

STATE OF MAINE
LINCOLN, ss.

DISTRICT COURT
Division of Wiscasset
Docket No. CV-2022-2

TOWN OF ALNA, a duly organized and
existing body corporate in the County of
Lincoln, State of Maine,

Plaintiff,

v.

JEFFRY A. SPINNEY

*Defendant/Alleged
Violator/Property Owner*

STIPULATED FINAL JUDGMENT

And

FINAL ORDER

This matter came before the Court on the Plaintiff Town of Alna's ("Town") Complaint for relief under 30-A M.R.S. § 4452 and M.R. Civ. P. 80K. By the consent of the parties, it is hereby ordered and adjudged that the Defendant Jeffrey Spinney ("Mr. Spinney") is maintaining erosion control materials surfacing a boat ramp within the Town's Shoreland Zone, on property located at 126 Golden Ridge Road, Alna, Maine 04535, since at least March 4, 2021, in violation of the Town's Shoreland Zoning ("SZO") and Building Code Ordinances ("BCO"). The parties in the above-captioned matter hereby STIPULATE AND AGREE to the entry of Judgment as follows:

1. Mr. Spinney is the owner of a certain residential property located at 126 Golden Ridge Road, Alna, Maine 04535, identified by the Town Assessor's Map as Tax Map R4, Lot 21A, the property being further described in a deed dated August 26, 2002, from Phyllis Austin and Anne Dellenbaugh to Jeffrey A. Spinney and Emma M. Page, and recorded in

the Lincoln County Registry of Deeds at Book 2902, Page 199 (hereinafter referred to as the “Property”).

2. The Property is partially bounded by the Sheepscot River.
3. This matter is brought by the Town pursuant to the provisions of 30-A M.R.S. §4452 and M.R. Civ. P. 80K in order to enforce the Town’s SZO and BCO upon Mr. Spinney.
4. The Court hereby finds the following facts:
 - a. In February of 2020, Mr. Spinney submitted an application to the Town’s Planning Board seeking approval to conduct “pier/ramp alteration + boat ramp resurfacing & regrading per NRPA plans” for a 12 ft. x 36 ft. boat ramp running to the mean low water line of the Sheepscot River on the Property (the “First Application”). Mr. Spinney later withdrew the “pier/ramp alteration” component from the project on April 21, 2020.
 - b. On March 13, 2020, the Maine Department of Environmental Protection (“MDEP”) conditionally approved Mr. Spinney’s application under the Maine Natural Resources Protection Act, the Federal Water Pollution Control Act, and Chapters 310 and 315 of the MDEP’s regulations to perform the work described in the First Application. One of the conditions of approval was to obtain and provide all necessary local permits prior to commencement of work.
 - c. The Planning Board failed to approve the First Application by 2-2 vote on June 29, 2020, and the Town’s Board of Appeals (“BOA”) subsequently affirmed the Planning Board’s decision on October 16, 2020.
 - d. On June 30, 2020, Mr. Spinney obtained a permit from the Town of Alna Code Enforcement Officer to “regrade/resurface/stabilize earthwork above HAT line

(upland work) and road work w/in LR/RP.” This permit was not appealed and work performed under it is not at issue in this enforcement action.

- e. On October 26, 2020, Mr. Spinney filed a modified application with the Town’s Planning Board based on feedback from the First Application. This application requested approval for “earth work (soil stabilization by filling and earth moving)...contained within the footprint of the currently used launch area, specifically the approx. 12’x36’ portion of the area between the [Highest Astronomical Tide] and [Mean Low Water] lines,” made of cobbles and gravel, running to the mean low water line of the Sheepscot River, and a 15’ seasonal roll-out mat structure made of anodized aluminum that could be placed over the cobble and gravel erosion controls (the “Second Application”).
- f. On or about the same date as filing the Second Application, and pursuant to 5 M.R.S. § 3341, Mr. Spinney initiated a land use mediation in the Lincoln County Superior Court with the Town. The mediation was docketed under CV-2020-24 and, pursuant to Section 3341, its filing stayed the appeal period related to the First Application.
- g. At its December 10, 2020 meeting, the Planning Board orally approved the Second Application. Shortly thereafter, on December 17, 2020, the Town’s Code Enforcement Officer, as agent for the Planning Board, issued a permit for the Project as approved by the Planning Board.
- h. During the mediation held on December 16, 2020, Spinney and the Town’s representative agreed in principle to terms of a comprehensive settlement that

were drafted into a formal document in the following days, for adoption at the Select Board's next scheduled meeting.

