



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Mark C. Draper, Chair

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Sent via electronic mail only

June 19, 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
Rulings on Additional Proposed Supplemental Evidence

Dear Participants:

The Board of Environmental Protection received an appeal on April 7, 2020 of the Commissioner's approval of a Natural Resources Protection Act permit for Jeffry Spinney to construct a shared-use boat ramp and pier system on and in a coastal wetland in Alna from three abutters. The appellants requested that the Board stay the permit pending consideration of the appeal. The request for stay was denied in my letter of April 17, 2020. The deadline for responses to the appeal was set at May 13, 2020.

The Board received responses to the appeal from the following individuals: A. McKinne Stires, Mark P. DesMeules, Doreen Conboy, Cathy Johnson, and the licensee. The licensee's response to the appeal, filed by Kristin Collins of Preti Flaherty on May 13, 2020, 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. Ms. Johnson's response to the appeal

included a request that the Board table consideration of the appeal until after a natural resource inventory had been conducted. My letter of June 5, 2020 ruled on the licensee's proposed supplemental evidence and Ms. Johnson's request for tabling of the appeal.

On June 8, the Board received an email from the licensee, Mr. Spinney, dated June 5, 2020 responding to the comments submitted by interested persons in support of the appeal of his license. Mr. Spinney's submission, totaling 15 pages, contained annotated photographs and maps commenting on the interested persons' responses to the appeal. Mr. Spinney clarified his June 8th submission by email on June 10.

On June 17, 2020, the Board received a request from Department staff that the Board admit the Licensee's executed Land Use License Agreement required by Condition 7 of the license.

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:

Mr. Spinney's filings on June 8 and June 10, 2020 commenting on the interested persons' responses to the appeal are not admitted to the record. The Department's Chapter 2 rule only provides an opportunity to respond to the appeal itself. It does not provide for rebuttal to other persons' responses to the appeal. Additionally, these filings include additional comments and annotations on the photographs and maps that are not in the existing record. When the Board considers the appeal, both the licensee and the appellants will have an opportunity to present oral argument. During oral argument, the participants may refer to the maps and photographs in the existing record.

The executed Land Use License Agreement submitted by Department staff is admitted to the record. Condition #7 of the license requires its submission to the Department. Given that the agreement is an issue on appeal, the executed agreement is relevant and material.

At this point in the proceeding, the evidentiary record is closed. Staff will prepare a recommendation for consideration at a future Board meeting. You will be notified of the date of the Board meeting and receive a copy of the materials presented to the Board for its consideration.

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
Interested Persons List