

In the Matter of
Maine Land Use Planning Commission
Development Permit DP 3639-F
Big Lake Development Company, LLC
Big Moose Ski Resort

**MOOSEHEAD REGION FUTURES COMMITTEE'S
PRE-FILED TESTIMONY**

June 6, 2022

Pursuant to §G(3)(b) of the First Procedural Order in the above-captioned matter, the Limited Intervenor, Moosehead Region Futures Committee (MRFC), through its Secretary and designated representative in this proceeding, Christopher A. King, testifies as follows:

INTRODUCTION

1. MRFC is a corporation incorporated in 2005 under the Maine Nonprofit Corporation Act, 13-B M.R.S. §§ 101-1406. As stated in its Bylaws, MRFC's mission "is to encourage, gather, and incorporate residents' ideas and expertise to shape and balance the [Moosehead Lake] Region's future development, economy, and conservation efforts". Its board of directors, the "Steering Committee", consists of Maine citizens who reside in, own real property in, are employed in, or are interested in the affairs of the Moosehead Lake Region.
2. **MRFC favors redevelopment of the ski resort area on Big Moose Mountain.** MRFC's purpose as a Limited Intervenor is to help ensure that redevelopment of the ski area is undertaken in such a way as to enable its successful and continuous operation for years and decades to come, for the benefit of residents of, and visitors to, the Region.

APPLICANT'S BURDEN

3. "The burden is upon the applicant to demonstrate by substantial evidence that the criteria for approval [of its application] are satisfied, and that the public's health, safety and general welfare will be adequately protected." 12 M.R.S. § 685-B (4) (2011).

ADEQUATE FINANCIAL RESOURCES

4. “The Commission may not approve an application unless [a]dequate...financial provision has been made for complying with the requirements of the State’s...environmental laws, and those standards and regulations adopted with respect thereto...” *Id.*, § 685-B (4)(A).
5. “The applicant shall have adequate financial resources to construct the proposed improvements, structures, and facilities and meet the criteria of all state and federal laws and the standards of these rules. In determining the applicant’s financial capacity, the Commission shall consider the cost of the proposed...development, the amount and strength of commitment by the financing entity, and, when appropriate evidence of sufficient resources available directly from the applicant to finance the...development.” 01-672 C.M.R. ch. 10, § 10.25 (C)(2) (2022).
6. The Applicant identified Barclays as the underwriter for the bonds which will be used to fund its proposed development. See: the letter of Anthony C. Hughes, Managing Director, Barclays, dated March 17, 2021; and item 2 of the “Agreement” authored by Anthony C. Hughes, Managing Director, Barclays, dated November 16, 2020.
7. The public record in this proceeding contains no evidence of Barclays’ commitment to underwrite the bonds financing construction of the proposed development, to the best of MRFC’s knowledge. To the contrary, all three documents in the record under Barclays letterhead state explicitly that Barclays has not made a commitment.
 - a. The “Agreement” dated November 16, 2020, authored by Mr. Hughes, states: “Notwithstanding the above [agreement that the Sponsor pay Barclays an “underwriting/placement” fee] or any oral representations made to the contrary, this Agreement does not constitute a commitment by Barclays or its affiliates to participate in any such transaction and **such a commitment will exist only upon the execution of a separate, written agreement (typically a bond purchase agreement) with Barclays containing terms and conditions applicable to such transaction.**” (Emphasis added.)
 - b. Mr. Hughes’s letter dated March 17, 2021 states: “[N]othing in this letter or attached transaction description is intended to be or is construed as a commitment or guarantee by Barclays to lend money or to provide funds, and should not be relied upon as such. Any such commitment to lend or underwrite would be stated explicitly in writing and would require completion of satisfactory due diligence and necessary internal approvals within Barclays in Barclays’ sole discretion. No such due diligence has been completed and no such approvals have been sought to date.” (Italics in original.)

