

Ian Houseal
 86 Florida Avenue
 Portland Maine 04103
 207-272-8610

June 27, 2020

Chair, Board of Environmental Protection
 17 State House Station
 Augusta Maine 04333-0017

RE: Appeal of Department Licensing Decision

Fall Brook Development, LLC, Portland, Cumberland County, Fallbrook Commons L-11219-TE-H-N

Dear Chair and Board of Environmental Protection,

Please accept my application in appeal of the above stated license issued by the Commissioner.

1. Aggrieved Status.

I have standing to maintain an appeal as an abutter to the proposed project and the Commissioner's decision will impact my community's wellbeing, the wellbeing of the environment and the value of my property.

2. The findings, conclusions, or conditions objected to or believed to be in error.

a. 1. PROJECT DESCRIPTION

D. Public Comment: The Department received comments regarding the proposed project from several interested persons who live in the neighborhood where the project is proposed to be built. Concerns that were raised included several issues related to Site Law review, which were directed to the City of Portland. Several persons expressed general concerns with the project and its potential impacts to natural resources. No draft requests of the Department's decision were requested.

This is disingenuous. There were no opportunities to provide public comment to the application. See the attached email from myself to DEP staff and subsequent follow-up phone call requesting notification of a submitted application so as to respond. The email references a conversation with DEP staff with regard to a notice that was received to my house of a DEP application made. No such application was made according to DEP staff. I asked staff to receive information when it became available. No information was forthcoming. No other notice was provided of an actual application made. No comments were solicited. No public meeting for public comment was held. I requested application information and did not receive application information. Others have requested application information and have not received application information. "No draft requests of the Department's decision were

requested” is a meaningless statement. No such draft requests or draft decisions were known to exist until the application was approved.

Public comment has not been solicited and has been disregarded or diminished in the application.

Basis of the objection or challenge. The application should be reversed on the grounds that inadequate public comment was solicited and public comment received was diminished and disregarded. No public meeting was held or offered, or considered.

b. 4. HABITAT CONSIDERATIONS

Foxes, skunk, coyote, hawks, frogs, toads, and salamanders have been observed in this woodland. Because this is an urban environment, consideration of habitat is more important. Also this woodland and wetland is important habitat in relationship to the headwaters of the Fall Brook, an urban impaired stream.

Basis of the objection or challenge. The application should be reversed on the grounds that animal habitat was disregarded. Obviously, wetland habitat and connecting habitat is essential in an urban environment. Furthermore the orientation of the structure and parking area prohibits the migration of animals.

c. 5. WATER QUALITY CONSIDERATIONS

Fall Brook is an urban impaired stream and this property is the headwaters of a tributary of Fall Brook. This has not been considered.

Basis of the objection or challenge. The application should be reserved on the grounds that Fall Brook, the headwaters of Fall Brook, and the tributaries of Fall Brook have been disregarded and should be considered since this area is part of an urban impaired stream and the headwaters of the watershed of that urban impaired stream.

d. 6. WETLANDS AND WATERBODIES PROTECTION RULES

The applicant conducted a survey of available properties that are large enough to accommodate the size of development necessary to make the project viable and in proximity to the existing Fall Brook Woods facility. Redevelopment of the existing St. Joseph’s Manor property was dismissed because the current owner does not wish to have a replacement building constructed on that property. The selected parcel was the only property that met the applicant’s development criteria.

Nonetheless, from an environmental review standpoint, convenience does not matter. The Joseph’s Manor property is a functional facility that itself carried an environmental impact. Redevelopment of the existing St. Joseph’s Manor property must be considered. This stance by the applicant is for convenience and not a serious conclusion.

The project site includes a wetland network that crosses the property. The applicant considered several design layouts. One alternative for development on this parcel included a larger single-story building, but this alternative was determined to be impracticable because the footprint of a larger building would result in greater wetland impact. The selected alternative, a two-story building, will result in the least amount of wetland alteration, while meeting the project purpose. Given the location of the protected natural resources on the site, some impact to the freshwater wetlands cannot be avoided.

