

**CITY OF BELFAST  
ZONING BOARD OF APPEALS**

UPSTREAM WATCH

Appellant,

v.

CITY OF BELFAST,

Appellee,

and

NORDIC AQUAFARMS, INC.

Applicant.

**UPSTREAM WATCH FAILED TO  
DEMONSTRATE STANDING**

Upstream Watch’s (“Upstream”) appeals to the City of Belfast Zoning Board of Appeals (“ZBA”) of the five permits granted by the City of Belfast Planning Board (“Planning Board”) for the Nordic Aquafarms, Inc. (“Nordic”) project should be dismissed. In short, Upstream’s appeal failed to document particularized injury as required by Belfast, Me. Code (“Ordinance”) § 102-134(a) to establish administrative standing. Standing is a threshold requirement such that, without submission of proof of standing within the appeal period, Upstream’s appeal is not justiciable and the ZBA cannot review it.

**I. Upstream did not make a showing of administrative standing as required upon filing an appeal to the ZBA.**

People or organizations appealing to the ZBA must demonstrate administrative standing in order for the appeal to go forward. *See Nergaard v. Town of Westport Island*, 2009 ME 56, ¶¶ 11-12, 973 A.2d 735. “[T]he question of whether a party has standing to bring an administrative appeal” before the ZBA “depends on the language of the governing ordinance.” *Id.* ¶ 12 (citing

*Nelson v. Bayroot, LLC*, 2008 ME 91, ¶ 9, 953 A.2d 378). Where an ordinance, such as the City of Belfast’s, limits administrative appeals of Planning Board decisions to “aggrieved” parties, the appealing party must establish, at the time they file the appeal, *how* they are aggrieved. *Id.* ¶¶ 13-14; *see also* Belfast, Me. Code (“Ordinance”) § 102-134(a) (“An administrative appeal shall be taken within 30 calendar days from the vote taken by the board from which a party is aggrieved . . . Forms for appeal shall be those approved by the Zoning Board of Appeals, and the aggrieved person shall set forth on said forms the grounds for the appeal.”).

The Ordinance defines an “aggrieved party” as:

A person whose land is directly or indirectly affected by the granting or denial of a permit or variance under the provisions of the zoning regulations (chapter 102), the shoreland zoning regulations (chapter 82) and the site plan review regulations (chapter 90), or a person whose land abuts land for which a permit or variance has been granted.

Ordinance § 66-1(c). In other words, within 30 days of the Planning Board votes on the Nordic project Permits, Upstream needed to file ZBA appeals that show Upstream meets the Ordinance definition of “aggrieved party.” Upstream made no such showing.

This “aggrieved party” requirement imposes an additional hurdle for a party seeking to appeal a permit decision. Party status before the Planning Board does not automatically provide standing to appeal to the ZBA. Rather, “[t]o establish standing, one must demonstrate not only that he or she had party status at the administrative proceedings, but, *in addition*, that he or she has suffered a particularized injury or harm.” *Nergaard*, 2009 ME 56, ¶ 16 (citing *Norris Family Assocs., LLC v. Town of Phippsburg*, 2005 ME 102 ¶ 11, 879 A.2d 1007). Likewise, “[a] particularized injury occurs when a judgment or order adversely and directly affects a party's property, pecuniary, or personal rights[,]” *id.* ¶ 18 (citing *Anderson v. Swanson*, 534 A.2d 1286, 1288 (Me.1987)), and the alleged injury must be “in fact distinct from the harm experienced by

the public at large[,]” *id.* (citing *Ricci v. Superintendent, Bureau of Banking*, 485 A.2d 645, 647 (Me.1984)).

There is no excuse for Upstream’s failure to establish standing, nor any authority authorizing the Board to extend the timeframe in which Upstream may do so. The ZBA’s appeal application asks parties filing an appeal to “[d]escribe why you believe you have ‘standing’ to file an appeal.” (Upstream’s Application for Appeal at 2). Upstream responded only: “Upstream Watch was qualified by the planning board as an ‘interested party’ and participated fully in the planning board proceedings. Upstream Watch was formed to restore the Little River that abuts the project. Volunteers use the trails, the bay and the river.” (Upstream’s Application for Appeal at 2). These three sentences do not show that Upstream is an aggrieved party as defined by the Ordinance- *i.e.* that it suffered particularized injury.