- i. On December 27, 2020, Mr. Spinney conducted the above high tide work as described in the Code Enforcement Officer's June 30, 2020 permit, and the below high tide work as described in the Planning Board's approval for the Second Application (the "Project").
- j. On December 28, 2020 the CEO and Select Board visited the site to determine compliance with the issued permit as well as the terms of the proposed Settlement Agreement. The CEO issued a written finding of compliance on December 28, 2020.
- k. On January 5, 2021, the Planning Board issued its written findings and conclusions documenting approval of the Second Application (the "Second Application Decision").
- l. On January 6, 2021, the Town's Select Board voted to execute a settlement agreement (the "Settlement Agreement"), some terms of which had already been presented to and adopted by the Planning Board.
- m. SZO § 16(H)(3) authorizes the Select Board to enter into consent agreements; however, section 16(H)(3) also provides that "such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless removal of the structure or

use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.”

- n. Also on January 6, 2021, individuals filed appeals related to the Second Application Decision with the BOA.
- o. On January 7, 2021, the CEO again visited the site – this time with representatives of Maine DEP – to address a complaint filed by one of the appellants with DEP. No violation was found.
- p. On March 4, 2021, the BOA overturned the Second Application Decision. The BOA concluded that: (1) the Project constitutes a “permanent” structure that is prohibited within the Resource Protection District by section 14, table 1, section 17(b) of the Town’s SZO, and (2) the Project violated section 14(A) of the BCO, because it is not set back at least twenty feet from adjoining lot lines.
- q. Mr. Spinney requested that the BOA reconsider its decision, arguing, in part, that the BOA was not properly constituted when it reached its decision to overturn the Second Application Decision because one of the BOA’s members was not a resident of Maine at the time he voted to overturn the Second Application Decision.
- r. On March 30, 2021, the BOA denied Mr. Spinney’s request for reconsideration and voted that one of its members had not been a valid member at the time of its March 4, 2021 decision, as he was not a resident of the State of Maine.
- s. On November 10, 2021, the Town issued a notice of violation to Mr. Spinney, requesting that he restore the Project to its preconstruction condition.

- t. When Mr. Spinney failed to comply with the Town's request, the Town filed this action.
- u. In response to the Town's enforcement proceeding, Mr. Spinney and the Golden Ridge Sportsman's Club filed a two-count complaint in Lincoln County Superior Court seeking (1) a ruling that the Town's commencement of this action breached the Settlement Agreement, and (2) declaratory relief. The case was docketed in the Lincoln County Superior Court as *Jeffry Spinney and Golden Ridge Sportsman's Club. v. Town of Alna*, Docket No. CV-22-9.
- v. On November 23, 2022, the Lincoln County Superior Court concluded that the Settlement Agreement is invalid ("CV-22-9 Order"). The Court reasoned that the Town's Select Board did not have the authority to enter into the Settlement Agreement with Mr. Spinney because "SZO § 16(H)(3) does not grant the Board of Selectmen the authority to make its own determination as to whether a structure or use is illegal [t]hus, when the BOA decided that Mr. Spinney's boat ramp was an illegal structure, the Board of Selectmen would have had no authority to enter a consent agreement unless it made the findings required by § 16(H)(3)." The Court also found that the Select Board did not make the findings that would otherwise have been required by SZO § 16(H)(3) in order to allow the Project to remain. That decision is now final.
- w. On December 22, 2022, Mr. Spinney filed Rule 80B appeals from the BOA's affirmance of the First Application Decision, and the BOA's vacation of the Second Application Decision, in the Lincoln County Superior Court. Mr.

Spinney's appeals are pending before the Lincoln County Superior Court, and docketed as *Jeffry Spinney v. Town of Alna*, Docket No. WISC-AP-2022-07.

- x. Mr. Spinney's Rule 80B appeals advance various substantive and procedural grounds to reverse the Planning Board's denial of the First Application, and to uphold the Planning Board's approval of the Second Application Decision.
 - y. Mr. Spinney has asserted as a defense against the Rule 80K enforcement action that the Town should be equitably estopped because Mr. Spinney reasonably relied upon the Settlement Agreement and other written and verbal statements of Town officials in installing and maintaining the Project.
5. There is a genuine controversy between the parties concerning Mr. Spinney's construction and use of the Project, and the outcome of the existing litigation is uncertain.
 6. The Town's Select Board does not possess the authority to approve the Project. Instead, that authority rests with the Town's Planning Board and BOA.
 7. The Town has expended significant public funds, and Mr. Spinney has expended significant private funds, to litigate this dispute in several different judicial and administrative forums. Both parties wish to resolve this dispute to prevent and avoid further expenditures of significant public and private funds.
 8. As part of the agreement reached between the parties, Mr. Spinney consents to a finding by this Court, and the Court hereby finds that:
 - a. The Project is an unpermitted nonconforming permanent structure in the Town's Resource Protection District that violates SZO, § 14, table 1, section 17(b), which prohibits permanent structures extending over or below the normal high-water line.

