

**IN RE: APPEAL OF DEPARTMENT ORDER L-28397-4E-A-N
Jeffrey Spinney, Licensee. Pier System and Boat Ramp, Alna**

OPPOSITION TO MOTION TO INTRODUCE SUPPLEMENTAL EVIDENCE

Licensee/Appellee Jeffrey Spinney hereby opposes Appellants'/Abutters' motion to submit supplemental evidence in the above-captioned appeal. The Appellants request to introduce testimony related to events at the local permitting level, suggesting that the Licensee obtained a permit from the Town for a different scope of work or use than was permitted by the Department's order. If this were the case, that would be an issue only Department staff could investigate or enforce. Indeed, the Licensee has completed the permitted work and both Town and Department staff have inspected the work for conformance with their respective permits. DEP staff indicated in an email to the Licensee dated January 20, 2021 that, "when I visited the project site on January 7, 2021, I observed the soils to be stable and the project to be built in substantial compliance with the permit." A copy of staff's inspection report has been submitted into evidence. Department staff have independent authority to investigate any other questions or concerns arising from the local permitting process in order to determine the Licensee's conformance with the Department's permit. Those issues are not related to the issues raised in the present appeal. The evidence the Appellants seek to introduce arose well after the Department completed its review and is therefore not germane to the Board's appellate review, which must be based solely on the Department's record.

If the Appellants have legitimate concerns that they wish Department staff to investigate regarding the Licensee's intentions for the permitted project, they may certainly pursue those at the staff level, but they cannot do so in relation to this appeal. The Licensee therefore respectfully requests that the Board Chair deny the Appellants' request to introduce supplemental evidence.

Dated: January 21, 2021

By: Appellee/Licensee Jeffrey Spinney



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