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EFFINGHAM GAS STATION PROPOSAL REMAINS ON HOLD

📅 November 28, 2022 👤 David Smith 📁 Alliance Report 💬 0 comments

Effingham—November 28, 2022—Planning Board consideration of a Conway company’s application to build a gas station in Effingham’s Groundwater Protection District remains on hold ten weeks after a Superior Court judge stayed all proceedings.

Judge Amy Ignatius issued the stay on September 20 in response to an appeal of the Effingham Planning Board’s vote that applicant Meena LLC did not have to apply for a Special Use Permit under Section 2208 of the Zoning Ordinance.

The Board’s vote was contrary to the recommendation of its technical consultant, North Point Engineering, which flagged the Special Use Permit requirement in April after it was hired to review the developer’s Site Plan Application. In July, the company reiterated its position after Meena’s attorney called North Point’s conclusion “legally incorrect.”

The Superior Court appeal of the Planning Board’s decision was filed by William Bartoswicz and Tammy McPherson, Ossipee residents whose homes abut the Meena property, and local conservation groups Ossipee Lake Alliance and Green Mountain Conservation Group. A separate appeal of the decision was filed with the town’s ZBA.

Section 2208 of the Zoning Ordinance, “Uses Requiring a Special Use Permit,” includes “the storage, handling, and use of regulated substances in quantities exceeding 100 gallons.” An application for a Special Use Permit would require Meena to identify “All stormwater filtration and infiltration practices and associated depths to the average seasonal high-water table.”

Opponents of the gas station say the requirement is critical since the site, which is permeable and sits atop the Ossipee Aquifer, is highly susceptible to contamination because the top layer of soil was removed when the site was mined as a gravel pit.

Photos of the site published by geoscientist and gas station opponent Dr. Robert Newton show that standing water from Meena property runoff in an adjacent basin on State land is barely above the water table.

Meena’s attorney argues that Section 2208 pertains only to land uses that are permitted in a particular district; and since gas stations are specifically prohibited at the Meena site, the regulation doesn’t apply to his client.

The attorney for the abutters says that when Effingham’s ZBA provided relief from the gas station prohibition in the form of a variance, it turned a prohibited use into a permitted use, requiring the applicant to apply for a Special Use Permit.

After a brief discussion in August, the Planning Board voted unanimously that the Special Use Permit requirement was “redundant” to the conditions the ZBA mandated when it granted a variance to build a gas station at the Meena site.

Minutes of the Board’s discussion do not reference the legal arguments of the two opposing attorneys, and the Board later declined to say whether it had sought Town Counsel’s guidance before it voted.

On October 21, the Planning Board filed a Motion to Dismiss the Petitioners’ Superior Court appeal, and asked the court to stay the judge’s December 4 deadline for the town to submit a certified record of all Meena proceedings. The Petitioners filed an objection to the Motion to Dismiss a week later.

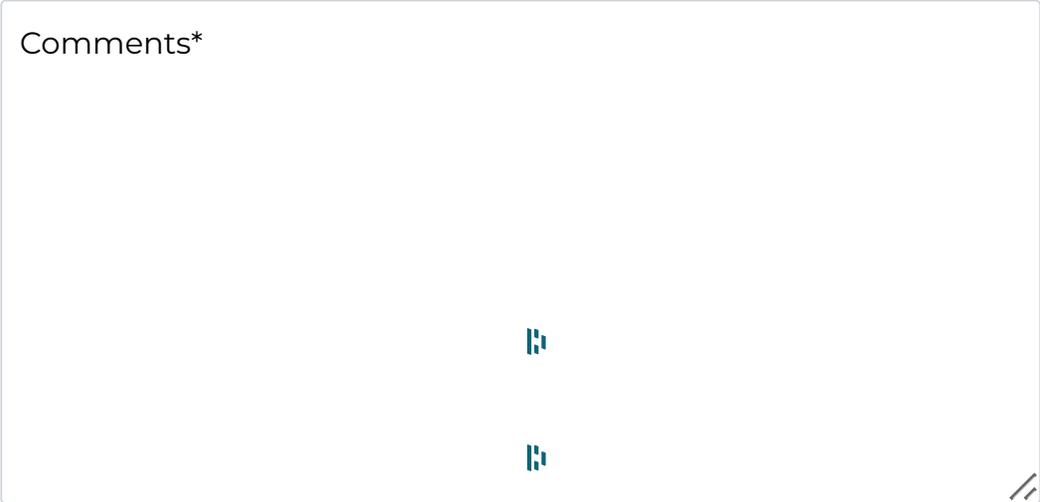
A public hearing on the Meena Site Plan Application remains on the town’s calendar for January 5, a date picked after a scheduled November 3 hearing was scuttled by the court’s stay on the proceedings.

The Planning Board had previously given Meena a September 8 deadline to submit a final Site Plan Application after the company repeatedly submitted its materials late, causing scheduled hearings to be canceled. While the company complied with the deadline, a review of the final materials by North Point Engineering found they contained numerous deficiencies.

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