

**CITY OF BELFAST
ZONING BOARD OF APPEALS**

UPSTREAM WATCH

Appellant,

v.

CITY OF BELFAST,

Appellee,

and

NORDIC AQUAFARMS, INC.

Applicant.

**NORDIC AQUAFARMS, INC. REPLY
TO UPSTREAM WATCH APPEAL OF
SITE PLAN PERMIT**

Nordic Aquafarms, Inc. (“Nordic”) responds to Upstream Watch’s (“Upstream”) appeal before the City of Belfast Zoning Board of Appeals (“ZBA”) of Nordic’s Final Site Plan Permit (“Site Plan Permit”) from the City of Belfast (“the City”) Planning Board (“Planning Board”). As discussed in detail below, Upstream’s appeal is without merit. The ZBA must uphold the Planning Board’s decision because it is supported by competent record evidence.

PLANNING BOARD DECISION

The Planning Board issued all permits for construction of Nordic’s state-of-the-art land-based commercial aquaculture facility in Belfast, Maine on property currently owned by the Belfast Water District. Nordic will produce 33,000 metric tons of salmon (roughly 7% of current domestic demand per year), at roughly one-third of the carbon footprint as compared to imported salmon, with all wastewater processed through a state-of-the-art treatment plant, at a facility expected to add 100 or more direct jobs and drive economic development via synergies with businesses, educational institutions and governmental entities (the “Project”). (*See* Site Plan Permit

at 2). The Planning Board approved Project use of up to 1,205 gallons per minute of fresh water from three sources and 3,925 gallons per minute of salt water from Penobscot Bay. (Site Plan Permit at 2).

On June 11, 2019, after over a year of preliminary discussions with the City and submission of a pre-application to the City Code and Planning Department, Nordic submitted a Preliminary Site Plan application and applications for four additional related permits (a Zoning Use Permit, Significant Water Intake and Significant Water Discharge/Outfall Pipes Permit, Shoreland Zoning Permit, and Significant Ground Water Wells Permit). (Site Plan Permit at 4). The Planning Board began review of the Project on June 26, 2019. Planning Board review included 22 public hearings and 23 public meetings. (Site Plan Permit at 7-8). Following Planning Board approval of the Preliminary Site Plan application on July 15, 2020, the Planning Board conducted 16 more public meetings over six more months of review before approving each of the five permits with conditions on December 17 and December 22, 2020. (Site Plan Permit at 17-18). Upstream engaged in this process every step of the way.

JURISDICTION AND STANDARD OF REVIEW

Local ordinance and state law authorize the ZBA to review appeals of final, written Planning Board decisions. *See* 30-A M.R.S.A. § 2691(4); Belfast, Me. Code of Ordinance (“Ordinance”) § 102-132(6). The Ordinance mandates that ZBA review of Planning Board decisions is in an “appellate” capacity. Ordinance § 102-134(f). This means the ZBA may only review evidence considered by the Planning Board and “determine if the evidence of record compels the [ZBA] to find that all or part of the decision on appeal was arbitrary or capricious and compels a contrary decision based on substantial evidence in the record.” Ordinance § 102-134(f). In other words, the ZBA “*must* affirm the [Planning Board’s] findings of fact if they are

supported by *any* competent evidence in the record, even if evidence contrary to the result reached by the agency exists.” *Town of Kittery v. Dineen*, 2017 ME 53, ¶ 25, 157 A.3d 788, 794 (emphasis added); accord *Carryl v. Dep't of Corr.*, 2019 ME 114, ¶ 8, 212 A.3d 336, 339. Thus, the party seeking to overturn the Planning Board decision (Upstream) bears the burden of proving that the Planning Board’s decision is unsupported by substantial evidence and must be overturned. *Lane Construction Corp. v. Town of Washington*, 2008 ME 45, ¶¶ 13, 21, 942 A.2d 1202 (“the party that sought to overturn the Planning Board's finding . . . bears the burden of showing the Board's initial determination was not supported by substantial evidence in the record.”). Therefore, for Upstream to prevail in its challenges to the Planning Board findings, it must prove to the ZBA that those findings are not supported by a single shred of competent evidence. As detailed below, Upstream doesn’t even attempt to carry this burden and its appeal thus fails.

ARGUMENT

Upstream’s appeal takes issue with nearly everything the Planning Board did, or didn’t do. However, nowhere in Upstream’s voluminous and vociferous appeal does Upstream do what it must in order to prevail on appeal to the ZBA- namely to demonstrate that the Planning Board failed to base its decision on any shred of competent evidence in the record before it. Because Upstream fails to make this showing, the ZBA must uphold the Planning Board decision.

Nordic responds to each of Upstream’s arguments regarding all permits and specific to the Site Plan Permit in greater detail below. Arguments applicable to other Project permits are cross referenced and thereby incorporated into those Nordic responses in order to minimize repetition.

I. Upstream’s presents numerous arguments that are irrelevant to ZBA review.

Upstream makes a series of arguments that are wholly irrelevant to ZBA appeal standards or that fall outside the scope of the ZBA’s jurisdiction. Specifically, Upstream is not satisfied with Nordic’s answers to questions that arose in the permitting process, Upstream alleges that the Planning Board improperly relied on hearsay, Upstream asserts that the Maine Department of Environmental Protection did not properly issue the Project Air License, Upstream complains that the U.S. Army Corps of Engineers wrongly determined that the Project did not require certain approvals, and Upstream avers that the Planning Board does not possess the authority to obtain Ordinance compliance via conditions on approval that govern ongoing or specific Project operations. While these arguments are nonsensical, in order to protect the Planning Board decision on appeal, Nordic addresses each in greater detail, albeit briefly, below.

A. Upstream’s dissatisfaction with Nordic and the City’s responses to Upstream questions in the Planning Board process is not grounds for ZBA appeal.

Upstream opens its appeal by arguing that “Nordic never answered many of the questions addressed to it by the Planning Board,” and then asserts its dissatisfaction with Nordic’s answers to questions posed to Nordic during the Planning Board’s eighteen month review process. (Upstream Appeal of Site Plan Permit at 2-3). Setting aside that the facts don’t support Upstream’s argument,¹ and that it was Upstream and not the Planning Board that posed these questions at the October 28, 2020 Planning Board meeting,² the ZBA’s task is to determine whether the Planning Board’s decision was arbitrary, capricious, and not supported by any

¹ For example, Upstream argues that the Planning Board erred in taking answers to questions in October, 2020 as part of the Final Site Plan application process because that information was not included in the Preliminary Site Plan process. This makes no sense. The Planning Board issued Nordic Site Plan approval based on both the Final and Preliminary Site Plan applications- it does not matter when in its process the Planning Board took evidence, only that it did so and thus that the Planning Board’s decision is supported by competent evidence. (Site Plan Permit at 15; Upstream Appeal of Site Plan Permit at 1).