- c. The letter of Anthony C. Hughes, Managing Director, Barclays, dated November 9, 2021 states: “You will appreciate that this letter is not an offer of financing or any commitment on our part, nor is it intended to be legally binding or to give rise to any legal or fiduciary relationship between [Barclays, and Treadwell Franklin Infrastructure Capital, LLC and Big Lake Development Co, LLC, the parties to whom this letter is addressed] or between Barclays Bank PLC (or its affiliates) and any other person. ... **A commitment from Barclays with finalized terms and a date certain closing will come in the form of bond purchase agreements to be executed immediately after the pricing of the two series of Bonds.**” (Emphasis added.)
8. The public record in this proceeding contains neither the “bond purchase agreements” referred to in 7a. and 7c. above, nor any other unequivocal statement that any entity besides Barclays has committed itself to underwrite the bonds necessary to finance the proposed development, to the best of MRFC’s knowledge. Nor does the record indicate any alternate proposal by the Applicant for financing the proposed development. Therefore, the Commission should find that “the strength of commitment by the financing entity” is not sufficient to conclude that the Applicant has shown “adequate financial resources to construct the proposed” development.
9. MRFC is well aware of Section H of the First Procedural Order in this proceeding, which states in part: “Discussion of any potential phases of development on the subject parcel must not be addressed in testimony and evidence *unless it can be shown that the testimony and evidence is directly relevant to application of the statutory criteria and regulatory standards applicable to the current proposal.*” (Emphasis supplied.) MRFC will attempt to show here that the Applicant does not have adequate financial resources to meet the requirements of the statute and rule cited above if it does not receive regulatory approval for the 457 residential units that the record shows the Applicant intends to construct in the so-called “Phase Two” of its plans.
 - a. MRFC requests to place into evidence a document that was presented to the Piscataquis County Commissioners on April 20, 2021 and styled as “An Application for a Municipal Development and Tax Increment Financing District—Big Moose Municipal Development and Tax Increment Financing District” (“the TIF Application”). The TIF Application was presented by the Applicant, and adopted by the Piscataquis County Commissioners, on April 20, 2021. MRFC is attaching the TIF Application to the same email to which this Testimony is attached, and requests that it be marked for identification as Limited Intervenor’s Exhibit A.
 - b. MRFC calls the Commission’s particular attention to: Section I C.—The Development Program (pp.2-3); Section III—Financial Plan (pp.4-7); and Exhibit D-1—TIF Revenue Projections (six tables of data on unnumbered pages), of the

TIF Application.

- c. MRFC believes that it is a fair summation of the TIF Application that:
 - i. the Applicant proposes to pay the debt service on the bonds issued to finance the construction of the development proposed in the pending application in part with money paid into the TIF funds by Piscataquis County;
 - ii. Piscataquis County will pay money into the TIF funds from tax increments theoretically realized from the improvements to be constructed if the pending application is approved, *and* from the tax increments theoretically realized from the improvements resulting from the construction of the proposed 457 residential units, and from the construction of the proposed marina.
 - iii. The Applicant expects to realize \$66,788,089 from payments to the TIF funds by Piscataquis County. TIF Application, Exhibit D-1, third table. Only 13.8% (\$9,191,781) of that sum is estimated to come from the TIF funds generated by both the development proposed in the pending application, and the proposed 200-slip marina on Moosehead Lake, which, of course, is not part of the pending application. TIF Application, Exhibit D-1, second table. The remaining 86.2% (\$57,596,308) of the money the Applicant will realize from the TIF funds to pay the debt service on the bonds which will finance construction proposed in the pending application, will come from the tax increment generated by the 457 proposed residential units, for which regulatory approval has not yet been applied. TIF Application, Exhibit D-1, first table.
- d. MRFC, therefore, argues that whether the Applicant has “adequate financial resources” to meet the statutory and regulatory requirements for the pending application, is directly dependent on whether it can obtain regulatory approval for construction of 457 residential units (which, on p.1 the TIF Application describes as “Ski-In/Ski-Out residential units) to be built on the side of Big Moose Mountain. Therefore, the question of “adequate financial resources” for the pending application cannot be decided in the Applicant’s favor at least until such time as the Applicant gains regulatory approval for the proposed 457 residential units and the marina.
- e. Should the Commission rule that consideration of how the residential portion of the Developer’s entire proposal will contribute to payment on the debt service of the bonds which are financing the pending application, is irrelevant or should otherwise be excluded from being admitted into evidence in this proceeding, the MRFC, as the Limited Intervenor, wishes to OBJECT to that decision, for the purpose of preserving the record for appeal.

10. The Applicant submitted to the public record in this proceeding a “Project Development Agreement”, a “Loan Agreement by and between Finance Authority of Maine and Provident Group–Moosehead Lake L3C” and an “Indenture of Trust by and between Finance Authority of Maine” and an unspecified Trustee, presumably in support of its position that it has demonstrated “adequate financial resources”. In all of these documents there appear numerous blanks where necessary information should appear, and numerous exhibits and lists are referenced, but the information is not provided. MRFC argues that until all the information missing from these documents (too numerous to itemize here) is supplied by the Applicant, the Commission cannot make a finding that the Applicant has shown “adequate financial resources” within the meaning of the statute and rule.

