

January 19, 2021

Mark C. Draper
Chair, Maine Board of Environmental Protection
Commissioner, Department of Environmental Protection
c/o William F. Hinkel
Executive Analyst, Board of Environmental Protection
17 State House Station
August, ME 04333-0017
Bill.Hinkel@maine.gov

Re: #L-28397-4E-A-N

Dear Mr. Draper:

The appellants/abutters request permission to supplement the record in the above referenced #L-28397-4E-A-N matter relating to a permit originally granted on March 13, 2020 issued to Jeffrey Spinney of Alna.¹ The permit was later revised on June 2, 2020.

The events since closing of the record May 12, 2020 have been multiple and complex, and materially affect the original permit and the appellants' appeal of April 6, 2020. To understand the nature of the project proposed and the issues raised on appeal by the appellants, the Board needs to have information related to statements, activities and decisions that have taken place since the appeal was filed. We request permission to include testimony setting forth a chronology summarizing these subsequent statements, activities and decisions and documents related to those statements, activities, and decisions. Pursuant to appeal procedures (06-096, 24D), this information "could not, by the exercise of reasonable diligence, have been discovered in time to be presented earlier in the licensing process."²

This testimony and documents will show that Mr. Spinney described and advocated to DEP one project, a permanent geotextile and rock motorboat launch for use by his recently formed sportsmen's club of 25+ members, while describing and advocating to the Town of Alna a different project, a temporary boat ramp supported by "earthwork" for personal residential use. A permit for the DEP-approved ramp was denied by the town's planning board, the decision upheld by its board of appeals, and that ramp installed December 27.

¹ The record, closed May 12, 2020, may be found at <https://www.maine.gov/dep/ftp/projects/Spinney-L28397AN/>.

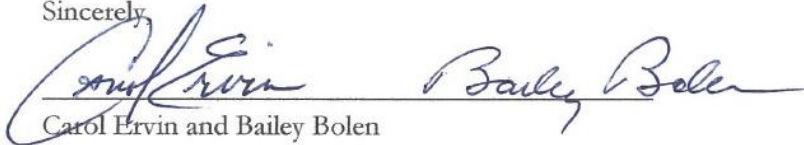
² <https://www.dropbox.com/sh/o5ehj84nd79oqcf/AAD5Az6QQ3eIfX5QDS-Vu-gZa?dl=0>

Specifically, the documents we propose to add to the record relate to:

1. The Alna Board of Appeals' affirmation of the denials by the Alna Planning Board of the project for which Mr. Spinney received the March 2020 DEP permit.
2. Multiple statements and legally binding documents regarding the existence and nature of the Golden Ridge Sportsmen's Club (GRSC) and the actual – as opposed to proposed – “shared” use of the project, which differs from the statements Mr. Spinney made to the DEP and which were relied upon by the DEP in issuing its permit.
3. The nature of the project subsequently orally approved December 10, 2020 by the Alna Planning Board, whether that project is a permanent structure as reflected in the DEP permit or temporary structure as reflected in the Alna permit and whether that latter project requires a new or modified DEP permit.

Thank you for your consideration.

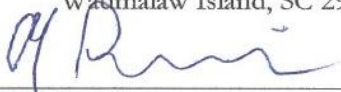
Sincerely,



Carol Ervin and Bailey Bolen

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Supplementary Written Testimony from the Abutters Requested to be Included in the Record

1. Chronology of Events regarding the DEP Permit granted March 13, 2020

- 6/18/19 Beginning discussions between applicant and DEP regarding the application.
- 8/20/10 DEP/NRPA application filed.
- 3/13/20 DEP permit issued.
- 4/6/20 Abutters appeal DEP permit to BEP
- 5/12/20 Closing date for submission of evidence.
Applicant's attorney's rebuttal of abutters.
New Golden Ridge Sportsman's Club (GRSC) bylaws and land-use license.
- 5/29/20 Alna Planning Board (PB) public hearing on local permit application for
6/18/20 project approved by DEP's 3/13/20 permit.
- 6/2/20 Applicant received revised permit from DEP.
- 6/10/20 Alna Town Attorney determines that the GRSC is "a couple of buddies."
- 6/23/20 Alna PB deliberations on Spinney proposal; application denied.
6/29/20
- 6/29/20 Applicant attempts to surrender approval of the dock from the DEP permit.
- 7/3/20 Applicant requests reconsideration of 6/29/20 Alna PB denial.
- 7/7/20 Applicant submits new application to Alna PB for roadwork above the HAT line.
- 7/27/20 Applicant withdraws 7/7/20 permit application for roadwork above the HAT line.
- 7/27/20 After reconsideration, Alna PB affirms application denial of 6/29/20.

