

December 2, 2019

Via Email – [Jami.macneil@maine.gov](mailto:Jami.macneil@maine.gov)  
And United States Mail, First Class  
Jami MacNeil  
Environmental Specialist III  
Maine Dept. of Environmental Protection  
Bureau of Land Resources  
28 Tyson Drive  
Augusta, ME 04330

Re: Permit Application of Jeffrey Spinney, Alna, Maine

Dear Ms. MacNeil:

As you are aware, we represent the Philbrick family which owns land which abuts the land owned by Jeff Spinney upon which he has applied for a permit to build a boat launch. It has become evident that the real applicant should be a separate entity known as the Golden Ridge Sportsman's Club, LLC. In turn, given that the club has no right, title, and interest in the property on which the boat ramp would be constructed, the permit should be denied.

We have reviewed from the DEP files recent comments prepared by Jeff Spinney dated November 6th, November 8th and November 11th and the accompanying materials. These materials do not resolve the issues raised by you and your questions posed to Mr. Spinney as reflected in these emails.

First, as your in house counsel has confirmed, the retained easement arising from the discontinuance of the road which travels upon my clients' property is only for Mr. Spinney and his successor and assigns. I am confident that your counsel will confirm that "successors and assigns" is a term which refers to transferees of a record interest in real estate. Therefore, I think that Mr. Spinney and your office ought to acknowledge that the Golden Ridge Sportsman's Club, LLC which has no record interest in the Spinney property is not a successor and assign and, therefore, has no right to use the retained easement across my clients' property.

Similarly, Mr. Spinney has attempted to resolve your concerns regarding the scope of the right to use the proposed boat ramp and dock by preparing a "license" which he advises he would make terminable only in certain circumstances.<sup>1</sup> As a matter of law, however, a "license"

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<sup>1</sup> The draft "License" agreement recites that "This Agreement will begin on the Effective Date and will automatically renew for another term unless terminated by Licensor or Licensee in writing." First, no length of any initial or subsequent term is identified. Second, as noted above a License is terminable at any time by the Licensor.

is subject to termination or revocation at any time. While Mr. Spinney may be sincere in assuring you that he does not intend to terminate the license, the very fact that he proposes to grant a terminable right should give you pause. Perhaps his reliance on a license also arises from his recognition that he has no right to expand the burden of the use of Reed Road to the extent that it crosses my clients' land. As noted above, his own right to use is rested in the limited discontinuance order and he has no right to grant an easement on land he does not own, i.e., my clients' land.<sup>2</sup> His efforts to craft a solution to your questions demonstrate that there is no right, title, and interest to do what he intends to do, develop a boat ramp in the name of a club that has no legal title or rights in or access to the property on which the development will occur.

Finally, the "by-laws" that he has shared are not the proper document by which a limited liability company may articulate its regulations of governance. Having chosen to organize the Club – before the DEP application was ever filed in his own name – in the form of a for-profit Limited Liability Company, Mr. Spinney must adhere to the legal requirements set forth in the statutes for such entities. LLCs do not have by-laws.<sup>3</sup>

For all the reasons stated herein, it is evident that the Sportsman's Club which proposes to operate and manage to boat ramp and dock has no right, title, and interest in the property on which it will be built. The permit should be denied.

Thank you for your attention.

Very truly yours,



Judy A. S. Metcalf

JASM/rt  
cc: Jay Clement, Sr. Project Manager, USACE  
clients

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This provision reinforces that. Finally, one must wonder who the licensee is intended to be. Is it the Golden Ridge Sportsman's Club, LLC or is it the individual members of the club? In either circumstance, a terminable license is not sufficient to demonstrate right, title, and interest in the true applicant, the LLC which was formed in May, 2019, which according to the application and the subsequent submissions proposes to be the real operator of the boat launch and ramp.

<sup>2</sup> The draft "license" suggests that the actual location of the route of access from Golden Ridge Road to "the boat ramp and dock area at river" can be determined "at Licensor's discretion." It is a fundamental principle of easement law that once a road is located for access it cannot be moved. *Davis v. Bruk*, 411 A.2d 660 (Me. 1980). To the extent that this language in the "license" intimates that Mr. Spinney thinks he can relocate the Reed Road path and route to the extent it crosses on and over the Philbrick family land he is absolutely incorrect.

<sup>3</sup> The by-laws themselves as Mr. Spinney concedes are flawed. At the very least, the by-laws appear to be a hodge-podge of often internally inconsistent provisions which ought not to be relied on as proof of any meaningful plan for governing access and use of the boat ramp and launch.