

STATE OF MAINE / STATE PLANNING OFFICE – JUNIPER RIDGE
LANDFILL // Public Benefit Determination (PBD) Permit #S-020700-W5-
AU-N: Motion to Dismiss Appeal -- Charles Leithiser

- Draft Proposed Board Order

DRAFT
BOARD ORDER

IN THE MATTER OF

STATE OF MAINE, ACTING THROUGH THE	)	APPEAL OF CHAIR'S RULING
STATE PLANNING OFFICE	)	ON MOTION TO DISMISS
OLD TOWN, PENOBSCOT COUNTY, MAINE)	
JUNIPER RIDGE LANDFILL EXPANSION	)	LEITHISER APPEAL
PUBLIC BENEFIT DETERMINATION	)	FINDINGS OF FACT AND ORDER
#S-020700-W5-AZ-N	)	(DENIAL)

Pursuant to the provisions of 38 M.R.S.A. Sections 344 and 341-D(4) and *Rules Concerning the processing of Applications and Other Administrative Matters*, 06-096 CMR 2.24(B) (last amended April 1, 2003) of the Department of Environmental Protection's regulations, the Board of Environmental Protection has considered the applicant's Motion to dismiss the appeal of CHARLES LEITHISER, the response of Mr. Leithiser, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. BACKGROUND

The State of Maine, acting through the State Planning Office (SPO), owns the Juniper Ridge Landfill (JRL) in Old Town, Maine. The State Planning Office contracts with Casella Waste Systems, Inc. (Casella) for the operation of the Juniper Ridge Landfill. Under the terms of the operating contract, Casella is required to fund all costs associated with development of capacity, operations and closure activities at the landfill, including the submission of an application to expand the landfill. NEWSME Landfill Operations, LLC, a subsidiary of Casella, is the operator of the Juniper Ridge Landfill.

In the first regular session of the 124th Legislature, the public benefit determination statute (38 M.R.S.A. §1310-AA) was amended to extend applicability to new state-owned facilities or expansions to existing state-owned facilities. On September 15, 2011, the applicant filed an application for a determination of public benefit. The Department held a public meeting on October 24, 2011 and also accepted written comments on the application. On January 31, 2012, the Commissioner issued partial approval of the public benefit determination application.

2. PROCEDURAL HISTORY

On February 28, 2012, Charles Leithiser filed an appeal of the Commissioner's Public Benefit Determination for the proposed Juniper Ridge Landfill Expansion to the Board of Environmental Protection (Board). On March 15, 2012, Pierce Atwood, LLP, representing SPO/Casella, filed with the Board a motion to dismiss the appeal. In part, the motion argued that Mr. Leithiser failed to establish that he would be aggrieved because he did not demonstrate that he has suffered a

35 STATE OF MAINE, ACTING THROUGH THE) APPEAL OF CHAIR'S RULING
STATE PLANNING OFFICE) ON MOTION TO DISMISS
OLD TOWN, PENOBSCOT COUNTY, MAINE)
JUNIPER RIDGE LANDFILL EXPANSION) LEITHISER APPEAL
PUBLIC BENEFIT DETERMINATION) FINDINGS OF FACT AND ORDER
#S-020700-W5-AZ-N) (DENIAL)

particularized injury from the issuance of the public benefit determination. In a letter dated March 20, 2012, the Board Chair offered Mr. Leithiser the opportunity to respond to the applicant's motion to dismiss for lack of standing as an aggrieved person. On March 26, 2012, Mr. Leithiser filed a response to the applicant's motion to dismiss. Following review of these submissions, the Board Chair dismissed Mr. Leithiser's appeal on April 2, 2012 finding that Mr. Leithiser had not demonstrated a particularized injury. On April 8, 2012, Mr. Leithiser appealed the Chair's dismissal of his appeal to the full Board.

