

**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
ZONING USE PERMIT**

Nordic Aquafarms, Inc. (“Nordic”) responds to Upstream Watch’s (“Upstream”) appeal to the City of Belfast Zoning Board of Appeals (“ZBA”) of City of Belfast Planning Board issuance of a Zoning Use Permit to Nordic. As discussed in detail below, Upstream’s appeal is without merit and the ZBA must uphold the Zoning Use Permit.

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 the Project to use 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 its review of the Project on June 26, 2019, and proceeded to conduct 22 public hearing and 23 public meetings regarding the Project. (Site Plan Permit at 7-8). Following the Planning Board's approval of the Preliminary Site Plan application on July 15, 2020, the Planning Board conducted 16 more public meetings over six more months before approving each of the five Project 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 (“Ordinance”) § 102-132. The Ordinance mandates that ZBA review is “appellate.” Ordinance § 102-134(f). This means that 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, 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 of the Zoning Use Permit merely repeats arguments from its appeals of the Site Plan and Shoreland Zoning Permits. In hopes of facilitating efficient ZBA review by avoiding duplication, Nordic lists each of Upstream's arguments regarding the Zoning Use Permit below and the location of Nordic's substantive response which is incorporated by reference- but not in full text- here.

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

Please see Nordic's Response to Upstream's Site Plan Permit Appeal at pages 5-6 for a detailed discussion of this issue.

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

Please see Nordic's Response to Upstream's Site Plan Permit Appeal at 13-14 for a detailed discussion of this issue.

III. The Planning Board correctly determined that the Project includes chimneys that are exempt from the definition of structure height.

Please see Nordic's Response to Upstream's Appeal of Nordic's Site Plan Permit, pages 14-15 for a detailed discussion of this issue.

IV. The Planning Board determination that the planned construction and Soil and Erosion Control Plan complies with the Ordinance is supported by competent evidence.

Please see Nordic's Response to Upstream's Appeal of Nordic's Shoreland Zoning Permit, page 6 for a detailed discussion of this issue.

CONCLUSION

Upstream's appeal, while lengthy and comprised of numerous, overlapping, and poorly argued points, does not claim that any portion of the Zoning Use Permit is unsupported by competent record evidence. Thus, Upstream fails to carry its burden and its appeal fails.

Dated: February 22, 2021

/s/ Joanna B. Tourangeau

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