

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION



Mark C. Draper, Chair

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Sent by electronic mail only

April 17, 2020

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RE: Jeffry Spinney, Department Order L-28397-4E-A-N, Pier System and Boat Ramp, Alna
Appeal filed jointly by Carol Ervin and Bailey Bolen, Allen J. Philbrick, and William A. Weary
Ruling on Request for Stay

Dear Participants:

The appeal filed jointly by Carol Ervin and Bailey Bolen; Allen J. Philbrick, Trustee for James Erskine Philbrick Tree Farm Trust; and William A. Weary of Department Order L-28397-4E-A-N issued to Jeffry Spinney for a pier system and boat ramp on the Sheepscot River in Alna included a request that the Board stay the permit decision.

Under provisions of the Department's Chapter 2, *Rule Concerning the Processing of Applications and Other Administrative Matters*, "...a license granted by the Commissioner is effective on the date the Commissioner, or his or her designee, signs the license" (Section 19(E)), and the filing of an appeal does not stay the license decision (Section 24(A)). The Maine Administrative Procedure Act, 5 M.R.S. section 11004, provides a mechanism for a person to seek a stay of a license decision if certain demonstrations can be made. Specifically, the person seeking a stay must show irreparable injury to the petitioner, a strong likelihood of success of the merits, and no substantial harm to parties or the general public. Based on the appeal and the request for the stay, and in consideration of the terms of the permit issued, the appellants have not made a demonstration of irreparable harm to themselves. Therefore, without reaching the second and third criteria, the request for a stay is denied.

The licensee is on notice that, in the case of an appeal, the licensee proceeds at the licensee's own risk. If the licensee were to proceed with construction, and the appeal is granted and the permit denied, the licensee would be required to remove any structures and fully restore the site.

If you have any questions, you may contact Cynthia Bertocci at (207) 287-2452 or Peggy Bensinger, Assistant Attorney General, at (207) 626-8578.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mark C. Draper', with a large, stylized flourish at the end.

Mark C. Draper, Chair
Board of Environmental Protection

cc: Service List