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December 27, 2019

Jami MacNeil
Bureau of Land Resources
Maine Department of Environmental Protection
28 Tyson Drive
Augusta, ME 04330
By email: Jami.Macneil@maine.gov

Dear Ms. MacNeil,

I am writing in regard to the revised DEP application #L-28397-4E-A-N for the construction of a boat ramp and pier system in Alna as proposed by Jeffrey Spinney. I will reserve to a separate letter remarks I intend to make that relate specifically to the revisions you circulated on December 17th in regard to Appendix C and the detailed design. Here I wish to focus only on one specific shortcoming of Mr. Spinney's current submittals that I think must be cured in order for you to be able to complete your analysis and review of his application.

Specifically, Mr. Spinney has premised his *entire* request to modify and expand the dock/ramp on uses he envisions for a club he incorporated earlier this year. Although he provides nebulous outlines as to the nature of certain activities that will be available to members of his club, he provides none of the *specific* details that would be required in order for you to evaluate whether his proposed solution has been "minimized to the greatest extent possible for the proposed use." Instead of addressing these points directly, Mr. Spinney repeatedly uses phrases in the application itself, in correspondence with you, and in public comments he has made at meetings of Alna's Planning Board about having "no plans at this time" for various activities. Likewise, he repeatedly indicates that things that would help to specify the club activities, such as the club's bylaws and permitted uses, are "still being worked out." I submit to you that until such plans are finalized and such details are "worked out," neither you nor members of the community know what it is specifically that he is asking to have considered. Furthermore, as I shall elaborate below, many of the details he has failed to provide are essential to your review, and would become evident if you were to require him to specify details of his proposed use in the manner that would be necessary for him to obtain the business permit required under Alna's Building Ordinance.

I have referred repeatedly in my previous correspondence to the sensitivity and importance of understanding the specific “nature, frequency, and intensity” of uses that will be made by Mr. Spinney’s club. My point here is that without understanding these specifics, it is not possible for either the DEP or the Army Corps of Engineers to understand whether the structures Mr. Spinney is proposing are appropriately permitted for the legitimate uses that might actually be made by members of his club. Indeed, given that Mr. Spinney has not yet obtained the local permits that would be required to operate the club, not only do you have insufficient information to judge the appropriateness of his application in terms of these nature/frequency/intensity parameters, but (perhaps more importantly) you do not know whether such club activities will even be permitted *at all*. Therefore, at this point, you have no way of knowing whether his application should be reviewed in terms of (a) the commercial club use he has vaguely described, (b) the context of much more limited personal use, or (c) something intermediate between these extremes. Not only would a local permit for his club provide a critical basis for determining that the use he proposes will even be allowed, but much of the information he would have to provide in obtaining such a permit would be essential to identifying alternatives, determining alternative is preferred, and finally, the analysis as to whether the preferred solution has been appropriately minimized.

Given his years of service as a member of Alna’s Planning Board, and the number of business permits that have come before him, it is impossible to believe that Mr. Spinney is unaware that the club he described in his NRPA application requires a permit under Alna’s Building Ordinance. Indeed, the very first sentence of the Building Ordinance states that “[t]he purposes of the ordinance are to provide for safety, health and public welfare through [...] regulations for businesses.”

To demonstrate the necessity, relevance, and importance that completing the local permitting process has to enabling your review to proceed, please consider the following points about the local ordinance.

(A) The definition of a business under the ordinance clearly requires that Mr. Spinney’s club will be required to obtain a permit in order to operate in the manner described in his NRPA application. In particular, the ordinance defines a “business” as (emphasis added), “[a]ny enterprise engaged in the sale, lease, production or distribution of any products, equipment, supplies, goods, commodities, *including* plants and animals, or *services which are* sold, *leased* or distributed *by the owner* or an affiliated person where revenue exceeds \$500 per year.”

Mr. Spinney has clearly indicated in his application that he intends for the activities of his club to be supported through annual memberships, which are in every way equivalent to a fixed annual lease of access to and use of the land and amenities he intends to provide. The scale of improvements, the size of the membership, and the scope of activities make it clear that the operational costs the memberships would be required to cover would be far in excess of the \$500 threshold required for exemption.

(B) Among other things, obtaining a local building permit under the ordinance would require showing that the club and associated facilities

- Satisfy required setbacks¹ (Section 14A)
- Provide parking and vehicle access² adequate to for the specific nature, frequency, and intensity of uses for which the permit is to be granted (Section 14B and 20C).
- Include sewage and waste disposal that are adequate for the proposed use (Section 20A and 20C).
- Prohibit, minimize, or mitigate nuisances such as noise, noxious odors, water pollution, *etc.* (Section 20C)

(C) In addition to granting a permit for uses not to exceed those requested by the applicant, it is common for such permits to either deny certain specific uses, or to approve subject to conditions. An understanding of any such denials or conditions could obviously be of fundamental importance to completing your analysis as to whether the proposed solution is justified by the proposed use, whether it has been minimized to the greatest extent possible, whether alternatives have been adequately explored and identified, and whether the proposed solution is the preferred alternative among those that have been considered.

For all of the reasons described above, it seems to be essential that you require Mr. Spinney obtain a business license for the club he uses as the principal justification for his NRPA permit application. In the interest of ensuring that you are able to correctly perform the review and analyses necessary for processing his application, I ask that you require Mr. Spinney to obtain such a license and to provide you with documentation of the specific uses that have been approved before you render any decision.

Sincerely yours,



Ed Pentaleri

¹ It appears that the setback from the property line is only about half that required by Section 14A of Alna's Building Ordinance. This is obviously important in that you cannot correctly evaluate the proposed solution if it cannot be located as proposed as a result of inadequate setback from the property line, and if new or modified access is required as a result.

² Clearly, your review should consider whether any aspect of the proposed uses trigger a requirement for modifications or improvements to the segment of road access or parking that fall within your jurisdiction, and should be informed by the maximum specific uses to be permitted under the local building ordinance. Likewise, the same factors are likely to inform your assessment as to whether the proposed solution is consistent with the maximum permitted number of simultaneous users.