² See City of Belfast Planning Board Meeting Wednesday, October 21, 2020 Agenda Item 4.3 (attached for reference here as Exhibit 1). Note that all Nordic Exhibits are part of the Planning Board record and are attached hereto for the convenience of the ZBA.

competent evidence in the record. *See Town of Kittery v. Dineen*, 2017 ME 53, ¶ 25, 157 A.3d 788, 794. Thus, Upstream’s argument is beside the point and does not support appeal.

Upstream’s argument fails because, regardless of whether Nordic did or didn’t answer Upstream’s questions, each and every one of the Planning Board’s findings in the Site Plan Permit are well documented with citations to the evidence in the record before it. The ZBA cannot overturn those findings based on Upstream’s argument that the Planning Board should have considered more or different evidence.

Upstream’s failure to argue that the Planning Board decision is unsupported by competent evidence means it fails to carry its burden of proof on appeal and certainly does not provide any basis for Upstream’s challenge to the ZBA to plumb the hundreds of hours and thousands of pages of footage and documents comprising the Planning Board record to answer a question not properly before the ZBA operating within its appellate capacity- namely, did the Planning Board rely on competent evidence in making its decision.³

B. The Hearsay Rule doesn’t apply to Planning Board proceedings and, even if it did, it doesn’t prohibit reliance on administrative decisions or expert opinions as Upstream claims.

Upstream argues next that the Planning Board could not properly rely on evidence provided by Planning Board retained experts because that evidence is barred as hearsay. This argument fundamentally misunderstands the Planning Board process and authority. The Rules of

³ Upstream admits it relied only on the City’s website in determining what evidence the Planning Board considered. (Upstream Appeal of Site Plan Permit at 1). For example, Upstream argues that while there is reference to traffic estimate materials distributed to the Planning Board on January 29, 2020, it “reviewed information submitted to the City and have not found any supplemental information submitted by Nordic regarding off-site traffic.” (Upstream Appeal of Site Plan Permit at 2). However Nordic submitted a spreadsheet to the Planning Board on January 29, 2020 containing traffic estimates during construction and operation. (Attached hereto as Exhibit 2). Nordic also forwarded a letter from Central Maine Power (“CMP”) regarding CMP’s ability and willingness to provide the Project with all needed power to Planning Director Marshall during a meeting of the Planning Board on October 28, 2020. (Attached hereto as Exhibit 3). The Planning Board sought and obtained the competent evidence it needed to document compliance with each and all of its findings in the Site Plan Permit.

Evidence only apply in formal judicial proceedings—not in administrative hearings conducted by volunteer lay boards like the Planning Board and ZBA. Me. R. Evid. 101; *see also Portland Pipe Line Corp. v. Env'tl. Imp. Comm'n*, 307 A.2d 1, 14 (Me. 1973) (holding that the rules of evidence are not binding on administrative bodies). This makes sense, because the hearsay rule—like the rest of the rules of evidence—is riddled with exceptions, exclusions, and exceptions to exceptions that it is not reasonable to expect a local administrative board to administer. Generally speaking, hearsay is an out-of-court statement offered in court as proof (for example, a witness on the stand testifying that she heard another person say that the defendant's car ran the red light offered as proof that the defendant ran the red light). *See* Me. R. Evid. 802.

Here, the Planning Board retained experts to peer review Nordic's submissions and present evidence to the Planning Board regarding that expert's core competency. Many of the areas regulated by the Ordinance overlap with or are derived from substantially identical state or federal standards. The Planning Board's experts possess significant experience with all of these regulations. Evidence presented to the Planning Board by these experts is not precluded under the hearsay rule and is competent evidence on which the Planning Board can, and did, properly rely. (Shoreland Permit at 5).

Even if the hearsay rule did apply, it is a testament to Upstream's misunderstanding of it that the evidence it claims is hearsay is actually exempted from the hearsay rule. Specifically, record evidence from public administrative proceedings is generally admissible under an exception to the hearsay rule. *See* Me. R. Evid. 802(8). Further, when the hearsay rule does apply, a personal opinion provided by an expert witness is not within the hearsay rule because a

witness's own present opinion is not an "out of court statement." *Warren v. Waterville Urban Renewal Authority*, 235 A.2d 295, 303 (Me. 1967).

The Planning Board is authorized to retain and rely on experts for their expert assessments. Evidence provided the Planning Board by experts it hired to assess Nordic's application materials is, one might reasonably argue, the most competent evidence. It is certainly less biased than any evidence Upstream or Nordic might provide. That Upstream itself misapplies the inapplicable hearsay rule underscores that the ZBA need not linger on this issue.

C. Upstream appealed Nordic's Air License from the Maine Department of Environmental Protection to Superior Court and the ZBA cannot review DEP decisions.

Upstream asserts that the Maine Department of Environmental Protection ("DEP") wrongly issued Nordic's Air License and that therefore the Planning Board erred in finding that Nordic compliance with that Air License, as determined by DEP, would support a Planning Board finding that Nordic is in compliance with the "applicable state and local health and resource rules, regulations, and codes" as required by Ordinance § 90-42(b)(1)(e). (Upstream Appeal of Site Plan Permit at 4-50.) In other words, Upstream argues that Nordic compliance with the DEP Air License is not competent evidence of Nordic compliance with DEP air laws because DEP didn't do its job right when it issued the Air License. Even if Upstream were correct, which it isn't, neither the ZBA nor the Planning Board could properly say that Air License compliance isn't compliance because the Air License is wrong.

Neither the Planning Board nor the ZBA can look beyond the Planning Board's basic factual determination that DEP issued the Air License—which Upstream does not argue. The ZBA cannot consider appeals of permits not issued by the Planning Board. Municipal boards of appeal have jurisdiction over only what is granted to them by city charter or ordinance—neither

of which give the ZBA jurisdiction to review the Air License. *See* 30-A M.R.S.A. § 2691(4). The City could not confer this jurisdiction if it wanted to, as appeals of state agency decisions must be made to the courts under Rule 80C of the Maine Rules of Civil Procedure. *See* 5 M.R.S.A. § 11001; Me. R. Civ. P. 80C(a). Upstream filed an appeal of the Air License in court and the ZBA should not, and cannot properly, address Upstream’s claims regarding that permit. The Planning Board properly relied on competent evidence- a state agency issued Air License. No more is required and the ZBA must uphold this Planning Board finding.

D. Neither the Planning Board nor the ZBA can do as Upstream asks and tell the US Army Corps of Engineers what permits to issue for the Project.

Likewise, the ZBA cannot consider Upstream’s arguments that the U.S. Army Corps of Engineers (“USACOE”) wrongly determined what permits it must issue for the Nordic Project, again citing to the standard contained in Ordinance § 90-42(b)(1)(e). (Upstream Appeal of Site Plan Permit at 6). This is a basic tenet of federalism. *See* U.S. Const. Art, IV, ¶ 2 (establishing federal laws as the “supreme law of the land”). Upstream argues that the condition of approval that Nordic must comply with all USACOE permits “that may be issued to Nordic” somehow requires the Planning Board and now the ZBA to step into the shoes of the USACOE and determine what federal permits are required. (Upstream Appeal of Site Plan Permit at 6). As with the DEP Air License, the ZBA is without statutory or Ordinance authority to review the substantive decisions of the USACOE. It can only determine whether the Planning Board condition, requiring compliance with all other permits, is met by competent evidence supporting issuance of those permits and conditioning approval on compliance with those permits. Decisions by state and federal agencies are competent evidence upon which the Planning Board properly relied.

