

THE STATE OF NEW HAMPSHIRE

CARROLL, SS.

SUPERIOR COURT

William Bartoswicz and Tammy McPherson

v.

Town of Effingham and Town of Effingham Planning Board

Docket # 212-2024-CV-00017

DEFENDANTS TOWN OF EFFINGHAM AND TOWN OF EFFINGHAM PLANNING BOARD'S BRIEF STATEMENT AND ANSWER

NOW COME Defendants Town of Effingham (“**the Town**”) and Town of Effingham Planning Board (“**the Board**”), by and through their attorneys, Donahue, Tucker & Ciandella, PLLC, and hereby submit the following Brief Statement and Answer to the Appeal from Board’s Decision Pursuant to RSA 677:15 filed by William Bartoswicz and Tammy McPherson (collectively “**the Petitioners**”). In support thereof, the Board states as follows:

BRIEF STATEMENT

A. This is at least the fourth lawsuit filed by the Petitioners against the Town and either the Board or the Town’s Zoning Board of Adjustment (“**the ZBA**”) concerning the redevelopment of an old gas station/convenience store property (“**the Project**”) owned by Meena, LLC (“**Meena**”) located at 41 NH Route 25 (Tax Map 401, Lot 5)(“**the Property**”). The first case was Docket #212-2021-CV-00151 wherein Petitioners and others challenged the ZBA’s grant of a Variance to Meena for the Project; and Judge Ignatius upheld the ZBA’s decision. See Certified Record (“**CR**”) p. 68 for the ZBA August 6, 2021 Decision and CR p. 265 for Judge Ignatius’ Decision of June 2, 2022 (“**the ZBA Case**”). No one appealed the ZBA Case to the New Hampshire Supreme Court. The second case was Docket #212-2022-CV-102 wherein the Petitioners and others challenged the Board’s decision not to require the Project to obtain a Special

Use Permit in light of the Court's decision in the ZBA Case; and Judge Leonard granted the Board's Motion to Dismiss that case on the grounds that the Variance meant that no Special Use Permit was required ("the SUP Case"). See CR p. 471 for Judge Leonard's Order of January 27, 2023. No one appealed the SUP Case to the New Hampshire Supreme Court. The third case was Docket #212-2023-CV-00127 wherein the Petitioners and others prematurely challenged the Board's Conditional Notice of Decision for this Project dated August 8, 2023 (see CR p. 935 – "the Conditional NOD"); and that case was voluntarily non-suited without prejudice with the agreement of the Town and the Board since the numerous conditions precedent contained in the Conditional NOD had not yet been satisfied. This current case is thus the fourth lawsuit brought against the Project by the Petitioners; and there is a fifth case recently filed by Petitioners against the ZBA for its denial of Petitioners' Appeal of Administrative Decision claiming that the Board violated the Zoning Ordinance by granting the Conditional NOD.

B. Needless to say, with this Certified Record of over 1400 pages, the Board spent an abundance of time on this Project over the course of almost three (3) years. The Board discussed the Project at over thirty (30) public meetings and hearings, listening to the comments and concerns of the Petitioners' Counsel and their hired retired Massachusetts geology professor Dr. Robert Newton, the counsel and hired New Hampshire Licensed Engineers, Surveyors, etc. of Meena as well as individuals from both in Town and, more frequently, much farther afield. The Certified Record amply reflects that the Board lawfully and reasonably considered the evidence, giving it the weight it deserved and resolving conflicts in the evidence while assessing the credibility of the witnesses, all the while seeking to comply with the applicable Site Plan Regulations, any applicable Zoning Ordinance provisions, and the Court's Orders in the ZBA Case and the SUP Case. See, Harborside Associates v. Parade Residence Hotel, 162 N.H 508, 519 (2011) (noting the

ability of land use boards to weigh evidence and assess credibility of witnesses). The Conditional NOD has over 100 paragraphs showing the detail to which the Board went to document its decision and conditions of approval (both conditions precedent and conditions subsequent). See, CR p. 935. The Board further confirmed by January 4, 2024 that the necessary conditions precedent had been met so that the Board Chair signed the final Notice of Decision on January 22, 2024 (“**the Final NOD**”). See, CR p. 1064. [NOTE: The Board Chair erroneously signed “February” instead of “January”; but the January date is correct as reflected in a January 25, 2024 email from the undersigned counsel to Counsel for the Petitioners and Meena. See, CR p. 1067.] As part of the Final NOD, the Board Chair also signed the final set of Site Plans, the Stormwater Management Plan and the Spill Prevention, Control and Countermeasure Plan. See, CR 968 et seq.

