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December 3, 2019

Town of Alna Planning Board
1574 Alna Road
Alna, ME 04535

Re: Spinney Pier and Ramp Permit Application

Dear Members of the Board,

I am writing on behalf of Carol Ervin regarding your review of Jeff Spinney's application to construct a pier and concrete ramp on his property along the Sheepscot River. Ms. Ervin, owner of property at 99 Angier Road in Alna, is Mr. Spinney's direct abutter to the north and submits the following comments.

1. The Town of Alna Shoreland Zoning Ordinance prohibits the permanent pier and concrete ramp proposed by Mr. Spinney

Under Section 14 of the Alna Shoreland Zoning Ordinance (Alna SZO), Table of Land Uses, permanent "piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high-water line" are expressly prohibited in every district of the Town's shoreland zone. In contrast, the Table of Land Uses does authorize the Planning Board to permit temporary piers and similar structures below high water.¹ Alna SZO at 15. Mr. Spinney's application calls for a permanent concrete plank ramp and permanent pile-driven pier below the high water line. As such, the Alna SZO does not authorize the Planning Board to issue a permit for the permanent structures Mr. Spinney has proposed.

The U.S. Army Corps of Engineers has agreed with this interpretation. In an e-mail to Mr. Spinney, the head of the Army Corps Maine Project Office wrote, "My read of the [Alna] shoreland zoning ordinance and that of several commenters is that a permanent pier/ramp/float is not allowed under the ordinance, only temporary structures." E-mail from Jay Clement to Jeff Spinney, Oct. 11, 2019 (attached to this letter for the Board's convenience).

¹ Piers and other structures below the high water mark are deemed "permanent" when they "remain in or over the water for seven months or more in any period of twelve consecutive months" and are "temporary" when they are in the water for less than seven months of the year. Alna SZO at 50-51.

The Alna SZO's prohibition on permanent structures below the high tide line is underscored by the fact that it differs from the state's model shoreland zoning ordinance. Under the state model ordinance, temporary piers and similar structures are permitted below the high water line with approval from the code enforcement officer, while permanent piers and similar structures are permitted below the high water line with approval from the planning board. 06-096 CMR 1000(14). However, when Alna enacted its shoreland zoning ordinance, it affirmatively chose a more stringent framework than the state model. It chose to prohibit outright permanent structures below high water. In other words, while most of the Alna Shoreland Zoning Ordinance was adopted word for word from the state model, on this issue the Town made a decision to modify the state guidelines to reflect its specific, more stringent intent.

Section 15(C) of the Alna SZO states that the Planning Board may not approve new permanent piers and docks "unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act." Alna SZO at 19-20. To the extent that this provision is inconsistent with the complete prohibition on permanent structures set forth in the Table of Land Uses, the more stringent Table of Land Uses governs. As explicitly stated in Section 7 of the Alna SZO: "Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute, the more restrictive provision shall control." Alna SZO at 4.²

Accordingly, the Planning Board must deny Mr. Spinney's application for a permanent boat ramp and pier below high water. At a minimum, the Board should consult the town's attorney prior to rendering a decision on this question of law.

2. Additional Town of Alna Permitting Requirements

It is not clear from Mr. Spinney's permit application what specific approvals he is seeking. However, the development he is proposing requires review and approval under several of the Town's ordinances in addition to the Alna SZO discussed above:

- Alna Subdivision and Site Plan Review Ordinance. A Planning Board permit under the Town's Site Plan Review Ordinance is required for any new construction, alteration or enlargement of commercial development. Alna Site Plan Ord. § IV. Commercial activity includes "the provision of facilities for a fee." Alna Site Plan Ord. § II(D). The pier and ramp proposed by Mr. Spinney are for use by the Golden Ridge Sportsman's Club LLC, a for-profit entity that will charge its members a fee for access to the proposed pier and ramp facilities on Mr. Spinney's property. As such, Mr. Spinney's proposal constitutes commercial development triggering Site Plan review by the Planning Board. Site plan

² Furthermore, unlike the outright prohibition on permanent structures in the Table of Land Uses, the provision in Section 15(C) of the Alna SZO was adopted verbatim from the state model ordinance. 06-096 CMR 1000(15)(C)(7). Where the Town departed from the state model ordinance in the Table of Land Uses and created a prohibition specific to the Alna SZO, that specific provision should be given greater weight than the conflicting general model ordinance language adopted without amendment. Even if the Planning Board were to give effect to the language in Section 15(C), Mr. Spinney's application cannot be granted. Mr. Spinney has not "clearly demonstrated" that "a temporary pier or dock is not feasible" and Mr. Spinney has not obtained a NRPA permit from the Maine DEP.

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review requires submission of detailed plans and resource analysis, and demonstration of compliance with numerous performance standards including: preservation and enhancement of landscape; harmonious relationship of structures to the environment; vehicular access and parking; effect on scenic or natural beauty and aesthetics; and road design. Alna Site Plan Ord. § VII.

- Alna Floodplain Management Ordinance. The area where Mr. Spinney proposes to install the pier and ramp is located in Special Flood Hazard Zone A. Any construction or other development located in a special flood hazard area requires a Flood Hazard Development Permit from the Alna code enforcement officer. Alna Floodplain Ord. Art. II. In particular, “for commercial wharves, piers, and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for the construction.” Alna Floodplain Ord. Art. VI(O)(2). As discussed above, the for-profit Golden Ridge Sportsman’s Club LLC will constitute a commercial enterprise in its provision of the proposed ramp and pier facilities for a fee.
- Alna Building Code Ordinance: Within the Shoreland Zone, Planning Board approval is required for “new construction of a structure of any size or the addition to, renovation, relocation or replacement of an existing structure where the proposed work is of any size.” Alna Building Ord. §12(B).