E. Upstream wrongly claims the Planning Board cannot condition permits.

Last in the category of Upstream arguments that misapprehend Maine municipal law, Upstream takes the position that the ZBA must remand all the permits to the Planning Board to strip those permits of all conditions because the Planning Board does not have authority to condition permits. (Upstream Appeal of All Permits at 1, 5-6). As Upstream itself points out, the Ordinance empowers the Planning Board to “approve, approve with conditions, or disapprove” a land use permit application. Ordinance § 102-106(b)(3); (Upstream Appeal of All Permits at 5-6). Upstream’s argument is founded on the false assertion that the Planning Board lacks “inherent” authority. It is black letter Maine municipal law that “[a] planning board has inherent authority to attach conditions to its approval of an application.” Maine Municipal Association, *A Manual for Local Planning Boards: A Legal Perspective* 44 (2017). This inherent authority arises from a local board’s authority to deny a permit application.

The Law Court views the distinction between the power to issue a conditional approval and the power to repeatedly deny an application pending an applicant’s correction of application deficiencies as “semantic” because “[a] series of disapprovals pending the applicant's correction of deficiencies in its proposal would achieve the same effect as conditional approval.” *In re Belgrade Shores, Inc.*, 371 A.2d 413 (Me. 1977). Conditions of approval imposed by a planning board are acceptable so long as they are reasonable and directly related to the review standards that govern the permit. *See Kittery Water District v. Town of York*, 489 A.2d 1091, 1093-94 (Me. 1985); *Boutet v. Planning Board of the City of Saco*, 253 A.3d 53, 55 (Me. 1969). Put simply, Upstream is wrong. The Planning Board possesses the inherent authority to condition approval—it is in fact the purpose of such conditions to provide flexibility to a Planning Board during the review process in the exact manner in utilized by the Planning Board in issuing all five Project Permits.

Upstream argues further that Planning Board use of conditions allows Nordic to circumvent Ordinance requirements. (Upstream Appeal of All Permits at 6). As noted in the cases above, this is not the function of conditional approval. Indeed, in the Site Plan Permit alone, the Planning Board's point by point recitation of competent record evidence demonstrating Nordic compliance with each Ordinance standard spans *thirty* pages. Nowhere does Nordic request nor the Planning Board purport to waive any Ordinance standard. Instead, the Planning Board uses approval conditions to provide further assurance of Ordinance compliance because those conditions require a specific action or inaction which enables City personnel a ready course of action to mandate Ordinance compliance including through enforcement action. Had the Planning Board simply stated that the Project complied, and excluded all conditions as requested by Upstream, the City would be limited in its ability to take future enforcement action.

As one example, the Site Plan Permit includes a condition requiring that the Project will not generate excessive noise both by providing evidence of the expected decibel level of the Project's operations *and* by binding Nordic, under penalty of revocation of its permit, that it will keep operational noise below a certain decibel threshold. (*See* Site Plan Permit at 41). This condition thereby both mandates current Ordinance compliance *and* provides for ongoing compliance.

Upstream repeats this argument about forty-five different conditions across the five Planning Board approvals. There is nothing improper about any of these forty-five conditions and these claims do not present proper grounds for appeal. The ZBA must decline Upstream's invitation hamstringing the Planning Board.

II. Upstream argues that the Planning Board didn't find Upstream's evidence credible. Upstream is right, but all that means is that the ZBA must uphold the Planning Board's decision.

Having dispensed with Upstream's many irrelevant arguments, we turn to Upstream's complaints that the Planning Board should have relied on the evidence Upstream presented. These complaints provide no basis for the ZBA to remand the Planning Board decision. Upstream's arguments sum to disagreement with the Planning Board's judgment about which record evidence it found more credible- namely that presented by Nordic and the Planning Board's own peer review experts. It is not enough for Upstream to argue that its evidence is better than that which the Planning Board relied on. The ZBA is not authorized to disagree with the Planning Board's judgment about the relative credibility of record evidence. As discussed above, the ZBA can only overturn the Planning Board decision if it determines that there was not a shred of competent evidence supporting the decision. Upstream does not even try to make that argument. Thus, the ZBA can only affirm the Planning Board decision.

A. The Planning Board decision that Nordic demonstrated sufficient "right, title, or interest" is supported by competent evidence.

Demonstrating "right, title, or interest" ("TRI") in the property where an applicant seeks to undertake activity requiring a permit is a threshold requirement for administrative standing. *Walsh v. Brewer*, 315 A.2d 200, 207 (Me. 1974). Establishing TRI does not require much- only that an applicant demonstrate "the kind of relationship to the site, that gives [it] a legally cognizable expectation of having the power to use that site in the ways that would be authorized by the permit or license [it] seeks." *Southridge Corp. v. Board of Env'tl. Prot.*, 655 A.2d 345, 348 (Me. 1995) (quoting *Murray v. Inhabitants of the Town of Lincolnville*, 462 A.2d 40, 43 (Me. 1983) (internal quotations omitted). While Maine courts clearly state that the absence of any cognizable legal interest in the underlying property is insufficient to establish TRI, *see*

Walsh, 315 A.2d, at 207-08, any “legally cognizable expectation” is enough. *See Murray*, 462 A.2d, at 43; *Southridge*, 655 A.2d, at 348. This is because the primary purpose of the standing determination is to ensure that agencies do not “dissipate their time and energies in dealing with persons who are ‘strangers’ to the particular governmental regulation and control being undertaken.” *Walsh*, 315 A.2d, at 207 n.4.

Establishing TRI requires a facial review of documentation or other evidence- not a substantive review of the validity of that evidence. In other words, TRI is not quiet title. Put simply, if an applicant wishes to build a shed and his mortgage plan shows that land as his, that’s TRI- the board cannot look beyond the face of the document to determine whether he really owns the land. Maine courts regularly distinguish between TRI and quiet title, because, while a municipal board must determine if an applicant can demonstrate TRI, “a municipal zoning case is not the proper forum for a private property dispute between neighbors.” *Tomasino v. Town of Casco*, 2020 ME 96, ¶ 8, 237 A.3d 175 (citations omitted).

Nevertheless, Upstream argues that the Planning Board and the ZBA should do precisely what the Law Court says it cannot do: examine the title issues that are currently being litigated in Superior Court and “[find] that the Eckrotes do not own the intertidal land between their upland and Penobscot Bay and [therefore] dismiss[] the applications.” (Upstream Appeal of Site Plan Permit at 1). The ZBA can only do what it is authorized to do on appeal- determine whether the Planning Board decision is supported by any competent evidence. The Site Plan Permit details the Planning Board’s extensive review of TRI including Nordic submission of documentation regarding its rights to the subject property. (Site Plan Permit at 9-10). Despite Upstream’s assertions to the contrary, the ZBA cannot wade into the title dispute between neighbors that is currently being reviewed in court.