This is preposterous to suggest that a larger building was considered as an alternative and as was concluded, obviously a larger building would have a greater wetland impact. Different site configurations would result in lesser wetland impact. Such a conclusion should not be accepted.

The basis of the objections or challenge. The application should be reserved on the grounds that reasonable alternatives to protect wetlands were not adequately considered. Primarily, St. Joseph's can be considered and the notion that it would be dismissed outright is unacceptable even though there is a corporate relationship and effectively control of the property. Furthermore, alternatives could be considered on the site, other than a more-worse scenario to the arrived at scenario.

3. The basis of the objections or challenge.

See a. through d. above.

4. The remedy sought.

Public process was insufficient. Review of the damage to wetlands in consideration of alternative sites is also insufficient. Further review is necessary. I would suggest reversal of the approval of the license until such time the work has been done other than a perfunctory review and approval of an application that has and has not been delegated to the City of Portland.

5. All the matters to be contested.

Including insufficient public comment, failure to consider animal habitat, failure to consider the water classifications of the State (i.e. urban impaired stream), and failure to consider reasonable alternatives to protect wetlands, those area apparently the matters being contested.

6. Request for hearing.

I am hereby requesting a public hearing on the appeal. I state here as an offer of proof regarding testimony and other evidence that I present is substantive to the evidence and factual. I would not rely on expert or technical witnesses other than my own testimony as common knowledge.

7. New or additional evidence to be offered.

I have no new or additional evidence to offer. Records are available pertaining to St. Joseph's for the Board's consideration in the DEP files.

CONCLUSION

Thank you for your consideration. I appeal to you to reverse the perfunctory issuance of this license, issued without sufficient public comment and failure to adequately address reasonable alternatives to protect wetland, animal habitat, and the Fall Brook urban impaired stream and its headwaters.

Thank you for your consideration.

Sincerely submitted,

Ian Houseal

7. New or additional evidence to be offered.

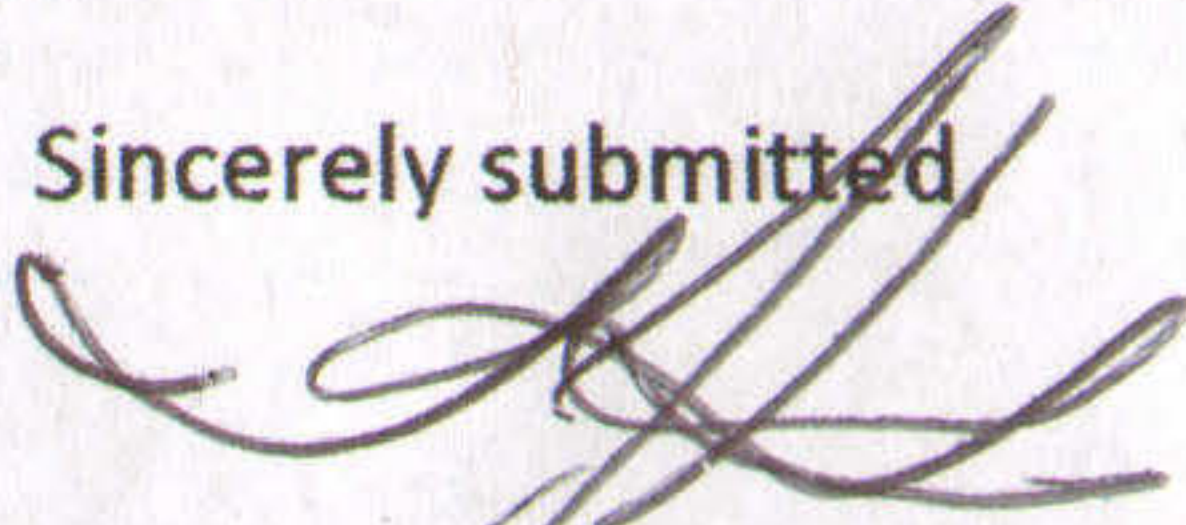
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Thank you for your consideration. I appeal to you to reverse the perfunctory issuance of this license, *issued without sufficient public comment and failure to adequately address reasonable alternatives to protect wetland, animal habitat, and the Fall Brook urban impaired stream and its headwaters.*

Thank you for your consideration.