Finally, Mr. Spinney’s permit application form states that his proposed project consists of “dock/ramp alterations.” My understanding is that there have been no permanent structures at the location of the proposed pier and ramp for several years. To the extent that Mr. Spinney may be asserting grandfathered permitting status or some other lower level of review based on the presence of an existing structure, the burden is on Mr. Spinney to demonstrate the location, dimension, date of construction, permitting status, etc. of that structure. My review of the record indicates that Mr. Spinney has not made such a demonstration.

Thank you very much for your attention to this matter.

Sincerely,



Gordon R. Smith

Enclosure

cc: Jami MacNeil, Maine DEP
Margaret Bensinger, Assistant Attorney General
Jay Clement, U.S. Army Corps of Engineers

MacNeil, Jami

From: Clement, Jay L CIV USARMY CENAE (US) <Jay.L.Clement@usace.army.mil>
Sent: Friday, October 11, 2019 2:25 PM
To: Spinney, Jeffrey; MacNeil, Jami
Subject: RE: RE: Permit Application on lower reach of Sheepscot River

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

The Corps would typically allow for 30 days in which to respond.

-----Original Message-----

From: Spinney, Jeffrey [mailto:Jeffry.Spinney@LibertyMutual.com]
Sent: Friday, October 11, 2019 2:22 PM
To: MacNeil, Jami <Jami.MacNeil@maine.gov>; Clement, Jay L CIV USARMY CENAE (US) <Jay.L.Clement@usace.army.mil>
Subject: [Non-DoD Source] RE: RE: Permit Application on lower reach of Sheepscot River

Ok, that's fine/understandable. Is there a specific due date? Maybe it makes sense for me to address them all at once?

-----Original Message-----

From: MacNeil, Jami <Jami.MacNeil@maine.gov>
Sent: Friday, October 11, 2019 2:00 PM
To: Clement, Jay L CIV USARMY CENAE (US) <Jay.L.Clement@usace.army.mil>; Spinney, Jeffrey <Jeffry.Spinney@LibertyMutual.com>
Subject: {EXTERNAL} Re: RE: Permit Application on lower reach of Sheepscot River

Jeff - This list is from Army Corps but it contains many of the same questions DEP has on the project. If you cc me on your response, that will narrow our list. Unfortunately I can't get you our list until early next week due to supervisors being out. I will cc Jay when I do send it.

-Jami MacNeil
Environmental Specialist III
Bureau of Land Resources
Maine Department of Environmental Protection
(207) 446-4894 | jami.macneil@maine.gov

-----Original Message-----

From: Clement, Jay L CIV USARMY CENAE (US) <Jay.L.Clement@usace.army.mil>
Sent: Friday, October 11, 2019 1:56 PM
To: Spinney, Jeffrey <Jeffry.Spinney@LibertyMutual.com>
Cc: MacNeil, Jami <Jami.MacNeil@maine.gov>
Subject: RE: [Non-DoD Source] Re: RE: Permit Application on lower reach of Sheepscot River

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

This is just from the Corps.

-----Original Message-----

From: Spinney, Jeffrey [mailto:Jeffrey.Spinney@LibertyMutual.com]

Sent: Friday, October 11, 2019 1:52 PM

To: Clement, Jay L CIV USARMY CENAE (US) <Jay.L.Clement@usace.army.mil>

Cc: MacNeil, Jami <Jami.MacNeil@maine.gov>

Subject: [Non-DoD Source] Re: RE: Permit Application on lower reach of Sheepscot River

Is this a combined list or is there another one coming from dep? Just curious as to the process/expectations. Im headed back up to my office right now to start in.

> On Oct 11, 2019, at 1:40 PM, Clement, Jay L CIV USARMY CENAE (US) <Jay.L.Clement@usace.army.mil> wrote:

>

> Jeff:

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> As you are aware, the DEP and Corps have received a number public comment letters/emails on your proposed project. We are also aware that you recently attended a municipal planning board meeting at which the public raised a number of similar questions/concerns. As a result of our review of the comments received and the administrative record, the following specific information is required in addition to any rebutting comments before making a final decision on your application:

>

> 1. Please provide more detail on the intended use of the boat ramp and pier/ramp/float and explain how that differs from the existing use. What is the size, type and number of boats that use your property now and with the installations? If you care to comment on your observations of the prevailing vessel traffic in the river and its overall effect on navigation and the environment, please do so.

>

> 2. Please opine on your project's potential for obtaining local approval. My read of the shoreland zoning ordinance and that of several commenters is that a permanent pier/ramp/float is not allowed under the ordinance, only temporary structures. The status of the boat ramp is less well defined. Although this is the town's decision to make, Title 33 Code of Federal Regulations Section 320.4(j)(1) states that "... where the required Federal, state and/or local authorization and/or certification has been denied for activities which also require a Department of the Army permit... the district engineer will... deny the Army permit without prejudice..." I would not want to continue to expend valuable staff time on processing an application for which local approvals are not possible.

>

> 3. Invariably the Corps and the DEP only hear from project opponents. If you are aware of residents or perhaps your members who might choose to contact us with alternative views or additional information about the project area, please encourage them to do so.

>

> 4. Please clarify the level of your 'club' membership and what their intended use of the facilities will be. More specifically, how many members do you currently have, how many might you expect, how many have boats, etc.

>

> 5. What plans do you have for addressing accidental fuel or other contaminant spills on site? For example, will you maintain spill prevention and containment equipment on site?

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> 6. Like at state/municipal boat ramps across the state, will there be signage on site advising boat launchers to inspect and clean off their trailers, motors, and boats to prevent the spread of invasive species?

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> 7. Have any other alternative sites for club use been identified through local planning board discussions that are not already discussed in the permit application?

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> Please contact me if you have any questions.

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