B. The Planning Board correctly determined that the Ordinance exempts buried Significant Intake and Outfall pipes from setback requirements.

Ordinance provisions must be construed “reasonably in light of the purposes and objectives of the ordinance and its general structure.” *Grant v. Town of Belgrade*, 2019 ME 160, ¶ 14, 221 A.3d 112. With that in mind, the provisions of an ordinance must be read “in light of the entire ordinance scheme to achieve a harmonious result[.]” *Desfosses v. City of Saco*, 2015 ME 151, ¶ 8, 128 A.3d 648, and a body interpreting an ordinance must avoid interpretations that produce “absurd, inconsistent, unreasonable, or illogical results.” *Peregrine Developers, LLC v. Town of Orono*, 2004 ME 95, ¶ 16, 854 A.2d 216 (citing *Melanson v. Belyea*, 1997 ME 150, ¶ 4, 698 A.2d 492). This is precisely the exercise that the Planning Board undertook when it determined that while intake or discharge pipes are technically structures, “[t]he imposition of front and rear structure setback requirements [to the pipes] would nullify the main intent” of the City of Belfast’s 2018 Ordinance revisions which specify that:

above ground structures associated with the intake or discharge/outfall pipes [must comply] with the minimum structure setback requirement for the respective Shoreland District, subject to consideration of structure setback requirements that apply to a structure that is a water dependent activity.

Ordinance Chap. 82, Div. 17(3). The City properly interpreted this Ordinance language to mean that the setback requirements did not apply to those portions of the piping that were not above ground- i.e. that will be buried. The Planning Board noted that this Ordinance amendment was intended “to allow the transport of water to serve a facility such as the Nordic Aquafarms project[.]” and further that City setback requirements have never been applied to “any other service line, such as water, sewer, or electrical line.” (Zoning Use Permit at 9-10).

Despite the plain Ordinance language and Planning Board findings thereon, Upstream’s appeal asks the ZBA to remand the Site Plan Permit and other Project permits to the Planning

Board because it claims that the proposed intake and outflow pipes will violate front and rear setback requirements. The pipes will run entirely underground in the uplands and intertidal zones where they are within setback areas. (Significant Intake and Outfall Permit at 9-10.) Consequently, the ZBA cannot properly determine that the Planning Board's decision on this issue is unsupported by competent evidence. Following Upstream's perverse thinking would lead to the bizarre conclusion that the City amended its Ordinance to allow significant intake and outfall piping and specified that above ground structures associated therewith remained subject to setback requirements- but meant to also subject buried pipes to setback requirements that would, in fact, prohibit their installation. (Upstream Appeal of Site Plan Permit at 11-12; Upstream Appeal of Zoning Use Permit at 3-4). The ZBA is not authorized to substitute such a strained and illogical interpretation for the Planning Board's judgment and, accordingly, must reject Upstream's argument.

C. The Planning Board correctly determined that the Ordinance definition of structure height exempts portions of a structure, like chimneys or smokestacks, with no useable floor area.

Upstream's Site Plan and Zoning Use Appeals claim that the Planning Board wrongly determined that the columnar structures from the roof of the Project buildings that will direct fuel combustion emissions skyward are chimneys and exempt from the City's height standards.

Upstream argues that because Nordic's chimneys are not chimneys but are, rather, "smokestacks" they are subject to the Ordinance's height limit. (Upstream Appeal of Site Plan Permit at 15-16; Upstream Appeal of Zoning Use Permit at 2-3).

The Ordinance provides that the maximum structure height in the Project area is 45 feet. Ordinance § 102-684(e). Upstream asserts that "[t]he regulations limit the height of *non-*

architectural features to 45 feet.” (Upstream Appeal of Site Plan Permit at 2) (emphasis added).

The Ordinance defines height of a structure as:

The vertical measurements from the average finished grade of the ground to the highest point on the roof, excluding chimneys, antennas, steeples or cupola like architectural enhancements that do not result in an increase in the usable amount of floor area of a structure, and similar appurtenances which have no useable floor area.

Ordinance § 66-1(c) As Upstream helpfully notes, a smokestack, like a chimney, has no habitable floor space. (Upstream Appeal of Zoning Use Permit at 2-3). Thus, regardless of denomination- smokestack or chimney—the Planning Board correctly applied the plain language of the Ordinance and determined that the height of a structure limit of 45 feet did not apply to appurtenances with no useable floor area. The Planning Board’s decision on this point is well supported and the ZBA cannot overturn it.

D. The Planning Board determination that the Project will not result in undue water pollution is supported by competent evidence.

Upstream misstates the City’s water quality standard in an attempt to create an issue where there is none. Ordinance § 90-42(b)(1) states that “[t]he proposed development will not result in undue water or air pollution,” and then enumerates five sub-standards that the Planning Board must evaluate in determining compliance with that standard. Upstream argues that this standard actually means that there can be *no* change in air or water quality whatsoever (although the standard plainly says no *undue* water or air pollution) and then that Nordic’s DEP Water Quality Permits do not establish that there will be no change in air or water quality- thus, according to Upstream, the ZBA must overturn the Planning Board decision. (Upstream Appeal of Site Plan Permit at 4-5).

The fact is that this Site Plan standard required the Planning Board to determine that there would be no *undue* water or air pollution based on specific criteria established in ordinance. That

is exactly what the Planning Board did. As explained in the Site Plan Permit, the Planning Board reviewed the DEP Water Quality Permits and determined, based on the conditions contained within that permit and evidence provided by third-party consultants, that the Project met the City's standard so long as Nordic complied with the DEP Water Quality Permits. The Planning Board memorialized this by requiring Nordic's compliance with the DEP Water Quality Permits as a condition to the Site Plan Permit.⁴ (Site Plan Permit at 21-22). This constitutes competent evidence supporting the Planning Board finding which the ZBA cannot overturn.

E. The Planning Board conclusion that the Project will not cause an Unreasonable Burden on the Existing Municipal Water Supply is Supported by Competent Evidence.

Upstream next argues that the Planning Board erred in determining that there was sufficient water capacity to provide Nordic with the estimated amount of freshwater that the Project would require because the Planning Board did not accept evidence that Upstream thought it should. Upstream Site Plan Appeal at 6-7.⁵ However, as discussed above, the ZBA cannot properly substitute its judgment for that of the Planning Board. *See Tremblay v. Land Use Regulation Comm'n*, 2005 ME 110, ¶ 15, 883 A.2d 901 (holding appellate review precludes substituting fact-finder's judgment when record is sufficient to support finding). The Site Plan Permit exquisitely details the competent evidence supporting this Planning Board finding. Specifically, the Planning Board references evidence from the Belfast Water District's expert,

⁴ In this same section, Upstream argues that the Project fails "to comply with the city requirements regarding groundwater quantity." (Upstream Appeal of Site Plan Permit at 5). This argument is addressed in Nordic's response to Upstream's appeal of the Significant Groundwater Well Permit and incorporated by reference here.