Devoid from this statement is an allegation that Upstream’s “land is directly or indirectly affected by the granting or denial of a permit” or that its “land abuts land for which a permit or variance has been granted.” *See* Ordinance § 66-1(c). In other words, Upstream completely ignores the specific requirements of the Ordinance. Nordic concedes that Upstream participated in the Planning Board proceedings. Yet, Upstream does not specify how it is an aggrieved party- *i.e.* how the Planning Board decisions injured its person, property, or pocketbook. Upstream does not assert that any members are Project abutters. Upstream does not own or claim the Little River nor do its “volunteers” possess or claim any rights that differ from those of the general public to use the Little River, or the Project property. Indeed, Upstream says simply that it formed with the purpose (but not the right) to restore the river and that its volunteers “use the trails, the bay and the river.” Upstream does not even assert that, if this use were a property right, that the Planning Board decisions impair those volunteers’ ability to “use the trails, the bay

and the river.” This is a far cry from demonstrating that any of these peoples’ “land is directly or indirectly affected by the granting or denial of a permit.” Ordinance § 66-1(c).

Further, it is not even clear how these “volunteers” relate to Upstream. While organizations like Upstream may demonstrate administrative standing by alleging that their members will suffer a particularized injury from a given decision, *see Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189, 195-96 (Me. 1978); *Sierra Club v. Morton*, 405 U.S. 727, 743 (1977), the organization must show not only that its members use the surrounding area, but that the members “use it in any way that would be significantly affected by the proposed actions of the [applicant].” *Fitzgerald*, 385 A.2d, at 196-97 (quoting *Sierra Club*, 45 U.S., at 735).

Upstream makes no such assertion. Upstream avers only that “[v]olunteers use the trails, the bay and the river.” Upstream does not claim that these “volunteers” are members of Upstream, and, even if they were,<sup>1</sup> Upstream provides no detail regarding the nature of their injury. Upstream’s failure to document the connection between the Planning Board decision and an injury to Upstream (or its members) is fatal, because such a showing is what is required of Upstream by the Ordinance. *See* Ordinance §§ 66-1(c), 102-134(a). Upstream did not meet the threshold for evidencing administrative standing. Without administrative standing, the ZBA cannot review Upstream’s appeal. *See Lindemann v. Comm’n on Gov’t Ethics and Election Practices*, 2008 ME 187, ¶ 8, 961 A.2d 538; *see also* Ordinance § 102-134(a) (limiting right to appeal to “aggrieved parties”).

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<sup>1</sup> Upstream bears the burden of proving injury to person, property or pocketbook flowing from the Planning Board decision. Thus, the ZBA cannot properly make assumptions favoring Upstream. Upstream needed to establish that its “volunteers” are Upstream members and that the Planning Board decision injured those members in order for Upstream to establish standing through them. Upstream did not claim the “volunteers” are members. Nor did Upstream demonstrate that these “volunteers” were injured by the Planning Board decision. More specifically, while “Good Karma Farm” is in the vicinity of the project, it is owned by Upstream board members, not volunteers. The appeal form contains no reference whatsoever to any injury that may be experienced by the owners of “Good Karma Farm.” Further, Good Karma Farm is not a Project abutter.

## CONCLUSION

Establishing administrative standing to participate before the Planning Board is a low bar- but in order to appeal the Planning Board’s decision, the Ordinance requires a showing that one is an “aggrieved party.” Specifically, one must demonstrate that one’s “land is directly or indirectly affected by the granting or denial of a permit” or one’s “land abuts land for which a permit ... has been granted.” Upstream’s voluminous appeal documentation is devoid of any such demonstration. Thus, Upstream fails to surmount the administrative standing requirement established by the Ordinance. Upstream’s submissions claim no harm to itself from the Planning Board decision- let alone one that differs from that of the general public. Consequently, the ZBA cannot review Upstream’s appeal.

Dated: February 22, 2021

*/s/ Joanna B. Tourangeau*

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