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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 write to you again in opposition to revised DEP application #L-28397-4E-A-N for the construction of a boat ramp and pier system in Alna as proposed by Jeffery Spinney. Specifically, I write in regard to the manner that the currently proposed design would continue to cause unreasonable interference with existing scenic, aesthetic, recreational and navigational uses for the sensitive portions of the Sheepscot adjacent to the project site. In consideration of these impacts, I request that you reject the permit application. Indeed, given that the previously existing structures have been built in flagrant violation of requirements to obtain permits required under the Natural Resources Protection Act, it seems that a more appropriate outcome would be for your department to require removal of the existing structures, remediation of the site to its original condition, and penalties that may be allowable for such violations.

To the extent that you ultimately do approve a project that derives from this application, I request that you do so only for a project that is consistent in its scale, size, and general design with the dock and ramp that were originally approved *ca* 2003 at the local level for personal use. Even then, I ask that any such approval be granted only subject to mitigations and conditions of use allowed to you pursuant to the Natural Resources Protection Act, 38MSRA §480-D(1), and the rules set forth under Chapter 315, §8.

Concerns Regarding Your Review

Before discussing the specific objections I have with the revised design, I feel it necessary to express concerns I share with many members of the community in regard to (a) uncertainty we have as to whether Mr. Spinney's application is being accepted by you as being on behalf of shared/common vs. individual use, and (b) remarks you made in your email message of December 17, 2019 suggesting that your review will not involve consideration of local ordinances. In particular, although the plain language of the application indicates that it is for a "[c]ommon or shared recreational pier, dock, or

wharf,” with the explicit statements in the “Activity Description” that it is to be “used by a recreationtioanl [*sic*] club for day use,” your department appears to be accepting representations Mr. Spinney makes in separate correspondence that the application is being made as an individual, and then only for his personal use. This, despite his acknowledgement to you that the club to which he refers is the “Golden Ridge Sportsman’s Club, LLC,” and that he has taken concrete steps toward the club-oriented use by incorporating the club in May of last year.

Because we think that any of these representations should lead reasonable people to accept the application as being made on behalf of the commercial club use that he’s so clearly described, we have addressed our correspondences to you on the assumption that you would be reviewing the application not as being on behalf of Jeff Spinney’s personal use as an individual, but rather on behalf of Jeff Spinney, sole proprietor of the Golden Ridge Sportsman’s Club, LLC. While we have objections to his application *in either capacity*, the especially severe adverse impacts that may result from the as-yet inadequately documented activities of the club on the existing scenic, aesthetic, recreational and navigational uses of this sensitive segment of the Sheepscot are of greatest concern.

Without clarity from your department as to whether it will interpret the application as the commercial application that it so clearly is, or as an individual application for personal use, members of the community are not able to address comments to you that are most pertinent to your review, impairing the ability of the interested parties to be effective in their government petitions. With this in mind, I think it is imperative that you clearly express to the interested parties in a timely manner which capacity (shared/common vs. individual) you will be reviewing the application. Should you choose to interpret the application on an individual basis, for personal use, I think your decision should be supported by a well reasoned rationale. In this cases, I also believe that you should require the application to be revised, both to eliminate references to the club, and to reduce the size of the proposed facility in alignment with individual use.

As for your consideration of town ordinances, although I acknowledge that it is unreasonable to expect that you perform a bottoms-up analysis of compliance with local ordinances for applications that come before you, I submit that when patently clear inconsistencies are brought to your attention, it *does* represent an appropriate and reasonable use of resources for you to take such non-compliance into account, as doing so could clearly reduce the likelihood that you might needlessly expend resources in reviewing proposals that should have no possibility of obtaining local approvals. Indeed, your consideration of such inconsistencies need not be burdensome. Quite the opposite, it could simply involve placing the burden on the applicant to show compliance as a condition of your further consideration.

In fact, while this burden *should* fall to the applicant at all levels of review, it is quite possible that failure of the NRPA review to consider patent violations of local ordinances

may have precisely the opposite effect. Given the deference that non-professional local boards may give to the higher-level NRPA review made by career professionals such as yourself, the burden may inappropriately fall to the community to demonstrate such non-compliances during local permit review, rather than leaving the burden with the applicant to demonstrate compliance, as should be the case.

Concerns Over Revised Design

Given the uncertainty described above as to the basis for your review, combined with (a) my belief that the application is, in fact, being made on behalf of the club enterprise, and (b) concerns as to the adverse impacts such use might entail, many aspects of my comments below continue to relate to the possibility of club-driven uses. Likewise, for reasons I have just described, I am also using this opportunity to bring to your attention some additional issues that relate to local ordinances that I think are appropriate for your review to take into consideration.