C. The standard of review of the Board’s Conditional NOD and the Final NOD is governed by RSA 677:15, V, which provides that the trial court “may reverse or affirm, wholly or partly, or may modify the decision brought up for review when there is an error of law or when the court is persuaded by the balance of probabilities, on the evidence before it, that [the Board’s] decision is unreasonable.” RSA 677:15, V. Thus, the trial court’s review is limited. See, Mojalaki Holdings, LLC v. City of Franklin, 2024 N.H. 17, p. 3 (Issued April 9, 2024); and Trustees of Dartmouth Coll. v. Town of Hanover, 171 N.H. 497, 504 (2018). The trial court must treat the factual findings of the Board as prima facie lawful and reasonable and cannot set aside its decision absent unreasonableness or an identified error of law. Id. The appealing party, here the Petitioners, bears the burden of persuading the trial court that, by the balance of probabilities, the Board’s decision was unreasonable. Id. The trial court determines not whether it agrees with the planning board’s findings, but whether there is evidence upon which its findings could have reasonably been based. Id. In this current case, there is abundant evidence in the Certified Record to support the Board’s

findings. Accordingly, the Board respectfully requests that the Court deny the Petitioners' current Appeal and award the Board its costs and attorneys' fees as justice may allow.

ANSWER

1. With respect to the opening Paragraph of the Petitioners' Appeal, the Board admit in part only to the extent that the subject of this Appeal; otherwise, the Board denies the allegations contained in the opening Paragraph of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, the ZBA denied the Petitioners' Motion for Rehearing reflected in Fn. 1; and the Petitioners have filed a companion case in this Court against the ZBA.

2. The Board admits the allegations contained in Paragraph 1 of the Petitioners' Appeal.

3. The Board admits the allegations contained in Paragraph 2 of the Petitioners' Appeal.

4. The Board admits the allegations contained in Paragraph 3 of the Petitioners' Appeal.

5. The Board admits the allegations contained in Paragraph 4 of the Petitioners' Appeal.

6. The Board admits the allegations contained in Paragraph 5 of the Petitioners' Appeal. BY WAY OF FURTHER ANSWER, the Board acknowledges that this case is within the jurisdiction of the Land Use Docket whose Judge is sitting in Hillsborough County Superior Court – Northern Division.

7. The Board admits the allegations contained in Paragraph 6 of the Petitioners' Appeal. BY WAY OF FURTHER ANSWER, the Property previously operated as a gas

station/convenience store with a laundromat and apartments. While the Petitioners contend that there has been an abandonment of the convenience store during the pendency of the Application process before the Board, including the ZBA Case and the SUP case, the Board does not agree with Petitioners' contention.

8. The Board admits the allegations contained in Paragraph 7 of the Petitioners' Appeal. BY WAY OF FURTHER ANSWER, see Answer to Paragraph 6, above. Additionally, Meena obtained the Variance from the ZBA for the Project; and this Variance was upheld by Judge Ignatius. See, CR p. 68 and p. 265.

9. The Board admits the allegations contained in Paragraph 8 of the Petitioners' Appeal only to the extent of the Property being part of an abandoned gravel pit; but the Board is without sufficient information to admit the remainder of this Paragraph, therefore denies the remainder of this Paragraph and puts the Petitioners to their proof.

10. The Board admit the allegations contained in Paragraph 9 of the Petitioners' Appeal. BY WAY OF FURTHER ANSWER, see Brief Statement above concerning the ZBA Case, the SUP Case and the referenced non-suit of the prematurely filed appeal of the Conditional NOD.