⁵ By letter dated February 12, 2021 and email dated February 17, 2021 both incorporated by reference herein, Nordic objected to Upstream's repeated attempts to submit new evidence to the ZBA including through testimony from its counsel, Maine Attorney David Losee, masquerading as a response to Nordic's Motion to Strike. For example, the Planning Board Site Plan Permit at 25 specifies its consideration of a refusal to reopen the record to add Upstream's claims regarding the Talbot Well. While Nordic does not reply to Upstream's new evidence here because it would create an unclean record, should the ZBA decline to strike that evidence, Nordic respectfully requests the opportunity to provide a reply in rebuttal.

third-party consultant (A.E. Hodson) who prepared a report stating their expert conclusion that the Belfast Water District's existing wells could supply sufficient water from the Project and that bringing the Talbot Well online would allow for excess capacity supporting service to new customers or increased demand from existing customers (above and beyond Nordic). (Site Plan Permit at 23-24). Notwithstanding the fact that Upstream challenges this factual determination, the ZBA cannot overturn a Planning Board finding supported by competent evidence.

F. The Planning Board's finding that Nordic demonstrated financial capacity is supported by competent evidence.

The Ordinance required the Planning Board to determine that Nordic possesses "adequate financial and technical ability to develop the project in a manner consistent with state and local performance, environmental and technical standards." Ordinance § 90-42(b)(10). The Planning Board found that Nordic demonstrated sufficient financial capacity to develop the Project, based on the financing plan provided by Nordic during the application process, as well as responses to Planning Board questions provided by Nordic's representatives, including Nordic's chief financial officer. (Site Plan Permit at 31-32). Planning Board reliance upon this evidence is sufficient to ground the Planning Board decision. However, the Planning Board did not stop there. Instead, the Planning Board included Conditions 35 and 36 requiring Nordic to submit evidence of sufficient funding to complete each phase of Project construction and to provide a performance guarantee to the City prior to commencing site work. (Site Plan Permit at 75-77). The Ordinance requires nothing more and the Planning Board decision is supported by competent evidence and cannot be overturned by the ZBA.

Upstream argues that the Planning Board erred in not requiring Nordic to establish the performance guarantee prior to the Planning Board's issuance of the Site Plan Permit. Of course, the Ordinance does not require an applicant to establish a performance guarantee before it

approves performance of the work to be guaranteed. The Planning Board's authority to require a performance guarantee depends upon its prior approval specifying the nature of the performance that is to be guaranteed. These Upstream arguments do not present credible grounds for appeal.

G. The Planning Board determination that Nordic possesses technical capability is supported by competent evidence.

The Site Plan Permit describes Nordic's experience with three existing land based aquaculture facilities that utilize Recirculating Aquaculture Systems ("RAS") and the deep competence of the Nordic team and third party consultants and inspectors who will ensure Nordic's ongoing compliance with local, state, and federal regulations as required by conditions to the Planning Board Site Plan Permit. (Site Plan Permit at 32-33). The Planning Board weighed Nordic's evidence, as peer reviewed by the Planning Board's expert team, against concerns raised by some members of the public and parties-in-interest regarding differences in size and scope of the current Project as compared to Nordic's other ventures and made the factual determination that Nordic demonstrated sufficient technical capacity. (Site Plan Permit at 33).

The only issues that Upstream raises to challenge these findings rely on evidence not properly in the record and therefore outside of the proper scope of the ZBA's limited appellate review.⁶ (Upstream Appeal of Site Plan Permit at 9-10). Even if the ZBA could properly consider Upstream's evidence, which it cannot, it doesn't matter if Upstream disagrees with the evidence the Planning Board relied on or if there is evidence that conflicts with the evidence the Planning Board relied on. Frankly, it doesn't even matter if the ZBA does not agree with the evidence that the Planning Board relied on. The only question that the ZBA can answer is

⁶ Nordic timely objected to Upstream's attachment of Exhibits A-F to its appeal, which documents were not presented to or part of the record before the Planning Board. The ZBA is not authorized to take new evidence and these materials should be struck from the record. In order to avoid contaminating the record, Nordic did not respond to new issues here. Should the ZBA decline to strike Upstream's new evidence, Nordic respectfully requests the opportunity to provide a rebuttal reply.

whether the Planning Board relied on competent evidence in making its decision. If it did, the ZBA must uphold the decision and cannot substitute its judgment for that of the Planning Board. *Tremblay*, 2005 ME 110, ¶ 15, 883 A.2d 901.

H. The Planning Board determination that the Project will not adversely affect the quality or quantity of groundwater is supported by competent evidence.

The Planning Board determined that the Project will not “adversely affect the quality or quantity of groundwater or any public or private water source, provided Nordic complies with all conditions of approval established by the DEP and the City of Belfast.” (Site Plan Permit at 34). In making this determination, the Planning Board relied on copious evidence including: the information Nordic submitted to the DEP as part of its state environmental permitting, Planning Board expert independent consultant assessment of Nordic’s groundwater documentation, and the numerous public meeting discussions of groundwater issues in the context of the Site Plan and the Significant Groundwater Permits. (Site Plan Permit at 35). Planning Board review of this competent evidence supported its conclusion that Nordic’s proposed surface water use would not impact groundwater levels, that the levels of surrounding wells will be monitored at Nordic’s expense to ensure that any unforeseen adverse impacts would be rapidly remediated, and that Nordic’s proposed withdrawal of up to 455 gallons per minute of water from the ground could be continually operated “without unreasonable adverse impacts to the bedrock aquifer or groundwater flow patterns, surrounding private wells including from saltwater intrusion, or cause ground subsidence.” (Site Plan Permit at 34-36; Groundwater Permit at 6-7).

Upstream again challenges the Planning Board’s findings, first asserting that lowering of surrounding well water levels would constitute an “unreasonable adverse impact,” and that the Planning Board was simply wrong about the potential for saltwater intrusion. (Upstream Appeal of Site Plan Permit at 10; Upstream Appeal of Groundwater Permit at 3-4). Despite Upstream’s

exhortations, the ZBA cannot second guess the Planning Board's fact-finding. Because the Planning Board's findings are based on competent evidence, the ZBA cannot overturn its decision.

I. The Planning Board determination that the Project will provide for adequate disposal of solid waste is supported by competent evidence.

The Planning Board found that "Nordic can successfully manage all types of solid wastes generated by their proposed operation, and that Nordic can maintain safe and healthful conditions." (Site Plan Permit at 38). The Planning Board based this finding on Nordic's submission of letters and other documentary evidence demonstrating that it "can secure contractual services from experienced companies to safely and effectively dispose of solid wastes generated on the site, as well as potential wastes associated with typical fish die-offs and a catastrophic fish die-off." (Site Plan Permit at 38). To ensure Nordic's ongoing compliance with this Ordinance standard, the Planning Board imposed five conditions specifically regulating Project operations in the areas of waste disposal, odor control, and emergency response. (See Site Plan Permit at 38-39).

