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**Subject:** Submission for the record in LUPC Permit DP 3639-F, Big Lake Development, LLC  
**Date:** Saturday, August 20, 2022 4:44:01 PM  
**Attachments:** [CAKLtrToLUPC2022-08-20.pdf](#)

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Dear Ms. Beyer and Ms. Kaczowski:

Please accept the attached letter for inclusion in the record in LUPC Permit DP 3639-F, Big Lake Development, LLC.

I am submitting this letter as an individual member of the public, and not as a representative of, or affiliate of, any other person or organization.

Thank you.

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August 20, 2022

Ms. Stacie R. Beyer, Acting Executive Director  
Maine Land Use Planning Commission  
18 Elkins Lane  
22 State House Station  
Augusta, ME 04333  
emailed to: Stacie.R.Beyer@maine.gov

Ms. Debra Kaczowski, Permitting and Compliance Regional Supervisor  
Maine Land Use Planning Commission  
43 Lakeview Street  
P. O. Box 1107  
Greenville, ME 04441  
emailed to: Debra.Kaczowski@maine.gov

RE: Maine Land Use Planning Commission Development Permit DP 3639-F

Dear Ms. Beyer and Ms. Kaczowski:

1. Please accept my comments on the topic of financial capacity and evidence presented at the reopened hearing with the Commission, which I am presenting as a member of the public, *and not representing any other person or organization*, in accordance with the Third Procedural Order in the above-referenced matter, dated July 20, 2022, ¶ C (8).
2. No one need justify or apologize for requesting that the Commission abide by its statutory obligation to approve the Applicant's Application in this matter *only* upon the Applicant meeting its burden to demonstrate by substantial evidence that the criteria for approval of its Application are satisfied.<sup>1</sup> The existence of the statute itself is sufficient justification.
3. The "delay" in obtaining approval of its Application, of which the Applicant has complained—publicly and consistently at least since the L.U.P.C. meeting held on February 9,

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<sup>1</sup> 12 M.R.S. § 685-B (4).

2022<sup>2</sup>—is entirely the result of the Applicant failing to complete its Application in such a way as to meet its statutory burden, and for no other reason. The Applicant’s Application remains incomplete for at least the following reasons:

- a. The Applicant has, so far, not produced evidence that its bond underwriter, Barclays, is committed to underwriting the bonds which will finance the proposed construction, and, under the Applicant’s financing scheme, the bond underwriter’s commitment is essential evidence of “adequate financial resources”. In fact, the record in this matter contains many instances in which Barclays states explicitly that it has not made a commitment<sup>3</sup>. The Applicant does state in its Pre-filed Testimony dated July 25, 2022, § B (1), that “[t]he funding process requires discretionary permits to be issued prior to a final commitment and closing”. However, the Applicant has not, in the record, verified this allegation with any corroborating statement from Barclays, F.A.M.E., Provident Resources Group, or any other entity associated with the “funding process” in this matter. It seems that would be the least the applicant could do to justify the record’s lack of substantial evidence of having “adequate financial provision”<sup>4</sup> and “adequate financial resources”<sup>5</sup>. I call attention to L.U.P.C.’s Rule which requires the Commission to “consider...the...strength of commitment by the financing entity.”<sup>6</sup> The record reflects no strength of commitment by Barclays.
- b. While the Applicant has emphasized the importance of the tax-exempt feature of the bonds which will finance the construction proposed in its Application<sup>7</sup>, the Applicant has not produced any evidence that the corporate entity it identifies as the “owner”—Provident Group—Moosehead Lake L3C<sup>8</sup>—has in fact been determined by the Internal Revenue Service (“the I.R.S.”) to be exempt from Federal income tax under § 501(c)(3) of the Internal Revenue Code. This documentation was requested by the Limited Intervenor in its Pre-filed Testimony dated August 5, 2022, and, on five days’ notice, could easily enough have been produced by the Applicant (absent a sufficient explanation to the contrary), had

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<sup>2</sup> E.g.: Audio record of L.U.P.C. meeting on February 9, 2022, at 11:25; minutes of Piscataquis County Commissioners’ meeting on March 8, 2022, ¶ 3.

<sup>3</sup> See Moosehead Region Futures Committee’s Pre-filed Testimony dated June 6, 2022, ¶ 7.

<sup>4</sup> 12 M.R.S. § 685-B(4)(A).

<sup>5</sup> 01-672 C.M.R. ch. 10, § 10.25 (C)(2).

<sup>6</sup> Id.

<sup>7</sup> E.g., Audio transcript of Public Hearing on August 10, 2022, at 56:08

<sup>8</sup> Applicant’s Pre-filed Testimony dated July 25, 2022, §§ B(2) and C.

the Applicant desired to do so.