11. The Board admits the allegations contained in Paragraph 10 only to the extent of Petitioner Bartoswicz' address and abutter status; otherwise, the Board denies the allegations contained in Paragraph 10 of the Petitioners' Appeal and puts the Petitioners to their proof.

12. The Board admits the allegations contained in Paragraph 11 only to the extent of Petitioner McPherson's address and abutter status; otherwise, the Board denies the allegations contained in Paragraph 11 of the Petitioners' Appeal and puts the Petitioners to their proof.

13. The Board is without sufficient and/or direct knowledge and/or information to admit or deny the allegations contained in Paragraph 12 of the Appeal and, therefore, denies the same and puts the Petitioners to their proof.

14. The Board admits the allegations contained in Paragraph 13 of the Petitioners' Appeal only to the extent that the Property is located within the Ossipee Aquifer and the Town's Groundwater Protection District and that Petitioner's expert report contained the statement referenced; otherwise, the Board denies the allegations of this Paragraph and puts the Petitioners to their proof.

15. The Board admits the allegations contained in Paragraph 14 of the Petitioners' Appeal only to the extent that the Town voters adopted the Groundwater Protection provisions of the Zoning Ordinance in 2011 and that the Zoning Ordinance contains the statements referenced; otherwise, the Board denies the allegations of this Paragraph and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, the ZBA Case upheld a Variance for the Project to be located on the Property with the two conditions that Meena provide a Stormwater Management Plan and a Spill Prevention, Control and Countermeasure Plan to the Board as part of a Site Plan Review Application. Those conditions were complied with via the Final NOD and Plan Set. See, CR p. 68 and pgs. 968 et. seq. and p. 1064.

16. The Board admits the allegations contained in Paragraph 15 of the Petitioners' Appeal only to the extent that the Groundwater Protection provisions of the Zoning Ordinance do prohibit gas stations, that the Meena started the installation of the underground storage tanks prior to obtaining Site Plan Approval from the Board, that the Town Selectmen issued a Cease & Desist to Meena to stop work until Meena obtained the Site Plan Approval from the Board (see, CR p. 47), and that the Cease & Desist Order was lifted by the Selectmen in September 2023 after the

Conditional NOD was issued by the Board; otherwise, the Board denies the allegations of this Paragraph and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see Answer to Paragraph 15, above.

17. The Board admits the allegations contained in Paragraph 16 of the Petitioners' Appeal.

18. The Board admits the allegations contained in Paragraph 17 of the Petitioners' Appeal.

19. The Board admits the allegations contained in Paragraph 18 of the Petitioners' Appeal. BY WAY OF FURTHER ANSWER, the ZBA's grant of the Variance for this Project included only two conditions:

“1. A Stormwater Management Plan, per NH DES guidelines, shall be submitted for Site Plan Review.

2. A Spill Prevention Control and Countermeasure Plan, per NH DES guidelines, shall be submitted for Site Plan Review.”

See, CR p. 68. Those conditions were complied with via the Final NOD and Plan Set. See, CR pgs. 968 et. seq. and p. 1064.

20. The Board admits the allegations contained in Paragraph 19 of the Petitioners' Appeal. BY WAY OF FURTHER ANSWER, the designation that a project is of potential regional impact grants abutter status to the local Regional Planning Commission and to the Select Boards of the potentially affected municipalities, not to individuals or other boards within those municipalities. See, RSA 36:54 et. seq. Furthermore, the Board's reviewing engineer, Northpoint Engineering, LLC (“Northpoint”) extensively reviewed the various versions of Meena's Plans and documents, provided suggested revisions to the same, participated at various public hearings

on this Project and ultimately reviewed and approved the final set of Plans and documents for compliance with the Conditional NOD. See, CR pgs. 251, 283, 440, 504, 752, 949, 958, 964 and 1068. Such extensive review alone constitutes sufficient evidence that the Board's Conditional NOD and Final NOD were lawful, reasonable and based on sufficient evidence to warrant denial of the Petitioners' Appeal.

21. The Board admits the allegations contained in Paragraph 20 of the Petitioners' Appeal to the extent that Petitioners' Counsel was very active in all of the Board meetings and hearings throughout this lengthy process; otherwise, the Board denies the remainder of the allegations contained in Paragraph 20 and puts the Petitioners to their proof.