Upstream argues first that "there is no provision for, and there is no space for, storage of solid waste in the event of an emergency." (Upstream Appeal of Site Plan Permit at 11). Even though the Ordinance does not require enactment of an emergency solid waste storage plan, the Site Plan Permit requires that Nordic must present an Emergency Response Plan that will address the issue Upstream raises. Specifically, Nordic must develop a plan that accounts for the potential waste associated with any unanticipated closure of the facility or fish die-off. (Site Plan Permit at 60-61). The Site Plan Permit therefore requires Nordic to demonstrate precisely what Upstream demands here before construction, never mind operation, may commence on the Project and even in the absence of clear Ordinance authority to implement such a requirement.

Second, Upstream argues that Nordic failed to produce an “odor management plan” and that therefore the Planning Board could not properly approve the Project. (Upstream Appeal of Site Plan Permit at 11). Setting aside again that the Ordinance does not require an “odor management plan,” Ordinance § 90-42(b)(18), the Planning Board implemented Condition 16 to the Site Plan Permit which requires this plan. Specifically, Condition 16 requires that Nordic not only comply with the odor and environmental standards contained in § 102-1127 but that Nordic must also develop an odor complaint response and resolution protocol that includes notifying the City within one business day of receiving any odor complaint. (Site Plan Permit at 59). The Planning Board thereby (despite Upstream’s complaints about its use of conditions) addressed Upstream’s concerns in the Site Plan Permit even though the Ordinance does not require the plans Upstream sought. The Planning Board considered, required and its decision regarding emergency response and odor control is founded on competent evidence.

J. The Planning Board determination that the Project will not create an unreasonable interference with the use and enjoyment of neighboring properties is supported by competent evidence.

The Planning Board determined that Project noise levels will not unreasonably interfere with neighbors because Nordic’s noise projections for regular operations did not exceed the Ordinance noise levels, because DEP imposed more onerous noise requirements upon the Project than are required by ordinance, and because the Planning Board implemented Condition 19, which requires Nordic to comply with the more rigorous noise regulations imposed by the DEP, enforceable by the City Code Enforcement Officer. (Site Plan Permit at 41, 61-62). The Planning Board noted that Ordinance noise standards only apply to operation, not construction, but because of public concerns about the Project, the Planning Board would also limit construction noise.

Upstream argues that Nordic failed to adequately answer Planning Board questions regarding operational noise generation. (Upstream Appeal of Site Plan Permit at 12-13). As discussed above, Upstream’s focus on whether it agrees that Nordic answered a question or not is misplaced. Even if Nordic didn’t answer a single question (Nordic most assuredly answered hundreds of questions in the dozens of meetings on the Project) the ZBA still could not overturn the Planning Board decision so long as it is based on any shred of competent evidence. Here, the Planning Board relied not just on Nordic answering questions, but on an expert noise study.

Upstream then argues that the noise study the Planning Board relied on is insufficient. Again, whether Upstream or the ZBA agree with the Planning Board’s assessment of the quality of the noise study is beside the point. It is competent record evidence that firmly supports the Planning Board conclusion and thus that conclusion cannot be overturned on appeal.

K. The Planning Board determination that the Project complies with federal and state laws when hazardous waste is generated or stored on site is supported by competent evidence.

The Site Plan Permit documents an absence of evidence that “hazardous waste” defined as “[a]ny gaseous, liquid, or solid materials or substance designated as hazardous by the United States Environmental Protection Agency or state department of environmental protection” will be generated by or stored at the Nordic Project. (Site Plan Permit at 44; Ordinance § 90-1.) Nevertheless, the Planning Board implemented Condition 17, which requires that Nordic notify state and local authorities regarding certain hazardous materials at the Project and that Nordic comply with all state and federal regulation of disposal of non-hazardous wastes. (Site Plan Permit at 60).

Upstream then creates a hypothetical situation: *If* Nordic feeds small fish to its stock, and *if* all fish contain heavy metals, and *if* those metals leave the fish in their feces, and *if* those

metals are not caught in Nordic's wastewater treatment plant, and *if* they are discharged, *then* those metals may enter Penobscot Bay. Upstream Site Plan Appeal at 14. Upstream has no record support for any of these ifs, nor has Upstream demonstrated that even if all of these ifs came to be, it would result in Nordic generating hazardous waste pursuant to state or federal environmental laws (it wouldn't). Upstream's argument is a red herring. The Planning Board determined, based on competent record evidence, that Nordic complied with this Ordinance standard and it implemented a condition ensuring compliance going forward. No more is required.

L. The Planning Board finding that the Project would not create a substantial risk of air pollution is supported by competent evidence, and neither the Planning Board nor ZBA can apply DEP's Site Location Of Development Act standards.

Last, with regard to its Site Plan Permit Appeal, Upstream asks the Planning Board and now the ZBA to assume DEP's jurisdiction and implement the provisions of the Site Location of Development Act ("SLODA"). (Upstream Appeal of Site Plan Permit at 14-15). Upstream argues that the Planning Board "ignored" the SLODA requirements "notwithstanding" the Planning Board's conclusion that the "City does not have specific standards to regulate air emissions" and the Planning Board's factual finding that Nordic compliance with the "strict limits" on Nordic operations imposed by the DEP's Air License (which Upstream appealed to court) will satisfy the general air quality standard set forth in the Ordinance. (Upstream Appeal of Site Plan Permit at 14-15). As noted above, neither the Planning Board nor the ZBA could properly do what Upstream asks. They are creatures of the Ordinance. SLODA is, as Upstream well knows given its heated opposition and pending court appeal of the DEP SLODA permit, DEP's territory- not the City's.

Upstream next argues that the Planning Board “did not require a local analysis of air pollution.” (Upstream Appeal of Site Plan Permit at 15). Upstream does not cite any Ordinance requirement, nor is there one requiring the Planning Board to conduct local analysis of air pollution. Without Ordinance authority to do so, the Planning Board cannot willy nilly require such analysis- particularly given that this area is occupied by the Clean Air Act which mandates federal delegation of authority to regulate in this area- which the City did not seek or obtain. Planning Board reliance on the DEP Air License supports the Planning Board’s finding that there are “strict limits on the amount of fuel that Nordic could use to operate its on-site generators.” (Site Plan Permit at 45). Though it could have stopped here, the Planning Board also imposed a condition that requires Nordic to obtain approval if it “proposes to emit more emissions or generate more power than is permitted in the DEP Permit.” (Site Plan Permit at 45).

Finally, Upstream claims that the Ordinance air quality standard is not met because the Planning Board failed to assess construction dust. (Upstream Appeal of Site Plan Permit at 15). The Planning Board considered and rejected this Upstream argument.

The Ordinance, § 90-42(b)(27), requires the Planning Board to determine that “[n]o use [is] allowed which creates a substantial risk of air pollution” (emphasis added). The Planning Board concluded that “use,” as that term is used in the Ordinance, does not include construction. Thus, the Planning Board determined that it could not properly consider construction dust in determining compliance with the Ordinance air quality standard. Despite having no Ordinance authority to do so, the Planning Board required Nordic, via Condition 39(b) to the Site Plan Permit, to minimize dust generated from construction using a series of methods established in that Condition 39(b). (Site Plan Permit at 80). Upstream again fails to demonstrate,

as it must in order to carry its burden of proof on appeal, that the Planning Board decision is in any way unsupported by competent evidence.

