

**UPSTREAM WATCH SUBMISSIONS TO THE ZBA
MARCH 1, 2021
BRIEFS/SUBMISSIONS ON ISSUE OF STANDING**

NOTE: This is a Merged File and Includes all of the following documents.

There are three documents for the ZBA:

- A1 - Cover letter to Attorney Grossman, Received 3/1/21 - 2 pages
- A2 - Response of Upstream Watch to the Suggestion by Alternate Board Member (Seated for this Matter) Lewis Baker That Upstream Watch Lacks Standing to Bring This Appeal. - 4 pages
- A3 - Accompanying Affidavits of Amy Grant, John Krueger, and James Grant - 6 pages.

DAVID B. LOSEE, LLC
Attorney-at-Law

Admitted in Maine and Connecticut

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Kate J. Grossman
Attorney at Law
Farrell, Rosenblatt & Russell
61 Main Street, Suite 1
P.O. Box 738
Bangor, Maine 04402-0738
Email: kjg@frrlegal.com

RE: Belfast, Maine Zoning Board of Appeals

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Dear Attorney Grossman:

Attached are a document regarding "Standing" and five (5) documents responding to the permit comments offered by the Belfast Planning Board and by Nordic Aquafarms, Inc.

In addition, we have attached two (2) Motions to remand the Appeals, or specific matters within the Appeals, to the Planning Board. One Motion addresses the absence of responses to questions asked by Planning Board members without the answers to which Upstream Watch contends the Planning Board could not approve the permits requested by Nordic. The second Motion also urges remand but is focused on the issue of electric power and asserts that the Planning Board decision inadvertently deprived the towns of the Midcoast region of any growth requiring more than household levels of electricity for the next five (5) to ten (10) years, without providing notice to those towns or providing those towns a voice in their own destiny.

Both Motions present material Upstream Watch contends should be offered to the Planning Board on remand for its consideration with an eye toward augmenting its record in the case. Upstream does not ask the Zoning Board of Appeals to rule on the proposed record items (although the ZBA has that authority) but rather to consider whether the

Planning Board should be given an opportunity to examine those materials and to include them in its record.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "David B. Losee". The signature is fluid and cursive, with a long horizontal stroke at the end.

David B. Losee,
Attorney for Upstream Watch
7 Highland Avenue
Camden, Maine 04843
Maine Bar Number 006500
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860 707 3215

**RESPONSE OF UPSTREAM WATCH TO THE SUGGESTION BY ALTERNATE
BOARD MEMBER (SEATED FOR THIS MATTER) LEWIS BAKER THAT
UPSTREAM WATCH LACKS STANDING TO BRING THIS APPEAL**

March 1, 2021

At the ZBA meeting of February 18, 2021, it was announced that Board Member Dana Keene would recuse himself from this appeal “for personal reasons”. The Board seated Alternate Member Lewis Baker in the stead of Mr. Keene. Immediately upon being seated, Mr. Baker requested the floor and by well prepared remarks, challenged the standing of Upstream Watch to bring this appeal. Curiously, immediately thereafter, Counsel for Nordic Aquafarms, Inc. obtained the floor and delivered an equally well-prepared and apparently well-coordinated statement in support of Mr. Baker. Thereupon, the issue of standing was advanced to the ZBA Meeting of March 4, 2021.

On February 18, 2021, the Board affirmed that this appeal is a “record” appeal, not a “de novo” appeal. That means the record of the Planning Board is the sum and substance of what the ZBA may consider in this appeal. The record shows Upstream was granted standing before the Planning Board and participated in almost every meeting of that Board regarding Nordic Aquafarms, Inc. If this is a record appeal, that should resolve the standing question. A proceeding should not be a record appeal as to some things and de novo as to others. It is one or the other.

