

February 12, 2021

Peter Nesin, Chair  
City of Belfast Zoning Board of Appeals  
City Hall  
131 Church Street  
Belfast, ME 04915

RE: Upstream Appeal Improperly Includes New Evidence the  
Zoning Board of Appeals is not Authorized to Consider  
and Which Must be Stricken.

Dear Chair and Zoning Board of Appeals Members:

Counsel for Upstream Watch (“Upstream”) appealed to the Zoning Board of Appeals (“ZBA”) the City of Belfast Planning Board’s (“Board”) decision to grant Nordic Aquafarms, Inc. (“Nordic”) permits allowing construction of a land based aquaculture project (“Project”) that will develop several lots along U.S. Route One on and around the current location of the Belfast Water District (“BWD”). The Project represents significant investment in the Belfast economy with broad support.

Multiple federal and state agencies completed administrative review of the Project over the past two and a half years including the Board. This review process dug deep into every aspect of the Project including years of public engagement in Belfast. Upstream opposed the Project every step of the way- seeking delay and increased expense- in trying to deter its coming to be. These appeals are one more such attempt. The ZBA must defer to the Board’s findings and uphold its decision. Nordic respectfully requests that it do so as expeditiously as possible.

Here, Nordic objects to Upstream’s attempt to expand the scope of ZBA review in order to achieve further delay. Upstream is prohibited from submitting any new evidence in its appeal and all such evidence must be stricken from its review. Maine law, 30-A M.R.S. § 2691(3)(c), mandates that if a local ordinance establishes an appellate review process for a board, that body shall limit its review to the record established by the board or official whose decision is the subject of the appeal and to the arguments of the parties. The Belfast Ordinance defines ZBA jurisdiction over Board decisions as appellate not “de novo” review. Section 102-134(f) of the Belfast Ordinance states that “[i]n all administrative appeals, except appeals from actions of the code enforcement officer, the ZBA shall act as an *appellate* board which shall entertain *all evidence of record* submitted in the underlying hearing, including any transcripts, findings of fact, and decisions made by the board of original fact-finding jurisdiction.” The plain language of the ordinance does not grant the ZBA jurisdiction to conduct “de novo” hearings, except in cases of appeals from action, failure to act or decisions of the code enforcement officer. Belfast Ordinance, §102-134(g). Upstream appealed the Board’s decision to grant Nordic’s permit

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applications, not a code enforcement officer decision. Thus, Upstream cannot properly submit new evidence.

Despite the clarity of this rule, Upstream filed voluminous new evidence with its appeals including claims about the Belfast Water District's Talbot Well (which the Board already specifically rejected) and numerous "exhibits" to the appeal. The ZBA must strike these improper filings.

On December 9, 2020, Upstream filed a motion with the Board seeking to reopen the record to consider Upstream's claims about the Talbot Well that are referenced in the Site Plan appeal. The Board carefully considered Upstream's motion and Nordic's written response. The Board, in rendering its decision, painstakingly considered substantial evidence regarding the BWD's capacity to serve Nordic. This evidence included: the agreement between the BWD and Nordic as approved by the Maine Public Utilities Commission ("PUC"), the A.E. Hodson Capacity Report regarding the BWD water resource, Nordic's Water Resource Monitoring Plan ("WRMP"), and the City Engineer's review and assessment of the WRMP. The Board also retained experts to monitor proceedings of the Board of Environmental Protection ("BEP"), and peer review of this substantial evidence in order to ensure protection of the water resource, including BWD impacts to the Goose River and Goose River Aquifer. The Board's Findings of Fact and conditions integrated this evidence to address all applicable and relevant Ordinance criteria. Given its exhaustive review of the evidence timely submitted, the Board declined to reopen its record and rejected Upstream's motion as untimely.

The ZBA is not authorized to revisit this part of the Board's process. It must defer to the Board decision to strike Upstream's claims regarding the Talbot Well and similarly strike that information from this appeal.

Likewise, Upstream attaches to its appeal Exhibits A-F which exhibits were not presented to the Board. Because ZBA review is limited to the record established by the Board, such evidence must be stricken. Specifically, the ZBA must strike and decline to review or consider each and all of the Exhibits A-F appended to Upstream's Site Plan Appeal.

Thank you for your consideration.

Sincerely,



Joanna B. Tourangeau

CC: David Losee, Esq.