



JANET T. MILLS
GOVERNER



MELANIE LOYZIM
ACTING COMMISSIONER

MEMORANDUM

To: Board of Environmental Protection
 From: Jami MacNeil, Department of Environmental Protection, Bureau of Land Resources
 Date: February 18, 2021 Board Meeting
 Re: Jeffry Spinney #L-28397-4E-A-N, Appeal by Carol Ervin & Baily Bolen,
 Allen J. Philbrick, and William Weary

Introduction. This is an appeal of the Commissioner’s decision approving Jeffry Spinney’s Natural Resources Protection Act permit to construct a pier system and permanent boat ramp in the Sheepscot River in Alna. The appellants, Carol Ervin & Baily Bolen, Allen J. Philbrick, and William Weary, own property that abuts or is directly across the river from the property which is subject to the permit decision.

Statutory and Regulatory References. The applicable statutes and rules governing the appeal of the permit issued to Jeffry Spinney are the Natural Resources Protection Act (NRPA), 38 M.R.S. §§ 480-A through 480-JJ; *Wetlands and Waterbodies Protection*, Chapter 310, and *Assessing and Mitigating Impacts to Existing Scenic and Aesthetic Uses*, Chapter 315. Procedures governing appeals before the Board are found in *Rule Concerning the Processing of Applications and Other Administrative Matters*, Chapter 2, § 24. Also referenced in the record but not the subject of this appeal are the following laws: Watercraft and Airmobiles (headway speed only), 12 M.R.S. § 13068-A(13); Operating Restrictions (for watercraft), 38 M.R.S. §§ 281-285; and the Maine Nonprofit Corporation Act, 13-B M.R.S. § 101 et. seq.

Project Location. Alna, Lincoln County.

Procedural History. On August 23, 2019, the licensee filed an application for a NRPA permit to construct a pier system and boat ramp on the Sheepscot River in the Town of Alna. The project was approved as a shared-use facility for the benefit of a recreation club, the Golden Ridge Sportsman’s Club. The Department approved the proposed project with conditions in Department Order #L-28397-4E-A-N, dated March 13, 2020.

On April 7, 2020, the appellants filed a timely appeal of Department Order #L-28397-4E-A-N. The appellants requested that the Board stay the permit decision while the appeal was pending and reverse the approval. On April 17, 2020, the Board Chair denied the appellants’ request for a stay of the permit decision.

During the 30-day response period for the appeal, six interested persons who had submitted written comments on the application filed letters in support of the appeal. Some of the letters raised issues that are not before the board in the appeal. One of the letters included a request that the appeal process be tabled until a field survey of the natural resources in the vicinity of the project site could be conducted.

Memorandum to Board - Appeal of Department License #L-28397-4E-A-N - 02/18/2021

On May 13, 2020, the licensee filed a response to the appeal and a request for the admittance of two documents as supplemental evidence. In a letter dated June 5, 2020, the Board Chair granted the licensee's request that the record be supplemented with the adopted club By-Laws, denied the request to admit the executed Land Use License Agreement into the record until it could be reviewed by the Department, and denied the interested person's request to table the processing of the appeal to allow for a field survey. The request to table the appeal while an interested person did a field survey in the vicinity was denied because the Board reviews the record that was before the Department during the application processing period and the interested persons had the opportunity to submit information during that period.

On June 17, 2020, Department staff requested that the Board admit to the record the licensee's executed Land Use License Agreement, dated June 3, 2020. On June 19, 2020, the Board Chair granted the Department's request to admit the executed Land Use License Agreement into the record.

On August 11, 2020, the licensee filed a motion to postpone the Board's consideration of the appeal for at least 60 days. The Board granted the continuance until October 12, 2020, at which time the licensee filed a motion to further continue the Board's consideration of the appeal. The Board granted the second continuance until December 15, 2020.

The licensee constructed the permanent boat ramp on or around December 27, 2020. Department staff inspected the completed project on January 7, 2021. On January 15, 2021, Department staff requested that the Board admit to the record the staff notes and photographs from the site inspection. On January 25, 2021, the Board Chair granted the Department's request for admission of the staff notes and photographs, as allowed by Chapter 2, §24(D)(3).

On January 19, 2021, the appellants filed a motion to continue the hearing for 60 days to allow for challenges to the municipal review process to be completed. The appellants also filed proposed supplemental evidence consisting of approximately 25 exhibits primarily related to the municipal review of the project. On January 25, 2021, the Board Chair denied the appellants' request for the admission of proposed supplemental evidence as well as the motion to continue.

Issues Raised by the Appellants and Remedy Requested. In their appeal, the appellants object to the Department's findings and conclusions regarding existing uses and harm to habitats and fisheries. The appellants express concern that the project will adversely affect the scenic and aesthetic quality of the project area and that the project will result in an increase in motorized boat traffic, which they contend will adversely affect the ability of other recreational users of the resource to use and enjoy the resource. The appellants argue that there exist alternatives to the project less damaging to the environment, and that the licensee's recreation club is not legitimate and therefore the project cannot be justified as a shared-use facility. The appellants also argue that the Department's Order contains inconsistencies and does not adequately consider impacts to conservation efforts in the area, that the Department's review was biased, and that the Department did not independently verify information submitted during the review.

Department recommendation. Department staff recommends that the Board deny the appeal and affirm the Commissioner's decision.

Estimated Time for Agenda Item. 1 hour