22. The Board admits the allegations contained in Paragraph 21 of the Petitioners' Appeal only to the extent that Petitioners and others hired Dr. Newton, that Dr. Newton expressed various opinions throughout the Board's lengthy consideration of this Project and that Dr. Newton's initial report contains the statement referenced in this Paragraph; otherwise, the Board denies the remainder of the allegations contained in Paragraph 21 and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, the Board lawfully and properly considered Dr. Newton's statements, made some suggested revisions to the Plans based in part on Dr. Newton's opinions, and properly gave Dr. Newton's opinions the weight they deserved. See, Harborside Associates v. Parade Residence Hotel, 162 N.H 508, 519 (2011). Dr. Newton is a retired Massachusetts Geology Professor and does not hold any New Hampshire professional licenses. Dr. Newton's letterhead lists "Geoscience Solutions, LLC"; but that entity is not registered in New Hampshire and appears to have been created in September 2021. The Petitioners and their Counsel provided no testimony of a New Hampshire licensed Professional Engineer, Surveyor, Wetlands

Scientist, or Geologist against this Project to refute the positions of Meena's and/or the Town's New Hampshire Licensed Professionals.

23. The Board admits the allegations contained in Paragraph 22 of the Petitioners' Appeal only to the extent that the Board took its initial action of approval of the Meena Site Plan with conditions precedent and conditions subsequent on July 11, 2023 after an extensive number of public meetings and hearings; otherwise, the Board denies the remainder of the allegations contained in Paragraph 22 and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, the Board lawfully and properly gave instructions to its attorney on the preparation of the draft Conditional NOD and then went through that draft Conditional NOD at one or more public meetings to modify and approve the language of the same. See, Planning Board minutes of June 6, 2023 at CR p. 755; Planning Board minutes of June 13, 2023 at CR p. 764; Planning Board minutes of June 19, 2023 Site Walk at CR p. 771; Planning Board minutes of June 20, 2023 at CR p. 773; Planning Board minutes of July 11, 2023 at CR p. 796; Planning Board minutes of August 7, 2023 at CR p. 855; and the final signed Conditional NOD at CR p. 935.

24. The Board admits the allegations contained in Paragraph 23 of the Petitioners' Appeal. BY WAY OF FURTHER ANSWER, see CR p. 800.

25. The Board admits the allegations contained in Paragraph 24 of the Petitioners' Appeal. BY WAY OF FURTHER ANSWER, see CR p. 800, which document speaks for itself.

26. The Board admits the allegations contained in Paragraph 25 of the Petitioners' Appeal only to the extent that the Board met on August 7, 2023 and revised its original Conditional NOD; otherwise, the Board denies the remainder of the allegations contained in Paragraph 25 and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see CR p. 800 and p. 935, which documents speak for themselves. The key revision was to correct the language of Paragraph

12 concerning the Selectmen's knowledge vs. approval of Meena's installation of the underground storage tanks in the spring of 2021.

27. The Board admits the allegations contained in Paragraph 26 of the Petitioners' Appeal. BY WAY OF FURTHER ANSWER, see CR 968 for the final approved Plans and related documents.

28. The Board admits the allegations contained in Paragraph 27 of the Petitioners' Appeal. BY WAY OF FURTHER ANSWER, see CR p. 961 for the minutes of that Public Meeting on November 30, 2023, which document speaks for itself. To rectify any potential error in the posting of the November 30th Public Meeting, the Board held another meeting on December 21, 2023 and on January 4, 2024. See, CR p. 966 and p. 1057.

29. The Board admits the allegations contained in Paragraph 28 of the Petitioners' Appeal only to the extent that the allegations reflect that the November 30th meeting had not been properly posted and that another meeting on January 4, 2024 would be held; otherwise, The Board denies the allegations contained in Paragraph 28 of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see, CR p. 966 and p. 1057.

30. The Board admits the allegations contained in Paragraph 29 of the Petitioners' Appeal. BY WAY OF FURTHER ANSWER, see CR p. 1057.