Sincerely submitted,



Ian Houseal

86 FLORIDA AVE
PORTLAND ME 04103
207-272-8610

6/26/2020

RE: DEP permit - Fall Brook Senior Care - Yahoo Mail

036

ihouseal@yahoo.../Inbox

RE: DEP permit - Fall Brook Senior Care



Woodruff, Christine <christine.woodruff@maine.gov>

To: Ian Pollis Houseal <ihouseal@yahoo.com>

Feb 12 at 8:43 AM

Mr. Houseal,

I have received your email.

Thank you,

Christine Woodruff
Maine DEP, Bureau of Land Resources
(207) 615-6426

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

From: Ian Pollis Houseal <ihouseal@yahoo.com>

Sent: Tuesday, February 11, 2020 4:36 PM

To: Woodruff, Christine <Christine.Woodruff@maine.gov>

Subject: DEP permit - Fall Brook Senior Care

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.

Ms. Woodruff,

I wanted to make sure my comments get entered into the proposed project at 60 Merrymeeting Dr, Fall Brook Senior Care. I will make comments when the application is made to DEP

I am a direct abutter to the proposed project.

Lucien in the Canco Rd Office of DEP tells me the application has not been made to DEP yet, but they made a notice to abutters through Sebago Technics in November. I guess it was premature.

Could you confirm that you have received this email?

Thank you,

Ian Houseal
86 Florida Avenue, Portland

Bertocci, Cynthia S

From: MDENBOW@maine.rr.com
Sent: Tuesday, June 30, 2020 8:56 AM
To: Bertocci, Cynthia S; Burke, Ruth A
Subject: Appeal Fallbrook Commons Development, LLC Portland, Cumberland County Fallbrook Commons L-11219-TE-H-N
Attachments: Scan_20200630 (2).png; Scan_20200630 (3).png; Scan_20200630 (4).png; Scan_20200630 (5).png; Scan_20200630 (6).png; Scan_20200630 (7).png; Scan_20200630.png

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.

Dear Ms. Burke and Ms Bertocci,

I have attached a appeal and hearing request of the license approval of FALLBROOK COMMONS DEVELOPMENT, LLC Portland, Cumberland County FALL BROOK COMMONS L-11219-TE-H-N. I apologize for the multiple attachments due to an error in my scan system. My signed statement is attached.

I will mail the original signed copy to your office to your office at 17 State Street, Augusta, Maine via certified mail with return receipt today. By mailing this out today your office should have the original in your possession in plenty of time prior to the appeal date cut off time. Please send an e-mail when you receive this message confirming receipt of the message and the ability to open the attachments.

Thank you,

Mike Denbow
69 Florida Ave, Portland, Maine 04103
207-899-0053
mdenbow@maine.rr.com

R. Michal Denbow
69 Florida Ave.
Portland, Maine 04103
207-899-0053
mdenbow@maine.rr.com
06/28/2020

Chair, Board of Environmental Protection
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Reference- Appeal of Department Licensing Decision

Fallbrook Development, LLC, Portland, Cumberland, Fallbrook Commons L-11219-TE-H-N

Dear Chair and Board of Environmental Protection

This notice will serve as my application for appeal for the project listed as Fallbrook Development, LLC, Portland, Cumberland, Fallbrook Commons L-11219-TE-H-N. Notice will be sent via e-mail and certified mail to the address listed above.

- 1) My appeal- Aggrieved Status.
- 2) The findings, conclusions, or conditions objected to or believed to be in error.

I have a legal standing to maintain this appeal since my property is located less than 300 feet from the border of the proposed building site and eventual significant negative impact that it will have on the surrounding neighborhood, the wildlife, and environment itself. I find the proposed project will definitely impact my neighborhood and the overall stability of the environment.