1. Despite the fact that the proposed size of the floating dock has been reduced from 8x32 feet to 8x24 feet, the revised design nevertheless represents a *doubling* of the size of the dock, as compared with the previously documented 8x12-foot dock.¹ Although the smaller previous dock was evidently sufficient for Mr. Spinney's personal use over many, many years, the new dock will accommodate multiple boats and/or personal watercraft. While the increased size of the dock itself will have adverse impacts upon existing scenic and aesthetic uses of the river, there is a greater concern within the community in regard to the nature, frequency, and intensity of *uses* that may result from allowing a larger structure to be built.

During the December 5, 2019 meeting of the of the town's Planning Board, Mr. Spinney acknowledged that uses of the dock by club members may include water-skiing and/or the use of personal watercraft (Jet Skis). Despite acknowledging these potential uses, he declined to discuss the parameters of such uses. As I've noted in my most recent previous letter to you, Mr. Spinney has yet to obtain the business permit required by the town's building ordinance for the club he says he intends to operate on his property. Obtaining such a permit would require, among other things, that the club's activities be described and bounded. Absent such specificity, it should be abundantly clear that the club's potential uses of the proposed dock/ramp for ski boats and Jet Skis could have dramatic and adverse impacts upon the existing scenic, aesthetic, and recreational uses of this stretch of river, which are currently dominated by kayaking, canoeing, fishing, and hunting. Likewise, intensive uses by ski boats and Jet Skis could be highly incompatible with safe navigation by kayakers and canoeists.

¹ Refer to the letter addressed to the Town of Alna Planning Board, which I forwarded to you along with my initial letter to you, both of which were attached to email I addressed to you on December 13, 2019.

While I continue to believe it to be in everyone's best interest to ensure that the parameters of permitted uses are expressly defined *before* any permits are issued, I also believe that one of the most important steps toward ensuring that *actual* uses of the dock/ramp remain compatible with existing uses is to deny a permit for any structure larger than that which has previously been used.

2. Over the course of years, Mr. Spinney has demonstrated a sustained and flagrant disregard for legal restrictions related to construction at this site. He has done so, for example, by failing to obtain NRPA permits for previous dock/ramp structures,² construction of permanent structures (Figure 1) without even a local permit to do so, and construction of those permanent structures below the HAT line (Figure 2), which is prohibited by local ordinance. Combined with the evasiveness he has demonstrated in regard to questions about the potential club-related uses of the proposed structure, this has led to a very high level of mistrust for Mr. Spinney within the community.



Figure 1. June 24, 2012 photo of Jeff Spinney in the process of constructing a permanent pier. Noteworthy is that even as the permanent pier was being constructed, water was already at or above the pilings closest to the river, despite the likelihood that this photo was not taken at or near the time of highest annual tide.

² This, despite the reasonable expectation that given his years of service on the local Planning Board, Mr. Spinney should be more likely than most to be aware of the need for such permits, particularly given the clear statement in §14 of Alna's Shoreland Zoning Ordinance that "In addition to a Town of Alna permit, a Department of Environmental Protection permit, under the Natural Resources Protection Act, is required for many of the Land Use activities of Table 1. It is recommended that a permit applicant contact the DEP LandBureau at 287-2111 for further information prior to starting any activity in, over, or within 75 feet of the Sheepscot River, a great pond, a stream or a wetland. Failure to obtain a DEP permit can result in court action and significant fines."

Given this history, the suggestion in the revised submittal that you should consider “facility sizing” as a sufficient means of “managing or controlling the water based usage [of the] launch site” should be taken as completely unacceptable. In making this suggestion, Mr. Spinney implicitly acknowledges the strong concerns that have been expressed in regard to the scope of possible uses he has described for his club, concerns for the possibility that these uses might expand over time, and the adverse effects that such activities may have on existing scenic, aesthetic, recreational, and navigational uses. Instead of proposing a genuine “metered solution” the carefully worded discussion he presents makes plainly clear that his greatest desire is for the permits he seeks to be unencumbered by any explicit use restrictions beyond the physical limits of the proposed design and the site themselves.



Figure 2. July 31, 2012 photo after completion of Spinney’s permanent pier structure, showing tide level above the second row of permanent pilings.

Although he claims that “the parking area and number of launch lanes should provide no more capacity than the desired level,” he is careful not to specify *whose* desire he refers to (his or the many other interested parties in the community). Nor does he describe what this desired capacity means in objective or quantifiable terms, such as (a) the maximum number of simultaneous users that the site and design would support, (b) the number of daily users, (c) the types of boats that would be able to access the

site, or any of a multitude of other factors likely to be relevant to the potential for adverse impact upon existing uses.

Similarly, his arguments that “the site has finite parking at current time and there are no plans for expanding that in the future” is completely hollow, offering neither a commitment not to expand parking in the future, nor any objective, quantifiable, or enforceable means of limiting such expansion. Nor does his past behavior give any reason to believe these claims in the first place.