CONCLUSION

Upstream's appeal, while lengthy and comprised of numerous, overlapping, poorly argued points, does not even claim (likely because the Site Plan Permit is so well drafted with voluminous citations for each finding to competent record evidence) that any portion of the Site Plan Permit is unsupported by competent record evidence. Thus, Upstream fails to carry its burden and its appeal must fail.

Dated: February 22, 2021

/s/Joanna B. Tourangeau
Joanna B. Tourangeau, Maine Bar No. 9125
Grady R. Burns, Bar No. 6605

Attorneys for Nordic Aquafarms, Inc.

DRUMMOND WOODSUM

84 Marginal Way, Suite 600
Portland, Maine 04101-2480
Tel: (207) 772-1941

EXHIBIT 1

**CITY OF BELFAST PLANNING BOARD MEETING
WEDNESDAY, OCTOBER 21, 2020 6:00 PM**

NOTES TO PUBLIC:

Due to the COVID-19 pandemic the Planning Board will not physically be meeting in the Council Chambers of Belfast City Hall to conduct the October 21 Board meeting. Thus, the public will have no access to City Hall during the meeting. The Board will be conducting the meeting electronically via a ZOOM webinar, and Board members will be participating in the meeting via ZOOM from their respective homes.

Persons who want to view the meeting can do so on the live stream on the City of Belfast website, cityofbelfast.org, or watch it live on BEL-TV. The video of the meeting will be posted on the city website a day or two after the meeting is conducted. The Planning Board has not scheduled any public hearings for this meeting, thus, the Board will not be accepting public testimony at this meeting.

BOARD AGENDA

1. **Call to Order & Roll Call.** Hugh Townsend, Chair, Declan O'Connor, Secretary, David Bond, Wayne Corey, and Geoff Gilchrist, regular members and Daisy Beal and Steve Ryan, alternate members. Note: Declan O'Connor will chair the meeting discussion on the Nordic Aquafarms application. Steve Ryan has recused himself from participating in the Nordic application.
2. **Adoption of Agenda.**
3. **Review of Meeting Minutes**
4. **Development Review –Nordic Aquafarms applications to construct a land-based salmon aquaculture facility near the lower reservoir of the Little River.** (See description of applications at end of agenda).
 - 4.1 Description of status and schedule for Planning Board review of Nordic Aquafarms permit applications - Wayne Marshall, Project Planner, Code & Planning Department.
 - 4.2 Board review and discussion of Memorandum dated October 14, 2020 from Mandy Olver, Olver Associates (City Engineer) regarding her assessment of the draft Dept of Environmental Protection (DEP) Findings of Fact to the Bureau of Environmental Protection (BEP) regarding the Natural Resources Protection Act (NRPA) and Site Location of Development Act (SLODA) Permit applications. - Mandy Olver, Olver Associates (City Engineer), will take a lead role in this review.
 - 4.3 Board review of questions posed by Upstream Watch in their October 7, 2020 public comment to the Planning Board - Schedule A, Questions and Requests for Information

from the Belfast Planning Board to the Applicant, Nordic Aquafarms. - Wayne Marshall, Project Planner, will take a lead role in this review.

4.4 Board consideration of City Shoreland Permit application; reference Chapter 82, Shoreland. Continuation of Board discussion from October 14, 2020 meeting. Portions of project site are in General Purpose District of the Shoreland Zone (area near existing Belfast Water District offices) and portions are in the Limited Residential District (area for intake/discharge pipe on Ekrote property). - Wayne Marshall, Project Planner, will take a lead role in the Board's review of the Shoreland Permit application.

4.5 Board review of Significant Water Intake/Significant Water Discharge Permit application. Permit application mostly involves the easement area on the Ekrote property that will be used to install the pipes and locating the pipes within the Route One right-of-way. Permit involves properties that are in the Limited Residential District of the Shoreland Zone (Chapter 82) and the Residential II and Route One South Business Park Zoning Districts (Chapter 102). Permit required pursuant to Chapter 102, Zoning, Article IX, Performance Standards, Division 2, Environmental Standards, Section 102-1138, Significant Water Intake or Significant Water Discharge/Outfall Pipe, and Chapter 82, Shoreland, Article IV, Districts, Sec. 82-135, Table of Land Uses, and Article V, Land Use Standards, Division 17, Significant Water Intake or Significant Water Discharge/Outfall Pipe. - Wayne Marshall, Project Planner, will take a lead role in the Board's review of the Intake/Discharge Permit.

4.6 Board review of Significant Groundwater Well Permit. Permit application to establish a series of 3 Groundwater Wells on the Nordic Aquafarms site that are located within the Route One South Business Park Zoning District. Permit required pursuant to Chapter 102, Zoning, Article VIII, Supplementary District Regulations, Division 7, Significant Groundwater Well Permit, and Article IX, Performance Standards, Division 2, Environmental Standards, Sec. 102-1137. Significant Groundwater Well. It is noted that no Groundwater Wells are proposed to be located in the Shoreland Zone, thus, the Board will not be considering the issuance of a Shoreland Permit for any Significant Groundwater Wells. - Wayne Marshall, Project Planner, Matt Reynolds, Drumlin Environmental, and Mandy Olver, Olver Associates, will take a lead role in the Board's review of the Groundwater Well Permit.

4.7 Review of Board schedule for future meetings on Nordic applications.

5. Code & Planning Department Report

6. Other Business

7. Adjournment

OVERALL DESCRIPTION OF NORDIC APPLICATIONS

Nordic Aquafarms, Inc. has submitted an application to develop a land-based salmon aquaculture facility on a 56 acre site located on the northwesterly side of Route One near the lower reservoir of the Little River. The applicant proposes to develop the project in two phases over 5 or more years. Total production capacity at build-out is estimated to be 72,732,000 pounds (33,000 metric tons) of salmon per year. Phase 1 involves the construction of about 414,450 square feet of buildings, and Phase 2 involves the construction of about 392,804 square feet of buildings; each phase involves rearing and processing a similar amount of salmon.

The facility would use a Recirculating Aquaculture System (RAS) to process water used in rearing the salmon in land-based tanks. At full build-out, the facility is projected to use about 1,205 gallons of freshwater per minute (gpm) and about 3,925 gallons of saltwater per minute. The freshwater is proposed to be obtained from three sources: the Belfast Water District (about 500 gpm), on-site groundwater wells (about 455 gpm) and the extraction of surficial water from Reservoir 1 on the Little River (about 250 gpm). Saltwater will be obtained from Belfast Bay via two new off-shore water intake pipes that extend about 6,300 feet from the High Annual Tide into the Bay. The RAS system also involves Nordic Aquafarms treating and regularly discharging the freshwater and saltwater (wastewater/effluent) used to rear salmon back into Belfast Bay via a discharge pipe that extends offshore about 3,400 feet from the High Annual Tide.