- a) I have been in contact with the Department of Environmental Protection since late February of 2020 in an attempt to determine the application process for the project, to determine property owner rights, to ensure concerns about the impact to the area were also met, and to request documents. In February I initially was advised to write to Alison Sirois by the DEP office. An e-mail was sent to her on February 28th 2020. I contacted your office again shortly after this was sent because there was no reply. I was advised a Robert Green had been assigned instead. I sent an email to Mr. Green and asked to be

notified in case of a public hearing. Mr. Green wrote back stating “there was Procedural Rules for that sort of action and a response to your request usually comes from the Bureau Director. I need to find out where we are in that process. I will keep you informed as this moves forward”. Mr. Green sent me an e-mail on May 27th 2020 just prior to signing the order for approval. He stated that “Time had slipped away faster than I realized.” He advised he was approving the plan in the next 1-2 days. There has been no notification of a public hearing. I have been denied that right.

Under the Freedom of Information Act, I am allowed access to all notes, photographs, e-mails, communications, reports, documents, digital and written. I contacted DEP on June 10th 2020 and was referred to the Freedom of Information Officer Kevin Martin. I left a voice mail on his cell phone with my request. I indicated the urgency of my obtaining these files due to the short time frame before a decision on the project. He did not return my call. On June 11th 2020 I contacted Supervisor Dawn Hallowell. She was advised of my request and the reason for it. I received an e-mail from Mr. Martin later in the day. I sent back a FOIA request. He replied it should not be any longer then 2 weeks for the files to be completed. On June 19th 2020 I sent an e-mail to Mr. Martin inquiring about the status of the request. As of June 29th 2020, there has been no reply or documentation. I have been denied the right to obtain public records as required by law to form my appeal.

Basis for Objection or Challenge- The application for allowance of Fallbrook LLC to proceed should be reversed because of requests for the right to public records never received and no allowance for public hearing given or expressed to the public.

b) Assessing and mitigating impact to existing scenic and aesthetic uses

Fallbrook LLC stated clearly in a February 2020 meeting with abutting neighbors that it intends to is cut all of the existing trees and shrubbery down to 25 feet from property lines and plant **some trees** as buffers. Plans for the development indicate only a thin line of trees will be planted. Parking lots will be placed in very close proximity to the property lines of the abutting neighbors. Retaining walls that will be built on the wetlands will be within that same property line margin reaching from 7-19 feet in height. This will have significant impact on the public access to the scenic beauty. This type of clear cutting and deforestation will remove tree cover that currently limits sunlight into the area allowing for natural cooling, limits high winds due to the natural barrier provided by the woods and also reduces carbon dioxide due to the natural green habitat.

In the Approval Signed by Commissioner Gerald D. Reid on June 4th of 2020 it was indicated on page of 8 under section 2, 4th paragraph

“The Department determined that based on the nature of the proposed project and its location, that there are no recreational or navigational uses of the resource that would be unreasonably impacted” This is an incorrect assessment. According the Department of Environmental rules:

Department of Environmental Protection

Chapter 315: ASSESSING AND MITIGATING IMPACTS TO EXISTING SCENIC AND AESTHETIC USES

In the Natural Resources Protection Act (NRPA), 38 M.R.S.A. §§ 480-A through Z, the Legislature has found and declared that Maine’s rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands, and sand dune systems are resources of state significance. Section 480-A states that these resources have great scenic beauty and unique characteristics, unsurpassed recreational, cultural, historical, and environmental value of present and future benefit to the citizens of the State and that uses are causing the rapid degradation and, in some cases, the destruction of these critical resources

Applicants for permits under the NRPA are required to demonstrate that a proposed activity meets the standards of the NRPA that have been established by the Legislature. Standard 1 in Section 480-D of the NRPA requires an applicant to demonstrate that a proposed activity will not unreasonably interfere with existing scenic and aesthetic uses.

Under this rule the land does hold several of the requirements described in the above. This property does have a natural wetland that feeds into a brook and is fragile. This resource is of natural scenic beauty which is enjoyed by all of the public that not only live near it, but also use the area for walks and relaxation. Testimony to the Portland Planning Board meeting on June 9th of 2020 have indicated that many people have moved to this area especially for this reason. Letters sent to the Department of Environmental Protection express this also. Building a facility this size will impact the forested and wetland area to the point of complete removal of natural barriers, scenery, and wildlife habitat.