Finally, although he closes his argument by suggesting that the existing access road is only suitable for use by “small trailered fishing craft behind standard tow vehicles” and that “exceptionally large or heavy vehicles or multi-axle trailers carrying large boats would not be able to realistically operate at this launch site,” his argument is again rendered meaningless by his failure to define or specify *any* of the terms he uses in advancing the argument (“small,” “standard,” “exceptionally,” *etc.*). Here again, although he wants you to accept the existing access road as a meaningful constraint on site uses, he has carefully avoided any commitment to refrain from making future improvements that could have the effect of increasing the capacity.

Perhaps it should go without saying, given the arguments I’ve elaborated above, that there is strong sentiment within the community that *any* permit that may eventually be granted should be accompanied by explicit limits as to the specific nature, frequency, and intensity of allowed uses. If Mr. Spinney truly believes (or would have you believe) that the proposed design or the existing site conditions are sufficient to adequately protect the resource and to protect against adverse impacts on existing uses, then he should have no objection to a redundant “belt-and-suspenders” action on your part to clearly and objectively specify what uses are permitted in a manner that is enforceable.

3. Mr. Spinney’s offer to submit to periodic, self-documentation of on-site conditions makes no sense whatsoever. Most important, of course, is that any permitted structures and activities at the site should, in their very design, be certain not to result in adverse impacts to the protected resource, rather considering alternatives only after an adverse impact has occurred. In the event that monitoring were to be required, however, any such monitoring should be performed by a disinterested third party, and should not include an arbitrary *a priori* limit against extending such monitoring beyond a single season.
4. Although it has not been previously noted in correspondence to you, it is significant that the proposed location of the dock/ramp is only 10 feet from the property line, as compared with the 20-foot minimum setback required by the town’s building

ordinance.³ While local ordinances allow for a somewhat smaller setback in limited instances,⁴ such a reduction is possible *only if the original structure existed in its current location prior to December 14, 1970, and then only with the concurrence of the abutting property owner*. Not only does the age of the structure in question fall far short of that required for an exemption, but given the Ervin/Bolen objections you have received in regard to the proposed permit, it is clear that the concurrence required for such an exemption will not be forthcoming. Regardless of whether a local permit was previously granted, or whether such permits were granted in accordance with setback requirements that were in place at the time, *there is therefore no path forward for obtaining the local permits required for the expanded structure at the location that has been proposed by Mr. Spinney*. In order to obtain the required permits, Mr. Spinney will have to propose a new site. Because such changes may necessitate modifications to site access, and/or design changes associated with conditions specific to the new site, such changes would also likely require a new NRPA permit review. Even though these changes would be driven by local ordinance, it would be reasonable for you to condition further consideration of Mr. Spinney's permit on his demonstration that local permits are feasible for the site he has identified.

5. It is worth noting that although *certain* aspects of the design (such as the size of the floats) have been reduced in the revised plans, the increased height of the structure in the revised design is likely to exacerbate its scenic and aesthetic impacts. That said, the revised drawings submitted by Mr. Spinney are not properly dimensioned, providing no way to judge the increased height of the pier, the pilings, and the ramp above the river. Absent such annotations, there is no way for you to re-evaluate its expected scenic and aesthetic impacts on existing uses, and no way to determine whether the as-built structure complies with the proposed design.
6. Finally, I would like simply to make note of a couple of errors or misrepresentations about our local ordinances that are made in the revised submittal.

First, in regard to his suggestion that the proposed dock/ramp expansion might be considered to be a “non-conforming maintenance activity,” I point out that §12b of Alna’s Shoreland Zoning Ordinance (SZO) explicitly states precisely the opposite:

“Repair and Maintenance: This Ordinance allows the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations *which do not involve expansion of the non-conforming use or structure* [emphasis

³ Alna Building Ordinance §14(A): No structure or subsurface sewage disposal system shall be closer than 50 feet to the center line of any street or highway and shall be setback at least 20 feet from any adjoining lot.

⁴ Alna Building Ordinance §23(B): The setback for an addition to a structure may be reduced to 10 feet from an adjoining lot provided that the original structure existed in its current location prior to December 14, 1970 and that the owner of the adjoining lot states in a notarized document that they have no objection to the reduction.

added], and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may required. Applicable permits are required.”

Second, Mr. Spinney’s claim that moving the permanent concrete piles he proposes to a location above the HAT line “eliminates the concern at the town level for a new permanent structure at/below the HAT line” misstates and misrepresents the restrictions in the local ordinance with respect to permanent structures. Specifically, §15(c)6 of the SZO clearly states that “[n]ew permanent piers and docks shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible.” Not only has Mr. Spinney failed to make any attempt whatsoever to demonstrate that a temporary pier is not feasible, it is not at all clear that he has any basis for making such claims, given that the structure he most recently built (without either the local or state permits required) included a permanent pier that extended below the HAT line.

I thank you for your kind consideration of my letter. Although I regret that it has been necessary for it to be so long, I hope you will recognize that this as a reflection on how deeply flawed Mr. Spinney’s application is, that it should not be approved, and that any approval that may ultimately result from your review should be carefully conditioned.

Sincerely yours,



Ed Pentaleri