- 8/11/20 Applicant requests 60-day continuance of BEP appeal to work out with the DEP the possibility of a temporary ramp surface in place of the permanent one approved. Appellants do not object to continuance.
- 8/20/20 Applicant appeals PB decisions of 6/29/20 and 7/27/20 to the Alna Board of Appeals (BOA).
- 10/12/20 Applicant requests a second 60-day continuance pending action by the Alna BOA on his appeal of 8/20/20. Appellants do not object.
- 10/16/20 Alna BOA upholds PB 6/29/20 and 7/27/20 decisions rejecting application for project approved by the DEP permit of 3/13/20 (formally voted 10/23/20).
- 10/23/20 Alna SB appoints three new members of the PB, two of them alternates.
- 10/26/20 Applicant applies to Alna PB for a temporary roll-out mat and supporting earthwork.
- 12/10/20 Alna PB orally approves the 10/26/20 permit for earthwork and mat, conditional upon DEP and other approvals.
- 12/16/20 Town, applicant, and abutters begin mediation to forestall applicant's appeal to Superior Court of 10/16/20 Alna BOA judgment.
- 12/17/20 Without legal authority, Alna CEO issues applicant a permit for the project approved orally and on conditions by the PB 12/10/20.
- 12/27/20 Applicant constructs the stone on geotextile fabric boat launch described in the March 13, 2020 DEP permit, a project different from that approved by the PB December 10 (cobble and gravel on existing substrate below excavations, without geotextile fabric).
- 12/28/20 Abutters file complaint of violation of code to Alna CEO.
- 12/28/20 Alna PB issues written approval for 10/26/20 project (later rescinded and reissued 1/5/21).
- 12/29/20 Abutters file notice of violation with DEP.

- 1/4/21 Abutters file objection with the SB to the proposed mediation agreement to be signed 1/6/21.
- 1/5/21 Alna PB issues formal findings of fact and written approval, with conditions, for the temporary rollout mat and ramp.
- 1/6/21 Abutters file notice of appeal of the 12/10/20 PB decision with the Alna BOA.
- 1/6/21 Neighbors file separate appeal of the 12/10/20 PB decision with the Alna BOA.
- 1/6/21 Alna SB signs mediation agreement with the applicant granting applicant permission to build a new stone-on-geotextile mat with requests to the DEP for proposed modifications to its 3/13/20 permit. Abutters do not sign.
- 1/11/21 Abutters file formal appeal (following 1/6/21 notice of appeal) of the 12/10/20 decision of the Alna PB with the BOA.
- 1/11/21 Abutters supplement notice of 1/6/20 to DEP of 12/27/20 violation of code.
- 1/13/21 Abutter Bailey Bolen and neighbors appeal 12/17/20 decision of the Alna Code Enforcement Officer (CEO).

2. Supplementary Documentary Evidence Requested to be Entered into the Record for Appeal with Exhibit Numbers

<https://www.dropbox.com/sh/o5ehj84nd79oqcf/AAD5Az6QQ3eIfX5QDS-Vu-gZa?dl=0>

1. Decision of the Alna Board of Appeals (BOA) upholding the denials of permit from the Alna Planning Board (PB) for the project approved by the DEP.
 - a. 10/23/20 written affirmation by Alna BOA (of vote of 10/16/20) of the 7/27/20 PB denial. [1]
2. Documents related to new roll-out mat and earthwork application (a different project than that approved by DEP on 3/13/20) and whether, as constructed, it is a temporary or permanent structure.
 - a. DEP emails noting new application or modification of existing permit would be required.
 - i. 8/11/20 DEP to applicant on temporary ramp and earthwork. [2]
 - ii. 8/12/20 DEP to applicant on temporary ramp and permit. [3]
 - b. Application for temporary roll-out mat and earthwork dated 10/26/20. [4]
 - c. Abutters' notice of violation of ordinances to Alna CEO, 12/28/21. [5]
 - d. Abutters' notice of violation to DEP, 12/29/21. [6]
 - e. Abutters' 1/4/21 objection to proposed Town and applicant mediation agreement. [7]
 - f. Decision and findings of fact of Alna PB granting permit for temporary mat and earthwork project dated 1/5/21. [8]
 - g. Settlement agreement dated 1/6/21 between the Town and applicant. [9]
 - h. Abutters' 1/11/21 formal appeal (following 1/6/21 notice of appeal) of the Alna PB's 12/10/20 decision with the BOA. [10]