Basis for Objection or Challenge- The application for allowance of Fallbrook LLC to proceed should be reversed. A public hearing should be commenced to allow for public testimony regarding the impact. A further and more complete evaluation should be completed onsite as well as statistically to ensure a proper decision is made.

c) Habitat Considerations

Significant wildlife resides in this forested area making it a wild life habitat. In the ever-developing cities of Maine the wildlife and the public lose more and more land that provide not only scenic beauty but the diverse environmental features that support wildlife and green areas. The Inland Fisheries and Wildlife consultation report dated November 20th 2019 and provided to Fallbrook LLC indicated by use of maps only, there was no significant or endangered wildlife. The last paragraph of that letter states “The consultation review has been conducted specifically for known MDIFW jurisdictional features that may occur in this area. Prior to the start of any future site disturbance we recommend additional consultation with municipality and other state resource agencies including the Maine Natural Areas Program and Maine Department of Environmental Protection in order to avoid unintended protected resource disturbance.” The information submitted by Fallbrook LLC indicates Maine Natural Areas Program did perform a review on November 7th, 2019 but by database only. There was no report included by the Maine Department of Environmental Protection. It is important to note the office of Inland Fisheries and Wildlife does not know when the map they used was last updated. They do not update maps on a regular basis and do not go into the field to do so. They rely on consultants hired by developers of projects such as Fallbrook to report to them their findings.

There is substantial wildlife in the wooded area as witnessed by those who live in the area. It should also be noted the Maine Endangered and Threatened Species Listing Handbook supplied by Fallbrook LLC to the Portland Planning Board and I believe also to your office was dated January 22, 2009. That is over 11 years ago.

Deer use this area as a wintering and breeding area. I believe a neighbor sent an e-mail to your office with a picture of a male deer on it. We have had deer in our front yard during the winter months eating our shrubs. We have had fawns living on neighbor's lawns. They rely on this patch of woods for survival.

Red-tailed Hawks have built a nest in the wooded section abutting the properties of Fallbrook and Florida Ave. Red-tailed Hawks are protected under the United States Fisheries and Wildlife laws, (Federal Migratory Bird Treaty Act of 1918). Their habitat is being removed throughout the country. Studies have shown they return to the same nest each breeding cycle. When I spoke to the supervisor at Maine Inland Fish and Wildlife, this person was not aware of the protected status of this bird. The Maine Inland Fish and Wildlife was also not aware of the presence of a Red-tailed Hawk nest at the Fallbrook and Florida Ave location.

Bats are seen every year in the wooded section of Fallbrook that abuts Florida Ave. Evidence has shown that bats return to the same area each year to breed and have their pups. The commissioner's own report states this area in Portland is on their migratory route. Bats in Maine are on the protected species list. There has been no comprehensive review or study to show the type of bats located in this area.

Fox have been seen with their kits in the woods that abut Florida Ave and the Fallbrook property.

Tree Frogs have been heard yearly. This is due to the wet lands that provide them a viable habitat to breed. Studies have shown that tree frogs use wetlands and vernal pools for breeding, rest, and nutrition.

Salamanders are seen in an abutting neighbor's back yard. Their yard is normally wet due to the wet lands. Several salamanders in Maine are on the protected species list.

A significant variety of hawks other than the Red-tailed, bald eagles, owls, turkeys and multiple species of birds all use this wild life habitat as a workable environment for their needs in a city setting.

Racoons breed and raise their young in the wooded section.

Coyotes, possum and other mammals are known to be in this wooded area.