31. The Board admits the allegations contained in Paragraph 30 of the Petitioners' Appeal. BY WAY OF FURTHER ANSWER, see CR p. 1064 for the Final NOD, CR p. 1067 for the undersigned email to Attorneys Bedard and Johnson with the Final NOD on January 25, 2024. The Final NOD was signed on January 22, 2024 by Board Chair George Bull who made an irrelevant scrivener's error as to the date. Chair Bull also signed the Final Plans, Stormwater

Management Plan and Spill Prevention, Control and Countermeasure Plan effective January 4, 2024. See, CR p. 968 through 1056.

32. The Board admits the allegations contained in Paragraph 31 of the Petitioners' Appeal only to the extent that the allegations reflect that the Final NOD was based on the Conditional NOD; otherwise, the Board denies the allegations contained in Paragraph 31 of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see Answer to Paragraph 30, above.

33. Paragraph 32 of the Petitioners' Appeal does not contain any statements of fact to which a response is needed; but to the extent this Paragraph does contain any facts, the Board denies the same and puts the Petitioners to their proof.

34. Paragraph 33 of the Petitioners' Appeal does not contain any statements of fact to which a response is needed; but to the extent this Paragraph does contain any facts, the Board denies the same and puts the Petitioners to their proof.

35. Paragraph 34 of the Petitioners' Appeal does not contain any statements of fact to which a response is needed; but to the extent this Paragraph does contain any facts, the Board denies the same and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see Brief Statement above for the complete standard of review in this case.

36. The Board denies the allegations contained in Paragraph 35 of Petitioners' Appeal and puts the Petitioners to their proof.

37. The Board admits the allegations contained in Paragraph 36 of the Petitioners' Appeal only to the extent that the allegations reflect that the Board must comply with the Site Plan Regulations of the Town; otherwise, the Board denies the allegations contained in Paragraph 36 of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER

ANSWER, the Board fully followed the applicable provisions of both the Town's Site Plan Regulations and the Zoning Ordinance in light of the Court's rulings in the ZBA Case and the SUP Case. See also, the 2022 Zoning Ordinance starting at CR p. 1088; the 2022 Site Plan Regulations starting at CR p. 1158; the 2020 Zoning Ordinance starting at CR p. 1168; and the 2016 Site Plan Review Regulations starting at CR p. 1238.

38. The Board admit the allegations contained in Paragraph 37 of the Petitioners' Appeal only to the extent that the quoted statements of purpose are contained in the Site Plan Review Regulations; otherwise, the Board denies the allegations contained in Paragraph 37 of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see the Brief Statement above and Mojalaki Holdings, LLC v. City of Franklin, 2024 N.H. 17, p. 3 (Issued April 9, 2024)(holding that the Franklin Planning Board erred in denying a Site Plan based solely on the purpose statements contained in the Site Plan Review Regulations). As in the Mojalaki case, Meena has complied with the various applicable Site Plan Review Regulations and the Zoning Ordinance provisions, especially in light of the Court's decisions in the ZBA Case and the SUP Case. See also, Answer to Paragraph 21, above.

39. The Board denies the allegations contained in Paragraph 38 of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see Answer to Paragraph 37, above.

40. The Board denies the allegations contained in Paragraph 39 of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see Answer to Paragraph 37, above.

41. The Board denies the allegations contained in Paragraph 40 of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see Answer to Paragraph 37, above.

42. The Board denies the allegations contained in Paragraph 41 of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see Answer to Paragraph 37, above.

43. The Board denies the allegations contained in Paragraph 42 of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see Answer to Paragraph 37, above.

44. The Board denies the allegations contained in Paragraph 43 of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see Answer to Paragraph 37, above.

45. The Board denies the allegations contained in Paragraph 44 of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see Answer to Paragraph 37, above.

46. The Board denies the allegations contained in Paragraph 45 of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see Answer to Paragraph 37, above.

47. The Board denies the allegations contained in Paragraph 46 of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see Answer to Paragraph 37, above.

48. The Board denies the allegations contained in Paragraph 47 of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see Answer to Paragraph 37, above.

49. The Board denies the allegations contained in Paragraph 48 of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see Answer to Paragraph 37, above. See also the extensive review of the Plans and related documents by Northpoint as referenced in Answer to Paragraph 19, above.