The 56 acre site that Nordic Aquafarms, Inc. proposes to develop includes parts of all of the following properties, as such are identified on the City of Belfast Tax Assessor maps:

- Map 29, Lot 39, located at 285 Northport Avenue that is owned by the Belfast Water District (about 29 acres):
- Map 4, Lot 104, located off of Northport Avenue that is owned by Sam Cassida (about 12.5 acres):
- Map 4, Lot 12A, located at 22 Perkins Road that is owned by Goldenrod Properties, LLC; [dba Mathews Brothers] (about 14.5 acres): and
- Map 29, Lot 36, located at 282 Northport Ave, that is owned by Richard Eckrote (easement for construction of water intake/wastewater discharge pipes).

The Planning Board is responsible for the review of the following permit applications:

- Chapter 82, Shoreland. Shoreland Permit for construction of facilities in the Shoreland Zone, including but not limited to the proposed water intake and discharge pipes. Part of project site is in the General Development Shoreland district and the easement area on the Ekrote property is in the Limited Residential Shoreland district.
- Chapter 90, Site Plan. Project requires a Site Plan Permit for a project that may substantially affect the environment. Board is now reviewing the Preliminary Plan application.
- Chapter 102, Zoning. Project requires a Use Permit for a project that qualifies as a Site Plan. Most of project is in the Route One South Business Park zoning district and the Ekrote property easement area is in the Residential II zoning district.
- Chapter 102, Zoning. Project requires a permit for the location and use of Significant Groundwater Wells; reference Article VIII, Division 7.
- Chapter 102, Zoning. Project requires a permit for the location of Significant Water Intake and Significant Water Discharge/Outfall Pipes; reference Article IX, Div 2.

The Planning Board approved the Preliminary Site Plan application for the Nordic project at its meeting of July 15, and is now preparing to commence its review of the Final Site Plan application as well as the other permit applications to the City. Questions regarding the Board's review of the Nordic applications

should be directed to Wayne Marshall, Project Planner for the Code and Planning Department at wmarshall@cityofbelfast.org, or by calling 338-1417 x 125.

EXHIBIT 2

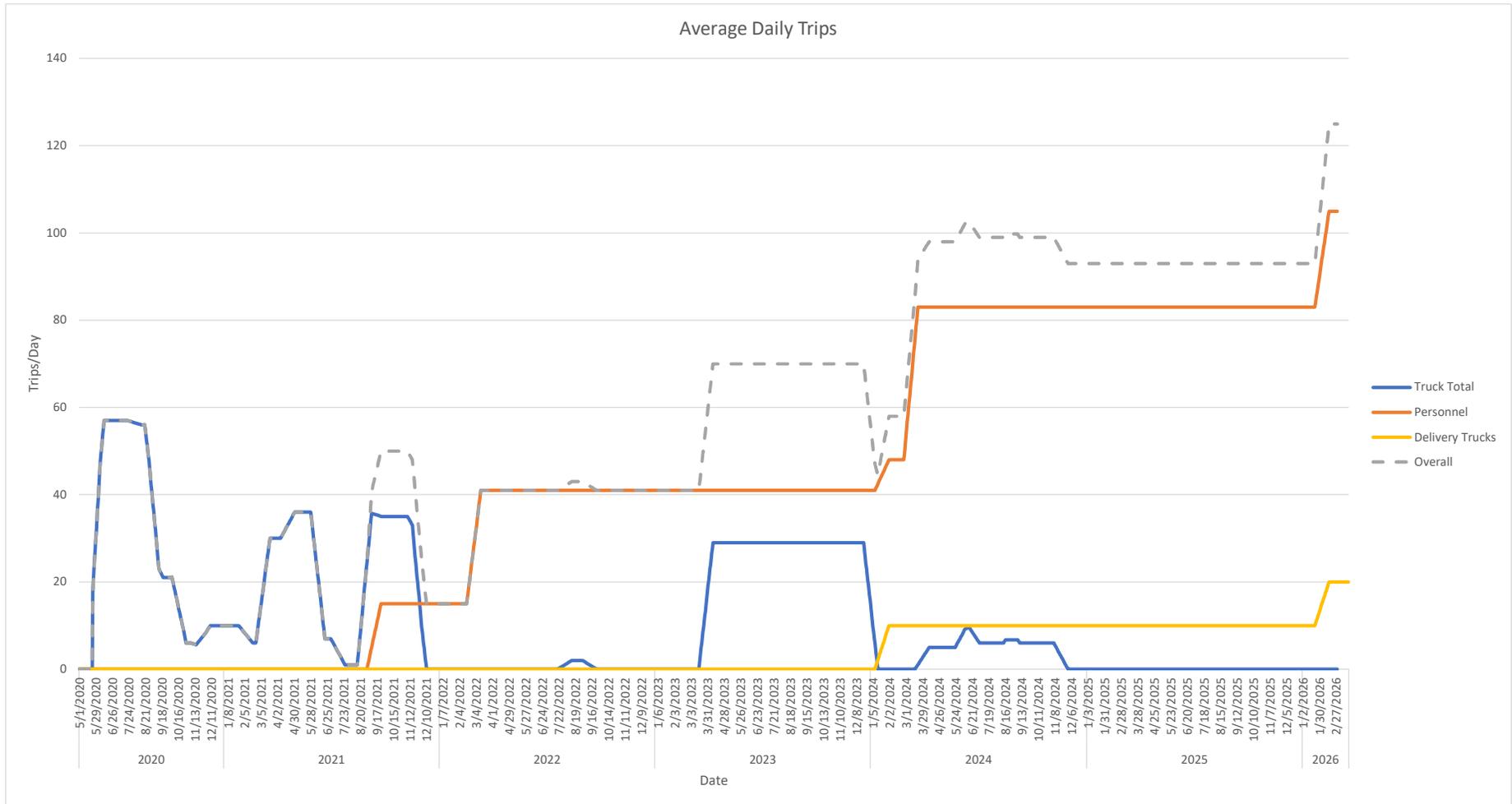


EXHIBIT 3



2/20/19
Belfast, ME
RE: Nordic Aquafarms Belfast

To Whom it May Concern

Thank you for inquiring about the availability of electric service for the proposed Nordic Aquafarms facility in Belfast, ME. We are pleased to inform you that Central Maine Power Company ("CMP") has transmission and distribution facilities in the vicinity of the proposed site. The actual service configuration will be determined based on the site requirements and technical specifications determined by a feasibility, engineering and impact study conducted by CMP. The service provided and associated costs would be in accordance with applicable CMP tariffs on file with the Maine Public Utilities Commission ("Commission") and Federal Energy Regulatory Commission ("FERC") at the time contractual arrangements are made.

This letter should not be considered a contractual commitment to serve the proposed project, and is provided for informational purposes only. As a public utility, CMP is under the jurisdiction of the Commission and FERC, and attests an electric service will be provided in accordance with the rules and regulations in effect at the time service is provided.

Sincerely,

A handwritten signature in black ink that reads "Jennifer P. Mazzaro".

Jennifer Mazzaro
Key Account Manager