



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Mark C. Draper, Chair

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Sent via electronic mail only

June 5, 2020

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RE: Jeffrey 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
Rulings on Proposed Supplemental Evidence and Request to Table Processing of the Appeal

Dear Participants:

The Board received an appeal on April 7, 2020 of the Commissioner's approval of a Natural Resources Protection Act permit for Jeffrey Spinney to construct a shared-use boat ramp and pier system on and in a coastal wetland in Alna. On May 13, 2020, Kristin Collins of Preti Flaherty submitted a response to the appeal on behalf of the licensee, Jeffrey Spinney. The response to the appeal included a request to supplement the record with two documents: Golden Ridge Sportsman's Club By-Laws and Land Use License Agreement, both dated May 12, 2020.

On May 21, 2020, Carol Ervin, on behalf of the appellants (Carol Ervin and Bailey Bolen, Allen J. Philbrick, and William A. Weary), objected to the inclusion of the licensee's proposed

supplemental evidence arguing that the documents could have been submitted earlier in the licensing process. If admitted, the appellants request an opportunity to respond.

In addition to the licensee, three interested persons filed responses to the appeal. The response filed by Ms. Cathy Johnson on May 12, 2020 stated that several neighbors and abutters to the project site have secured the services of a qualified ecologist to conduct a field survey and inventory of the project vicinity and requested that the Board table consideration of this appeal until after the field survey is completed and the results evaluated as part of this appeal process.

Criteria Governing Proposed Supplemental Evidence:

In accordance with provisions of Chapter 2, § 24(D) of the Department's rules,

The record for appeals decided by the Board is the administrative record prepared by Department staff in its review of the application, unless the Board admits supplemental evidence or decides to hold a hearing on the appeal....

- (2) The Board may allow the record to be supplemented on appeal when it finds that the evidence offered is relevant and material and that:
 - (a) the person seeking to supplement the record has shown due diligence in bringing the evidence to the attention of the Department at the earliest possible time; or
 - (b) the evidence is newly discovered and could not, by the exercise of reasonable diligence, have been discovered in time to be presented earlier in the licensing process.
- (3) The Chair may accept into the record additional evidence and analysis submitted by Department staff in response to issues raised on appeal or supplemental evidence offered by the appellant(s) or licensee(s).

Ruling:

During the licensing process, the applicant submitted draft Golden Ridge Sportsman's Club By-Laws for the Department's review; however, the By-Laws were not formally adopted until after issuance of the permit. Since the permit did not include a condition that the By-Laws as adopted be submitted to the Department, the licensee had no reason to submit them prior to the filing of the appeal. Because the By-Laws were raised as an issue in the appeal, the licensee has provided them at the earliest opportunity. The By-Laws are relevant and material and will be admitted to the record.

The appellants' request for additional time to file a written response if the adopted By-Laws are admitted is denied. The draft By-Laws were in the record and the appellants may comment on the adopted By-Laws orally at the Board meeting when the appeal is considered.

With respect to the Land Use License Agreement, Conditions 7 and 8 of the permit require the licensee to submit an executed copy of the Agreement to the Department and that any revisions to the Agreement be reviewed and approved by the Department. The executed version of the

Land Use License Agreement submitted by the licensee contains revisions that must be reviewed by the Department as part of the condition compliance process. Therefore, the version submitted by the licensee on May 13, 2020 is not admitted to the record. Following Department review of the Land Use License Agreement, a final approved Agreement may be submitted by Department staff for inclusion in the record in accordance with Chapter 2, § 24(D)(3).

The request to table processing of the appeal to allow for a field survey of natural resources in the vicinity of the project site is denied. The requirement that an appeal to the Board be decided based on the evidentiary record that was before the Department when the Commissioner's decision was made exists, in part, to ensure that the Department receives the best possible relevant information during the processing of the application. The processing of the appeal will not be delayed so that persons may gather additional information either in support of, or opposition to, a proposed project.

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

Sincerely,



Mark C. Draper, Chair
Board of Environmental Protection

Cc: Service List