

Maine Board of Environmental Protection
Board Assumption of Jurisdiction over an Application
Report of Requests Received and Commissioner Determinations
June 17, 2021

When the Board assumes original jurisdiction over an application, that means that the Board decides the application in the first instance instead of the Commissioner.

When the Commissioner recommends that the Board consider assuming jurisdiction over an application, that matter will be placed on the Board's agenda for discussion at a public meeting, and the materials will be provided to the Board as part of that agenda item. That kind of situation and related materials are not addressed by this report.

This report provides the Board with a copy of requests that the Board assume original jurisdiction over an application when the Commissioner's corresponding determination has been that the criteria for Board jurisdiction are *not* met.

The Department's *Rule Concerning the Processing of Applications and Other Administrative Matters*, Chapter 2, § 17, provides that any person may request that the Board assume original jurisdiction over an application by submitting the request to the Department in writing no later than 20 days after the application is accepted as complete for processing. The rule sets forth the criteria that must be met in order for the Board to assume original jurisdiction. When such a request is made, the Commissioner makes a preliminary determination as to whether the Board should assume jurisdiction over the application. When the Commissioner determines that the criteria for Board jurisdiction are not met, the Commissioner provides the Board with a copy of the request and the Commissioner's determination.

When the Commissioner determines that the criteria are not met, the Board may assume jurisdiction over and decide a license application that in its judgment represents a project of statewide significance. A project of statewide significance is a project that meets at least three of the following four criteria.

- 1) Will have an environmental or economic impact in more than one municipality, territory or county;
- 2) Involves an activity not previously permitted or licensed in the State;
- 3) Is likely to come under significant public scrutiny; and
- 4) Is located in more than one municipality, territory or county.

If a Board member wishes to have a substantive discussion of the Commissioner's determination and the possibility of the Board assuming original jurisdiction, that matter needs to be affirmatively raised and it then be placed on the Board's agenda for an upcoming Board meeting. Otherwise, no decision of the Board is required for the items listed below. If the Board takes no action, the Department staff will continue to process the application for eventual consideration and potential decision by the Commissioner rather than the Board.

Maine Board of Environmental Protection
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June 17, 2021

REQUESTS AND COMMISSIONER DETERMINATIONS

1. **Requestor:** Pete Bottomley, April 8, 2021 (copy attached)

Application: Application of MLM Realty, LLC for a Site Location of Development Law (Site Law) permit amendment to construct a showroom building, install a fuel tank, and replace the existing wastewater disposal system at the Moose Landing Marina on Moose Landing Trail in Naples (Bureau of Land Resources Application L-23140-26-M-A).

Date of Commissioner determination that the application does not meet at least 3 of 4 criteria for Board jurisdiction: June 3, 2021 (copy attached).

ATTACHMENT

MDEP, Southern Maine Regional Office
312 Canco Road
Portland, ME 04103

April 8, 2021

Dear Sir / Madam:

I am responding to your Public Notice regarding the proposed Development Permit for the Moose Landing Marina in Naples, ME.

I request that the Board of Environmental Protection assume jurisdiction over this application.

My main concern is with the addition of yet another building to this property. Moose Landing Marina has grown exponentially over the last 10 years and has covered a large portion of their waterfront land with impermeable roof surfaces, stored boats, and equipment. They have an alternative location where they can build their showroom – It is across the street at the old Reinhard Farm Market, which they purchased with the public intention of building their new showroom there.

Regarding the leach field, the current installation is problematic given the growth of the business and number of people using the property. It often smells and our campground is on the receiving end when the breeze is from the north or west. A reengineered and properly installed leach field would be an improvement and, again, I would like the Board of Environmental Protection to ensure it is completed correctly.

Best regards,



Pete Bottomley
Brandy Pond Park
522 Roosevelt Trail
Naples, ME 04055
(207)693-3129
brandypondpark@yahoo.com

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JANET T. MILLS
GOVERNOR

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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
COMMISSIONER

June 3, 2021

Via Email Only

Pete Bottomley
Brandy Pond Park
522 Roosevelt Trail
Naples, ME 04055
brandypondpark@yahoo.com

RE: DEP Project #L-23140-26-M-A

Dear Mr. Bottomley:

Thank you for your letter dated April 8, 2021, concerning MLM Realty, LLC's Site Location of Development Law (Site Law) amendment application to construct a showroom building, install a fuel tank and replace the existing wastewater disposal system at the Moose Landing Marina on Moose Landing Trail in Naples. In the letter, you request that the Board assume jurisdiction over the application, stating that MLM Realty has considerably expanded the marina and related impervious area over the last decade and has an alternative location where they could build the showroom on the opposite side of the street. You also express concern about the odor from the existing leach field being noticeable at your campground when the wind blows from the north or west.

I. Request for Board Assumption of Jurisdiction Over an Application

Pursuant to state law and the Department's Chapter 2 *Rules Concerning the Processing of Applications and Other Administrative Matters*, the Board may assume jurisdiction over applications for projects of statewide significance. The criteria used by the Commissioner when deciding whether to recommend to the Board that it assume jurisdiction, and by the Board when deciding whether to exercise its discretion to assume jurisdiction, are set forth in 38 M.R.S. § 341-D(2) and in Chapter 2, § 17(C). The statute (and rules) provide:

A project of statewide significance is a project that meets at least 3 of the following 4 criteria:

- (1) Will have an environmental or economic impact in more than one municipality, territory or county;
- (2) Involves an activity not previously permitted or licensed in the State;
- (3) Is likely to come under significant public scrutiny; and
- (4) Is located in more than one municipality, territory or county.

Regarding the first criterion, the proposed project is located in Naples and it is not evident that potential

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207-941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143


Letter to Pete Bottomley
May 26, 2021

impacts would extend beyond town boundaries. Regarding the second criterion, the Department has reviewed many development proposals similar in scale, including projects near lakes and other water bodies, and is experienced applying the applicable standards under controlling laws, including the Site Law along with the accompanying rules. Regarding the third criterion, the Department has received one request for public hearing, but no additional comments beyond your letter and this one request. The project has not come under significant public scrutiny and is not the type of project anticipated to attract significant public scrutiny. Regarding the fourth criterion, the project is proposed in a single municipality, the Town of Naples. With at least three of the four criteria not satisfied, my determination is that the pending Site Law amendment application does not represent a project of statewide significance. Therefore, the Board should not assume jurisdiction over the application. By copy of this letter, with your April 8, 2021 request for Board jurisdiction attached, I am notifying the Board of my determination.

II. Department Review

The Department will consider your comments in the course of its review of the pending Site Law amendment application. The application was received for processing on April 1, 2021, and it was accepted for processing on April 23, 2021. If you have additional written comments you would like to provide, please provide them as soon as possible to Robert Green at robert.l.green@maine.gov or DEP Southern Maine Regional Office, 312 Canco Road, Portland, Maine 04103 as soon as possible so that the Department may consider them in the course of our review.

Sincerely,



Melanie Loyzim, Commissioner
Maine Department of Environmental Protection

Enclosure (April 8 request for Board jurisdiction)

cc: Mark Draper, Chair BEP
William Hinkel, Executive Analyst BEP
Robert Green, DEP
Esther Bizier, Main-land Development Consultants, esther@main-landdci.com

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