



JANET T. MILLS
GOVERNER

055
STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
COMMISSIONER

MEMORANDUM

To: Board of Environmental Protection

From: Robert L. Green, Jr.
Nick Livesay

Date: June 17, 2021 Board Meeting

Re: Appeal of Apartments at Brunswick Landing, LLC, Department Order #L-28632-NJ-C-Z / L-28632-TC-D-Z by Joshua Katz

Statutory and Regulatory References. The applicable statutes and rules governing the appeal of the Department Order issued to Apartments at Brunswick Landing, LLC (Licensee) are the Storm Water Management Law, 38 M.R.S. § 420-D and the Department's Chapter 500 rules, *Stormwater Management*. Procedural rules governing appeals of Commissioner licensing decisions are set forth in the Department's Chapter 2, *Rule Concerning the Processing of Applications and Other Administrative Matters*, Chapter 2 § 24.

Location. Brunswick, Cumberland County

Project Description and Procedural History. On May 15, 2020, the Licensee filed applications with the Department for a Stormwater Management Law and Natural Resources Protection Act permit for the construction of an apartment complex that consists of nine, 3-story, approximately 1,200-square foot buildings, each with 12 apartment units, a 2,400-square foot clubhouse, walkways, and parking areas for 172 vehicles on a 5.69-acre parcel of land in Brunswick Landing (formerly the Brunswick Naval Air Station, BNAS). The applications were accepted for processing on June 3, 2020. The Department approved the applications in Department Order #L-28632-NJ-A-N/L-28632-TC-B-N, dated July 22, 2020, after consideration of the applications, public comments, review comments, and additional filings by the applicant.

On August 20, 2020, a timely appeal to the Board was filed jointly by Suzanne Johnson, David Page, Paul Ciesielski, and Joshua Katz (the Appeal). The Appeal includes a request that the Board reverse or modify the decision of the Department, as well as a request that the Board hold a public hearing to discuss the potential for the degraded storm sewer system to transport contaminated groundwater on site at Brunswick Landing. On September 9, 2020, the Licensee filed a motion to dismiss the appeal on the grounds that the four parties who signed the appeal lacked standing as aggrieved persons, as defined in Chapter 2. On September 30, 2020, the Board Chair ruled that one appellant, Joshua Katz, is an aggrieved person and may bring the appeal before the full Board, but the other appellants were dismissed from the appeal. The Board Chair also has ruled on supplemental evidence offered by the Appellant, the Licensee, and the Department. The Licensee submitted its response to the merits of the appeal on February 2, 2021.

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
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

Issues Raised by the Appellants and Remedy Requested. The Appellant raises substantive objections to the Department Order. The Appellant objects to the Department findings in Section 2(C) of the Department Order that the project will meet the Discharges to Public Storm Sewer System Standards contained in Chapter 500, § 4(J) and the corresponding conclusion that the project satisfies the Stormwater Management Law, 38 M.R.S. § 420-D, and the Department rules implementing this law, Chapter 500 *Stormwater Management* rules.

The Appellant argues that stormwater from the development will discharge into retention ponds owned by the U.S. Navy and MRRA is without legal authority to give the Licensee permission to discharge into these water bodies.

The Appellant also argues that the Department Order fails to address per- and polyfluoroalkyl substances (PFAS) contamination at the former BNAS, now referred to as Brunswick Landing, and the possible infiltration of PFAS-contaminated groundwater into MRRA’s storm sewer system and the conveyance of contaminated groundwater both on the former BNAS site and to water bodies off site. In this objection the Appellant does not cite any specific permitting standards applicable to the Licensee’s project.

Staff Recommendation. Department staff recommend that the Board deny the appeal and affirm the Commissioner’s decision.

Estimated Time for Agenda Item. 1 Hour 30 Minutes

| <u>Packet Materials:</u> | <u>Packet Page #</u> |
|---|----------------------|
| Department Staff Memo and Recommendation / Proposed Board Order | 57 |
| Department Order Appealed | 69 |
| Appeal by Joshua Katz | 81 |
| Licensee’s Response to Appeal | 99 |
| Excerpts from the Application Materials | 117 |
| Supplemental Evidence | 363 |