- i. Abutters' 1/11/21 supplement to 12/29/20 notice of violation to DEP. [17]
3. Documents related to proposed and actual "shared" use of the facility by the GRSC.
- a. Transcribed audio from Alna PB meeting with testimony of intentions for use of the site. [11]
 - b. Town Attorney's written opinion of 6/10/20 on GRSC as a "business." [12]
 - c. Transcribed audio from Alna Select Board (SB) meeting of 6/10/20 in which the Town Attorney characterizes the GRSC as "a couple of buddies." [13]
 - d. Photographs of Sheepscot River ("existing scenic and esthetic uses") dated 6/19/18) (zoomed from one in record), 6/18/20, and 9/20/20. [14, 15, 16]
 - e. Emails among Army Corps (ACE), DEP, and the applicant.³
 - i. 6/18/19 ACE to applicant re personal use [18]
 - ii. 7/9/19 Applicant to ACE re DEP on projected use [19]
 - iii. 7/15/19 DEP to ACE re DEP policy on private ramps [20]
 - iv. 10/17/19 Applicant to DEP and ACE re boat size [21]
 - v. 11/4/19 Applicant to DEP on plans to expand the club [22]
 - vi. 11/6/19 Applicant to DEP re projected use [23]
 - vii. 12/5/19 DEP to applicant re permanent structures, SZO [24]
 - viii. 1/16/20 Applicant to DEP re reasons for dock and ramp [25]

³ Should for some reason these appropriately timed emails, recovered via FOAA, not have been inserted in the official record, where they should be, they are included here.

Supplementary Documents Requested Listed as Exhibit Numbers

<https://www.dropbox.com/sh/o5ehj84nd79oqcf/AAD5Az6QQ3eIfX5QDS-Vu-gZa?dl=0>

1. 10/23/20 Affirmation (voted taken 10/16/20) of the 7/27/20 PB denial by Alna BOA.
2. 8/11/20 DEP email to applicant on temporary ramp and earthwork.
3. 8/12/20 DEP email to applicant on temporary ramp and permit.
4. Application for temporary roll-out mat and earthwork dated 10/26/20.
5. Abutters' notice of violation of ordinances to Alna CEO, 12/28/21.
6. Abutters' notice of violation to DEP, 12/29/21.
7. Abutters' 1/4/21 objection to proposed Town and applicant mediation agreement.
8. Decision and findings of fact of Alna PB granting permit for temporary mat and earthwork project dated 1/5/21.
9. Settlement 1/6/21 agreement of Town and applicant.
10. Abutters' 1/11/21 appeal of the Alna PB's 12/10/20 decision with the BOA.
11. Transcribed audio from the 5/29/20 Alna PB meeting with testimony of intentions for use.
12. Town Attorney's written statement of 6/10/20 on GRSC as a "business."
13. Transcribed audio from the Select Board (SB) meeting of 6/10/20 in which the Town Attorney characterizes the GRSC as "a couple of buddies."
14. 6/19/18 Photograph of Sheepscot River (zoomed out from photo already in the record. Exhibits 14, 15, and 16 on "existing scenic and esthetic uses")
15. 6/18/20 Photographs of Sheepscot River

16. 9/20/20 Photograph of Sheepscot River
17. 1/22/21 Abutters' supplement to DEP on 12/29/20 notice to the DEP of violation
18. 6/18/19 ACE email to applicant re personal use.
19. 7/9/19 Applicant email to ACE re DEP policy on projected use
20. 7/15/19 DEP emails of ACE on private and permanent ramps
21. 10/17/19 Applicant email to DEP and ACE re boat size
22. 11/4/19 Applicant email to DEP on plans to expand the club
23. 11/6/19 Applicant email to DEP re projected use
24. 12/5/19 DEP email to applicant re permanent structures and SZO
25. 1/16/20 Applicant email to DEP re reasons for dock and ramp