50. The Board denies the allegations contained in Paragraph 49 of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see Answer to Paragraph 37, above. Additionally, the Fire Chief determined that he was not required to sign off on the Spill Prevention, Control and Countermeasure Plan. See, CR p. 951.

51. The Board denies the allegations contained in Paragraph 50 of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see Answer to Paragraph 37, above. Additionally, the Variance granted for this Project did not require any additional condition other than the two contained in the ZBA's Notice of Decision and as upheld in the ZBA Case. See, CR p. 68 and 265. Additionally, the Board required Meena to comply with the 25 foot frontage setback and 15 foot building setback applicable to gas stations contained in Zoning Ordinance Section 1005. See, CR pgs. 1182-1183. Furthermore, Town has not as a rule required stormwater management features to be subject to setbacks for the very reason that those features are designed to capture the most runoff possible, which necessitates being at the boundary of properties.

52. The Board admit the allegations contained in Paragraph 51 of the Petitioners' Appeal only to the extent that the Board Chair and Northpoint were authorized by the terms of the

Conditional NOD to confirm that the conditions precedent had been complied with by Meena; otherwise, the Board denies the allegations contained in Paragraph 51 of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, the Board asserts that the items referenced are administrative in nature and not discretionary and that the involvement of Northpoint confirmed the propriety of the Board's ultimate Final NOD that Meena had complied with the conditions precedent in the Final Plans and related documents. See, Answer to Paragraph 19, above. Furthermore, the Board as a whole reviewed these Final Plans and related documents at a properly noticed Public Meeting held on January 4, 2024. See, CR p. 1057; see also, CR p. 1420 and 1421 for a copy of the published Notice of that January 4, 2024 Public Meeting.

53. The allegations contained in Paragraph 52 of the Appeal appear to be a legal conclusion to which no response is needed; but to the degree a response is needed, the Board denies the allegations of this Paragraph and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see Answer to Paragraph 51, above.

54. The Board denies the allegations contained in Paragraph 53 of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see Answer to Paragraph 51, above.

55. The Board denies the allegations contained in Paragraph 54 of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see Answer to Paragraph 51, above. Additionally, the Board required Meena to pay all of Northpoint's invoices; and that amount was paid by Meena. See, CR p. 1068 through 1082.

56. The Board denies the allegations contained in Paragraph 55 of the Petitioners' Appeal and puts the Petitioners to their proof. BY WAY OF FURTHER ANSWER, see Answer to Paragraph 19, above.

57. The Board denies the allegations contained in Paragraph 56 of the Petitioners' Appeal and puts the Petitioners to their proof.

58. To the extent necessary, the Board denies that the Petitioners are entitled to any of the relief requested in Prayers A or B.

WHEREFORE, The Board respectfully request that this Honorable Court:

- A. Enter judgment in favor of the Town and the Board in this action;
- B. Deny all the relief sought by the Petitioners in this matter;
- C. Grant the Town and the Board such other and further relief to which they may show themselves justly entitled.

Dated this 24th day of April, 2024.

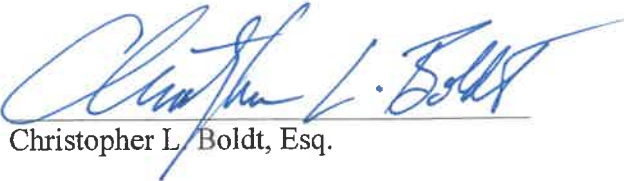
Respectfully submitted,
Town of Effingham and the Town of Effingham
Planning Board
By Its Attorneys,
DONAHUE, TUCKER & CIANDELLA, PLLC



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CERTIFICATION

I hereby certify that a copy of the Town of Effingham and the Town of Effingham Planning Board's Brief Statement and Answer has, this 24th day of April, 2024, been forwarded by electronic mail through the Court's e-filing system to Biron L. Bedard, Esq. and Meghan A. Jepsen Esq., counsel of record for the Petitioners, and Matthew R. Johnson, Esq., counsel of record for Intervenor Meena LLC.



Christopher L. Boldt, Esq.