- b. The Project violates BCO § 14(A), because it is located less than twenty (20) feet from the Property's adjoining lot line.
 - c. Mr. Spinney has maintained the unpermitted Project on the Property since at least March 4, 2021.
9. The Court orders that:
- a. In consideration of the above recitals, Mr. Spinney's equitable estoppel arguments asserting reliance upon the Settlement Agreement and various written statements by the Code Enforcement Officer, and of the potential environmental disruption that could result from removing the Project, the Project may remain on the Property. It may be maintained in its current location with similar erosion control surfacing materials but may not be expanded beyond its current footprint or hardened beyond its current type of surfacing on the date of this order. Any such maintenance work must comply with all other applicable State and local permitting requirements at the time it is performed.
 - b. Mr. Spinney surrenders and waives the right to place the aluminum roll-out mat as described in the Second Application.
 - c. Mr. Spinney, and his guests and invitees may use the boat ramp located on the Property for noncommercial purposes to launch watercraft into the Sheepscot River consistent with the terms of this Stipulated Judgment and Final Order. Such rights shall transfer with ownership of the subject real property but may not be separately transferred or assigned to other entities or individuals.
 - d. The boat ramp on the Property may be used solely by Mr. Spinney and his guests and invitees for incidental, residential purposes, and Mr. Spinney may further

allow use by the Golden Ridge Sportsman's Club consistent with Paragraph 9(f) of this Stipulated Judgment and Final Order.

- e. The boat ramp shall not be used for any commercial purpose by Mr. Spinney, the Golden Ridge Sportsman's Club, or anyone else. Commercial access to and use of the boat ramp is prohibited.
- f. Any use of the boat ramp by the Golden Ridge Sportsman's Club shall be limited to non-motorized boats only, by no more than 10 individual members during any calendar year.
- g. Civil penalties are hereby waived by the Town and will not be assessed against Mr. Spinney.
- h. The Town and Mr. Spinney shall each pay their respective attorney fees related to the administrative and legal actions described herein. Upon the Court's entry of this Stipulated Judgment and Final Order, Mr. Spinney shall immediately take any action necessary to dismiss his Rule 80B appeals docketed at WISSC-AP-2022-07.
- i. Nothing in this Order shall limit the Town's right to pursue an enforcement action for other violations and activities that may exist on the Property, and the parties agree that the Town does not waive, nor relinquish, its land use enforcement authority over any violations or activities that may now exist on the Property other than as described in this Stipulated Judgment and Final Order.
- j. In the event that either party fails to comply with this Stipulated Judgment and Final Order, it shall be subject to contempt proceedings before this Court and

shall be responsible for all costs and attorney's fees associated with any subsequent proceedings to enforce this Stipulated Judgment and Final Order.

10. Notice of the proposed entry of this Stipulated Judgment and Final Order onto the docket, and the date and time of the Town Select Board's public hearing thereon, was given to possible objectors on or before October 12, 2023 by service on all parties to WISSC-AP-2022-07, and by public notice on the Town's website.
11. Consistent with the Law Court's holding in *Pike Industries, Inc. v. City of Westbrook*, the Town's Select Board held a public hearing on the Stipulated Judgment and Final Order on October 19, 2023, and all objectors were given a reasonable opportunity to present their objections to this Stipulated Judgment and Final Order at that hearing. 2012 ME 78, 45 A.3d 707.
12. This Stipulated Judgment and Final Order shall be binding upon the Plaintiff and upon the Defendant and the Defendant's respective successors and assigns, and shall be duly recorded in the Lincoln County Registry of Deeds.

[Signature Lines Appear on the Next Page]

Date: _____

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The Clerk is specifically directed pursuant to M.R. Civ. P. 79(a) to enter this Stipulated Judgment on the Civil Docket by notation incorporating it by reference.

IT IS SO ORDERED.

Dated: _____, 2023

Judge, Maine District Court