ADEQUATE PROVISION FOR SEWAGE DISPOSAL

11. “The Commission may not approve an application unless... adequate provision has been made for sewage disposal....” 12 M.R.S. § 685-B (4)(A).
12. “Where wastewater is to be collected and treated off-site by a municipal or quasi-municipal sewage treatment facility, the applicant must demonstrate that...the facility is fully licensed by the Maine Department of Environmental Protection, and the facility agrees to accept these wastes.” 01-672 C.M.R. ch. 10, § 10.25 (I) (2022)
13. The record in this proceeding is silent about the status of the licensure of the Moosehead Sanitary District, to the best of MRFC’s knowledge.
14. The record contains no evidence of whether the Moosehead Sanitary District has determined whether, under the provisions of the Maine Sanitary District Enabling Act, 38 M.R.S. §§ 1061-1210, it may accept wastewater from beyond the boundaries of its District, and if it wishes to do so, whether it must expand its boundaries in the manner prescribed by 38 M.R.S. § 1162.
15. While the public record contains evidence of an initial contact between the Applicant and the Moosehead Sanitary District, which has wastewater treatment facilities in Greenville, the record contains no evidence that the Applicant and the Moosehead Sanitary District have reached a contractual agreement for the Sanitary District to accept the proposed development’s wastewater. This, despite the Applicant’s testimony (in section 3 of its pre-filed testimony) that it started work on this project “4 years ago”, and despite having filed the Application which is the subject of this proceeding more than fourteen months ago.
16. The record contains no evidence that permits required by MDOT regulations, specifically the Location Permit required by 17-229 C.M.R. ch. 210, § 5, and the Highway Opening Permit required by 17-229 C.M.R. § 6, for constructing a sewer line under the pavement of Maine Routes 6 & 15 between the Access Road to the ski area and Greenville Junction (the location

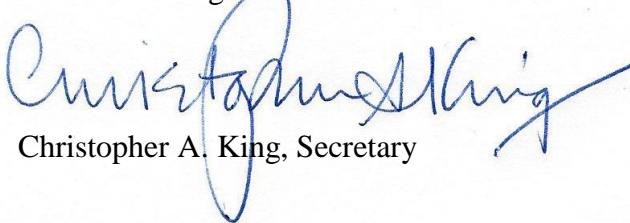
of the nearest connection to the Sanitary District's existing sewer line), have either been issued by MDOT to any entity, or have even been applied for by any entity, to the best of MRFC's knowledge.

17. The record contains no evidence that the applicant has plans for constructing and maintaining a subsurface wastewater disposal system or any system for disposing of the proposed development's wastewater, other than treatment by the Moosehead Sanitary District.

CONCLUSION

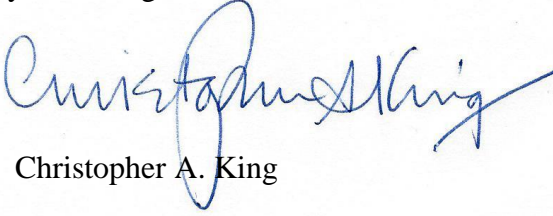
18. The Commission should not approve the pending application based on the current record because:
 - a. the Applicant has, so far, not produced evidence that its bond underwriter is committed to underwriting the bonds which will finance the proposed construction, and, under the Applicant's financing scheme, the bond underwriter's commitment is essential evidence of "adequate financial resources";
 - b. the Applicant, at present, can only assume that it will obtain regulatory approval for the residential phase of the project, which the Applicant has identified as a major source of servicing the bond debt necessary to construct its current proposal, and the Applicant's mere assumptions cannot be evidence of "adequate financial resources"; and
 - c. the Applicant has shown neither that it has a *binding* agreement in place with the Moosehead Sanitary District for wastewater disposal, nor that it has made any other adequate arrangements for wastewater disposal.
19. MRFC states no preference for which of the several courses of action the Commission could take, if it does not approve the application at this time.
20. MRFC continues to advocate for an economically viable redevelopment of the ski area on Big Moose Mountain that will enable local residents and visitors alike to once again "ski the view" available on the upper mountain, for decades of winters to come.

Respectfully submitted by
Moosehead Region Futures Committee



Christopher A. King, Secretary

I, Christopher A. King, do affirm under penalty of perjury, that the facts set forth in the above Pre-filed Testimony are true to the best of my knowledge, information, and belief.



Christopher A. King