion to reconsider. If they don't file a motion to reconsider, they have 30 days from the court's order to file an appeal."

Given their approach to drag this out, I would be very surprised if they don't file a motion to reconsider.

In his order, Klass noted that Bartoswicz and McPherson had appealed board decisions regarding Meena five times (the recent cases being the fourth and fifth) and have never succeeded.

The lawsuits were challenging the the planning board's decision to conditionally approve the project on July 11, 2023, and also the ZBA's denial of Bartoswicz and MccPherson's appeal of the planning board's decision.

"The record in this case consists of more than 1,400 pages. It reflects an extensive and iterative application process that spanned three years during which time Meena's plans were adjusted based on technical review of the project," said Klass in his order's conclusion.

"Incredibly, the application on appeal was heard by the planning board no fewer than 22 times. It was subjected to extensive peer review. The fact that petitioners disagree with the planning board's ultimate decision does not render the decision unreasonable or unlawful, considering the contents of the certified record."

Klass continued, "In light of the foregoing, the decision of the planning board that is on appeal is hereby affirmed. Petitioners' appeal is dismissed."

Klass opined on the merits of the abutters' cases.

The abutters alleged that the the plan didn't conform with the town's pollution control regulations and does not adequately protect ground water.

However, the town's peer reviewer, Northpoint Engineering LLC, found that it did comply. Northpoint also found that the storm water controls would comply with industry standards and state regulations. Klass found the planning board's reasoning to be reasonable.

The abutters also argued that the project represents a threat to the aquifer in the event of a leak. The abutters hired Dr. Robert Newton of Geoscience Solutions, LLC to make that case.

"However, the record reveals that the planning board found that the proposed development improved safety by removing one existing driveway," said Klass. "With respect to the fear of leaky tanks, such argument is not only overly speculative but also ignores the fact that the tanks were approved by the New Hampshire Department of Environmental Services. Furthermore, the Spill Prevention Control and Countermeasure Plan was approved by the Town's peer reviewer as compliant with DES guidelines. Finally, hypothetical future violations are inadequate to reject an otherwise compliant application."

The case against the ZBA alleged there were technical and procedural deficiencies relating to the ZBA's decision to deny the appeal.

The town argued that the ZBA's issues were minor, and Klass agreed. Among the issue in the abutter's lawsuit against the ZBA was that attendees couldn't hear the proceedings, contrary to the right to know law.

"However, the petitioners do not allege that they themselves could not hear the proceedings," said Klass. "Additionally, they provide no actual evidence that members of the public, or any ZBA members, could not hear and were materially prejudiced. Accordingly, the Court does not find that abstract and indirect complaints of potential RSA 91-A violations are sufficient to warrant invalidation of the ZBA's denial of the petitioners' appeal."

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