Whether operating a recreational resort on Big Moose Mountain is a charitable activity because it “lessens the burdens” of the Piscataquis County government is also a crucial determination to whether tax-exempt bonds can be used to finance the construction of this project. The Applicant apparently has obtained no Advance Ruling from the I.R.S. on this question<sup>9</sup>, though it could have requested one<sup>10</sup>, nor has it even provided the record with an expert legal opinion that the development for which it is applying for a permit constitutes a “charitable activity” supporting the issuance of tax-exempt bonds to finance it, though the Applicant alleges it has received such opinions.<sup>11</sup>

Whether or not this project is deemed a “charitable activity” being conducted by a “charitable organization” is, under the financial plan proposed by the Applicant, directly relevant to the questions of the Applicant’s possession of “adequate financial resources” and the Applicant’s ability to make “adequate financial provision” for this project. Without some evidence in the record, beyond the Applicant’s unsupported assertion, that the bonds financing construction will be tax-exempt, the Applicant has not met his burden of providing “substantial evidence” on this question.

- c. The Applicant has shown neither that it has a *binding* agreement in place with the Moosehead Sanitary District (“the Sanitary District”) for wastewater disposal, nor that it has made any other adequate arrangements for wastewater disposal, as required by statute.<sup>12</sup>

The Applicant’s unsupported allegation at the August 10, 2022 public hearing, that it has a “handshake agreement” with the Sanitary District<sup>13</sup> hardly constitutes, at this late date, “substantial evidence” that it has made “adequate provision for sewage disposal.” The record is curiously devoid of any written documentation provided by the Sanitary District to this effect, let alone an actual contract between the Applicant and the Sanitary District.

The Applicant started working on this project “4 years ago”.<sup>14</sup> If, after the passage of four years, the Applicant has not been able place in the record at least the

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9. Audio transcript of Public Hearing on August 10, 2022, at 54:27.

10. <https://www.irs.gov/charities-non-profits/charitable-organizations/exempt-organizations-rulings-and-determinations-letters#:~:text=A%20ruling%20or%20determination%20letter,which%20it%20is%20claiming%20exemption.>

11. Audio transcript of Public Hearing on August 10, 2022, at 53:55.

12. 12 M.R.S. § 685-B (4)(A).

13. Audio record of Public Hearing on August 10, 2022, at 35:50

14. Applicant’s Pre-filed Testimony dated June 7, 2022.

written outline of an agreement from the Sanitary District, or a statement from the Sanitary District concerning the current state of negotiations, or, again, an *actual contract*, then this Commission is justified in wondering if any agreement between the Applicant and the Sanitary District will be forthcoming at any time.

4. The Applicant apparently does not take seriously its statutory and regulatory obligations to prove to this Commission, by substantial evidence, that it has satisfied the criteria for approval of its Application.

It is not the responsibility of the Limited Intervenor, or this Commission, to “ask F.A.M.E.”<sup>15</sup> about whether F.A.M.E. can issue tax-exempt municipal bonds to finance a project that is not a “charitable activity” within the meaning of the Internal Revenue Code. It is not the responsibility of the Limited Intervenor, or this Commission, to obtain a 501(c)(3) Letter from Provident Group–Moosehead Lake L3C<sup>16</sup>. The time is not “right” to get an Advance Ruling from the I.R.S.<sup>17</sup> *after* the record on the pending Application has been closed. It is not the responsibility of the Limited Intervenor, or this Commission, to seek out evidence from Barclays, or the Applicant’s tax attorneys, or to seek a full explanation from F.A.M.E.<sup>18</sup> about F.A.M.E.’s involvement in this project. And so on. The statute clearly places the burden *on the Applicant alone* of placing this kind of evidence in the record.

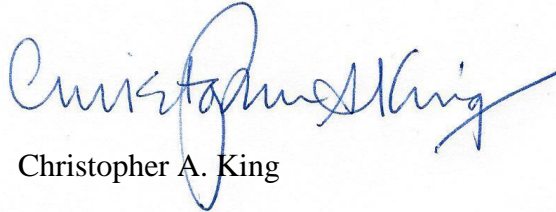
To me, personally, it seems simple: if an applicant makes a factual assertion in support of its application, the applicant must present substantial evidence in support of its assertions. An applicant’s unsupported factual assertion standing alone does not constitute “substantial evidence”.

On too many crucial issues, the Applicant in this matter has not met its burden.

Further, the statute does not say the Commission may approve an application *if*... Rather, the statute says “[t]he commission may *not* approve an application *unless*...”<sup>19</sup>.

On this record, the Commission may not approve this Application at this time.

Respectfully submitted,



Christopher A. King

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15. Audio transcript of Public Hearing on August 10, 2022, at 55:09.

16. Audio transcript of Public Hearing on August 10, 2022, at 52:51.

17. Audio transcript of Public Hearing on August 10, 2022, at 54:43.

18. Audio transcript of Public Hearing on August 10, 2022, at 55:23.

19. 12 M.R.S. § 685-B (4).