Basis for Objection or Challenge- The application for allowance of Fallbrook LLC to proceed should be reversed. Evaluation of this property by Inland Fisheries and Game and the Department of Environmental Protection was based on maps that are no longer up to date and their databases do not reflect current information.

d) Water Quality

Fallbrook is a tributary and considered an impaired stream. Another stream is also located on the Ray Street side of the property. Project planners have indicated that they estimate the facility will use approximately 16,000 gallons of water daily which is planned to be pumped via pump station to the Ray Street sewer system via Merrymeeting Drive. In the event of a catastrophic failure of the pumping station, sewer lines, or flooding, this sewage will endanger the water quality of the surrounding wetlands and streams. With the decrease in wetland and forested area and large paved areas for parking lots coupled with the building itself there is the potential for significant runoff that will not be properly filtered. This runoff will move into the remaining wetland, into the streams that it feeds, and eventually into the ocean. The current plan for this is to have retaining areas for run off. They will currently hold a minimum of 1 inch of run off. Due to ever changing weather patterns due to global warming and climate change, I do not feel this to be sufficient. Sediment, salt, and chemicals from the proposed parking lot, especially

during winter months from sanding and application of deicer on the pavement and sidewalks will have a potential to migrate into the remaining wetland and stream bed area.

Basis for Objection or Challenge- The application for allowance of Fallbrook LLC to proceed should be reversed. There should be an allowance for public meeting with DEP to voice concerns and alternatives. Further review of the application and proposal for run off and drainage should be assessed.

e) Wetlands and Waterbodies

This project was proposed due to the present owner of St Joseph's Manor, i.e. Maine Medical Center, "no longer wishes to be in the nursing home business". This was stated during the February 2020 meeting with the abutting neighbors and Fallbrook LLC by the representatives of Fallbrook LLC. An agreement between the two entities, MMC and Fallbrook is to have 90 of their 100 plus patients move into the new Fallbrook facility after completion. During this meeting questions were asked regarding the reasoning why the project managers had not considered a multi-floor facility to reduce the impact on the wetlands. Their reply was that it would be too difficult for the patients to walk from floor to floor so they wanted a single floor building for ease of walking. The size and scope of the planned project at Fallbrook will unnecessarily impact the wetlands and streams in that area. Because there happens to be a large parcel of land available does not automatically indicate this is the only option available.

Basis for Objection or Challenge- The application for allowance of Fallbrook LLC to proceed should be reversed. The size and scope of the project is too large and impacts too much protected wetlands to allow just because of convenience. A viable option with less environmental impact would be to have the site moved back to the St. Joseph's Manor site where a significant amount of cleared property already exists, parking lots and access roads are already in place, the impact on wetlands is negligible, and existing wildlife will not be displaced.

3) The basis of the objections or challenge

See listed above a-e

4) Remedy Sought

Throughout this entire process public input has not been allowed except for some e-mails sent to the Department of Environmental Protection. Requests made by myself and

acknowledged by the Department of Environmental Protection have not been fulfilled i.e. request for update to application process, information regarding public meetings and Freedom of Information request. The permit for this project should be vacated. Further review should be made into the impact of this facility on the environment and land using onsite and updated data. A secondary site needs to be located or the building plans revamped to greatly reduce the environmental impact. Public input by public meeting should be implemented. Notice of this meeting should be mailed to each abutting neighbor to the property.

5) All matters to be Contested

Due to my FOIA request not being met, the matters indicated in this request are the only ones that I have access to. These include insufficient public comment or input, failure to consider wildlife habitat, failure to ensure proper information is obtained by unbiased sources prior to approval, failure to consider other options to protect the wetlands and wildlife.

6) Hearing request

I am requesting a public hearing on this appeal. I will not rely on expert witnesses other than my own testimony from common knowledge and research.

7) New or additional evidence to be offered.

This will be dependent on whether I receive the documents requested under the FOIA request. During the appeal process, e-mails from and to DEP personnel will be used.

I would appreciate your attention to this matter. I ask that you rescind the issuance of this permit which was performed without the input of public comment, failure to properly review wildlife habitat and presence in the affected area, failure to review Fallbrook LLC plans to determine if other options were available, failure to insure wetlands, streams and wildlife were not unnecessarily effected and failure to comply with public's right to information and compliance with the Freedom of Information Act request.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Michael Denbow". The signature is written in a cursive style with a long horizontal line extending to the right.

R. Michael Denbow