



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

AMANDA E. BEAL
COMMISSIONER
SAMANTHA HORN
ACTING EXECUTIVE DIRECTOR

**First Procedural Order
In the Matter of
Development Permit DP 5050**

**Rising Tide Towers, LLC
Telecommunications Tower**

June 25, 2019
Commissioner Everett Worcester, Chair and Presiding Officer

This First Procedural Order (“Order”) of the Land Use Planning Commission (“Commission”) provides a project description and administrative background, identifies the Presiding Officer, sets forth decisions of the Presiding Officer with respect to petitions for leave to intervene, and provides a schedule for the hearing in this matter.

A. Designation of Presiding Officer

In accordance with the Maine Administrative Procedure Act, 5 M.R.S. § 9062(1) and the Commission’s *Rules for the Conduct of Public Hearings*, 01-672 C.M.R. 5(5.06)(1) (“Chapter 5”), the Presiding Officer in this hearing is Everett Worcester, the Chair of the Commission.

B. Project Description and Administrative Background

1. On March 18, 2019, the Commission accepted as complete for processing from Rising Tides Towers, LLC (“the Applicant”) an application for a Development Permit pursuant to 12 M.R.S. § 685-B(1)(A) (“Application DP 5050”).
2. The Applicant leases a 40,000-square-foot (200 feet by 200 feet) lot from Mark Beauregard, Inc. in Dallas Plantation, Maine. The lease lot is part of a 114-acre lot zoned as a Community Residential Development (“D-RS2”) subdistrict. This D-RS2 subdistrict is located between Rangeley Lake to the west and Saddleback Pond to the east. The Applicant proposes to construct a new telecommunications facility on the lease lot that would include a 190-foot tall lattice tower and an outdoor modular equipment platform. The Applicant proposes to clear approximately 10,250 square feet of vegetation within a forested portion of the lease lot. The proposed utility facility would be surrounded on four sides by a 75-foot long chain-link fence.

3. Pursuant to *Land Use Districts and Standards*, 01-672 C.M.R. 10 (“Chapter 10”), § 10.21(N)(3)(c)(23), utility facilities compatible with residential uses may be allowed within D-RS2 subdistricts upon issuance of a permit from the Commission, subject to applicable land use standards.
4. On March 22, 2019, the Commission received a request from Paul and Mary Dobek for a hearing on Application DP 5050. The Commission additionally received approximately one dozen public comments regarding Application DP 5050.
5. At its meeting on May 1, 2019, the Commission voted to hold a public hearing on Application DP 5050.
6. The Commission provided notice of the public hearing and opportunity to intervene in this matter on May 31, 2019¹, in accordance with Chapter 5, § 5.13. The notice established a deadline of June 19, 2019, at 5:00 p.m. to file a petition for leave to intervene.

C. Petitions for Leave to Intervene

1. The Commission may require or allow any person who desires to participate as a party, offer testimony and evidence, and participate in oral cross-examination to file a petition under oath or affirmation for leave to intervene. 5 M.R.S. § 9054(1) and Chapter 5, § 5.13(1). The Commission may further allow any other interested person to intervene as a party or to participate in more limited manner as the Commission or its Presiding Officer may designate.
2. The Commission received two petitions for leave to intervene in this matter. One from Mark Beauregard and one from Maine Appalachian Trail Club (“MATC”). Both petitions were filed by the June 19, 2019, deadline.

D. Decision on Petitions to Intervene

1. A petition to intervene shall be granted if it demonstrates that the petitioner is or may be substantially and directly affected by the proceeding. A petition for leave to intervene must be filed by the date specified by the Commission or the Presiding Officer or, if an earlier date is not specified, by the date of the public hearing. A petition to intervene which is not timely filed will be denied unless the petitioner shows good cause for failure to file on time. A person permitted to intervene shall become a party to the proceeding and shall be permitted to participate in all phases of the hearing, subject, however, to such limitations as the Commission or Presiding Officer may direct.
2. Mark Beauregard is the lessor for Rising Tide Tower LLC’s leasehold and owns the properties abutting the proposed project.

¹ A corrected notice was provided on June 3, 2019, in which the start time for the hearing was corrected from 1:00 p.m. to 5:00 p.m.

3. MATC is a nonprofit corporation that manages, maintains and protects the Appalachian Trail in Maine. The proposed project is located approximately five miles from the section of the Appalachian Trail in Sandy River Plantation.
4. Both Mark Beauregard and the MATC have demonstrated that they may be substantially and directly affected by the proceeding. Accordingly, the Presiding Officer grants intervenor status to both petitioners (“Intervenors”).

E. Hearing Schedule, Expectations and Close of Record

1. The hearing will be held on Wednesday, July 10, 2019, in the North Dining Hall at the University of Maine at Farmington (111 South Street, Farmington, Maine 04938). The first portion of the hearing will be dedicated to the Applicant and Intervenors and will commence at 5:00 p.m. The second portion of the hearing will be for members of the public.
2. The Applicant and Intervenors (“Party” or “Parties”) shall comply with deadlines and filing requirements established by the Presiding Officer. Failure to comply may result in appropriate sanctions, including the rejection of argument, evidence or testimony the party seeks to offer. Parties must have a representative in attendance at the hearing and are expected to conduct themselves professionally, both in their dealings with the Commission and with each other, throughout the proceeding.
3. The hearing record will remain open until July 22, 2019, at 5:00 p.m. to allow the public and Parties to file written statements with the Commission, and until July 29, 2019, at 5:00 p.m. to file statements in rebuttal of those filed by the July 22 deadline.
4. All filings in this proceeding must be made by electronic mail (“email”) to the service list appended to this Order. Once an email communication has been sent to the members on the service list, service is deemed complete. Any Party who does not readily have access to email and wishes to file and receive documents by U.S. mail in paper form, instead of email, may request that the Presiding Officer allow service by U.S. mail.
5. Upon request made by the Presiding Officer, each Party shall provide up to 10 complete printed copies of any filing it has made to the Commission for distribution to the Commissioners and staff.

F. Additional Information

A copy of Application DP 5050 may be viewed at the Commission’s Western Region office at 932 U.S. Route 2 East, Wilton 04294, (207) 670-7493. Please call if interested in visiting the office to view the application. Questions regarding this Order of the Presiding Officer should be directed to Bill Hinkel at bill.hinkel@maine.gov or 207-446-8823.

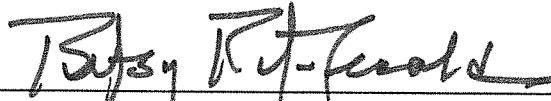
G. Ex parte Communication

No Commission member shall engage in any ex parte communication in connection with any issue of fact, law, or procedure which is the subject of the hearing. The Intervenors are directed to 5 M.R.S. § 9055 and Chapter 5, § 5.25 for a statement of legal restrictions on contact with Commission members during pending proceedings. The parties are cautioned to avoid any conduct that could give rise even to the appearance of improper contact with Commission members.

H. Authority and Reservations

This Procedural Order is issued by the Presiding Officer pursuant to Chapter 5. All objections to matters contained herein should be timely filed in writing with the Commission staff but are not to be further argued except by leave of the Presiding Officer. All rulings and objections will be noted in the record. The Presiding Officer may amend this Order at any time.

DONE AND DATED AT AUGUSTA, MAINE THIS 25th DAY OF JUNE 2019



Betsy Fitzgerald, Vice-Chair
Land Use Planning Commission



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