3. REGULATORY FRAMEWORK AND DISCUSSION

Although Chapter 2 of the Board rules does not apply to public benefit determinations pursuant to Section 2.B, these Rules are useful and instructive for the purpose of determining standing in this context. Section 24.B(1) of the rule provides that “an aggrieved person may appeal to the Board for review” of a decision of the Commissioner. As set forth in Section 24.B(2), the written notice of appeal must include evidence demonstrating that the appellant is an aggrieved person. Section 1.B states that an “ ‘aggrieved person’ means any person whom the Board determines may suffer particularized injury as a result of a licensing or other decision.” In addition, the Board looks to the interpretation by Maine courts of an “aggrieved person” and “particularized injury” in determining standing before the Board.

The applicant’s Motion to Dismiss argues that Mr. Leithiser lacks standing because he has not alleged a particularized injury.

Mr. Leithiser contends that he has standing as a member of the Maine public and as a taxpayer of the State and of Old Town. Mr. Leithiser further contends that property values in Old Town may be impacted by the expansion. In addition, Mr. Leithiser contends that he is impacted by trash truck traffic, and that he has filed many odor complaints, although the odor issues have improved.

Contrary to Mr. Leithiser’s argument, one’s status as a member of the Maine public, or as a taxpayer of the State or of Old Town, is not sufficient to establish standing to appeal the Public Benefit Determination (PBD). The Board adopts the approach consistently endorsed by the Maine courts that taxpayer status alone does not set forth a particularized injury to an individual, as it is a generalized harm suffered by the population as a whole.

Mr. Leithiser has not set forth any facts that establish that he is an aggrieved person who has suffered a particularized injury. He resides at 394 Fourth Street in Old Town, approximately 4 ½ miles from JRL. He makes a cursory reference to a hypothetical impact to property values in Old Town. Such hypothetical or uncertain facts are not sufficient to establish standing. *Passamaquoddy Water Dist. v. City of Eastport*, 710 A.2d 897, 900 (Me. 1998); *Annable v. Board of Env’tl. Protection*, 507 A.2d 592, 595 (Me. 1986).

Mr. Leithiser also raises concerns about potential impacts from increased truck traffic, but fails to explain how these injuries are direct and specific to him, as opposed to generalized harm that would

STATE OF MAINE, ACTING THROUGH THE	)	APPEAL OF CHAIR'S RULING	
STATE PLANNING OFFICE	)	ON MOTION TO DISMISS	353
OLD TOWN, PENOBSCOT COUNTY, MAINE)		
JUNIPER RIDGE LANDFILL EXPANSION	)	LEITHISER APPEAL	
PUBLIC BENEFIT DETERMINATION	)	FINDINGS OF FACT AND ORDER	
#S-020700-W5-AZ-N	)	(DENIAL)	

be sustained by the population as a whole. *See Nergaard v Town of Westport Island*, 2009 ME 56,973 A.2d 735.

Mr. Leithiser also mentions odors, without specifying whether the source is the landfill itself or truck traffic and without specifying the location of such odors. He also forthrightly admits that the odor problems have improved. These past issues, which are not alleged to affect Mr. Leithiser's property specifically, do not present a sufficient present or potential particularized injury in connection with the Public Benefit Determination or the proposed expansion of the landfill.

For the reasons set for the above, the Board finds that Charles Leithiser has not shown how he is an aggrieved person and has not demonstrated particularized injury. Therefore the Board finds that Mr. Leithiser does not have standing to bring this appeal before the Board.

Based on the above Findings, the Board concludes that:

1. Charles Leithiser filed a timely appeal.
2. Charles Leithiser did not submit evidence sufficient for the Board to conclude that he is an aggrieved person for the purpose of bringing an appeal of Public Benefit Determination #S-020700-W5-AU-N.

THEREFORE, the Board UPHOLDS the Board Chair's DISMISSAL of the appeal of CHARLES LEITHISER.

DONE AND DATED AT AUGUSTA, MAINE THIS _____ DAY OF MAY, 2012

BOARD OF ENVIRONMENTAL PROTECTION

BY: _____
 Susan M. Lessard, Chair