The logic of that notwithstanding, there is some caselaw suggesting the ZBA can examine the issue of standing anew before it decides an appeal. If so, the ZBA must provide an opportunity for the appellant to be heard. *Wister v. Town of Mount Desert, 2009 ME 66, 974 A.2d 903 (Me. 2009)*. Upstream Watch has attached affidavits and is prepared to be heard on this subject at the ZBA Hearing on March 4, 2021, as the Chairman requested.

Facts on which Upstream Watch bases its standing include:

1. Upstream Watch was originally founded to advocate and plan for restoration of the Little River to a point where it could again be a spawning ground for fish, thus enhancing the fishery and the general quality of Penobscot Bay. Nordic's control of the lower dam and demand for water from the Little River compromise those plans.
2. Amy Grant is the President of Upstream Watch and a Board member. Amy's husband Jim Grant is also a Board member. The Grants own Good Karma Farm located across Perkins Road from the site of the Nordic project. Good Karma Farm has two wells that provide agricultural water to the farm for the sheep, goats and alpacas raised on the farm, as well as for the farm's fiber processing operation. The Grants' two wells are in danger of being depleted by Nordic pumping its wells. The Planning Board found it necessary and proper to provide protection for those wells as a permit condition. In addition, particulate and dust in the air emitted by Nordic's operations and its smokestacks are completely incompatible with raising healthy animals on the farm.
3. The view to the south from Good Karma Farm is proposed to change from forest to a 40-foot-tall industrial building and, in addition, now Nordic proposes to erect eight 68-foot smokestacks discharging combusted air that can pollute Good Karma Farm with particulate and impair the Farm with odors, as will the slaughterhouse and other operations at the fish factory.
4. Upstream Board Member John Krueger lives on Rocky Road, west of the proposed Fish factory. Mr. Krueger has a private well. Mr. Krueger's neighbor across Rocky Road experienced significant drawdown of his well during the Nordic well pump tests and was so concerned he invested in an entirely new well that he hopes will not be compromised by the pumping of Nordic's wells.

5. Finally, as noted at the February 18th ZBA Meeting, most of the people who volunteer their time to Upstream Watch are regular users of the trail that runs between the reservoir and the Nordic building site and each of them will experience the substitution of a 40-foot-tall industrial building with eight 68-foot smoke stacks for the mature trees of the forest currently growing there, to the diminishment of the trail experience, an experience the Maine CDC encourages all of us to use during the Covid-19 pandemic.

Organizational standing is predicated on the standing of any one of its members and that the interests at stake are germane to the organization's purpose. *Widewaters Stillwater Co., LLC v. City of Bangor, PEN AP-01-16, Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167, 180, 145 L.Ed.2d 610, 627 (2000). Standing is viewed expansively in land use cases that raise issues of environmental impact. Regular use of the water district land impacted by the proposed development for recreational and aesthetic purposes by Upstream Watch volunteers provides standing for Upstream. In addition, as Mr. Kelly pointed out at the ZBA meeting of February 18, 2021, before the Planning Board Upstream asserted and the Planning Board recognized potential impact to the wells at Good Karma Farm, owned by the President of Upstream Watch. Not only did the Planning Board find that Upstream Watch had standing before the Planning Board by that reason, but then the Planning Board actually created protection for Good Karma Farm in one of the conditions to one of the permits awarded (see affidavit attached hereto). Standing has been liberally granted to people who own property in the same neighborhood as the property that is subject to a permit or variance, where it is shown that there is a neighborhood impact, especially an environmental impact, not shared by people living in other parts of the town. See: *Widewaters Stillwater Co., LLC v. City of Bangor, PEN AP-01-16*. When the issue of standing is raised, the appellant must be provided an opportunity to demonstrate his standing and once a prima facie case has been established the burden shifts to the objector to demonstrate the applicant lacked standing. *Wister v. Town of Mount Desert, 2009 ME 66, 974 A.2d 903 (Me. 2009)*. The appellant has demonstrated standing by the affidavits submitted and Mrs. Grant is present should the ZBA wish to inquire further.

UPSTREAM WATCH,

David B. Losee, Esq.
Its Attorney
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Camden, Maine 04843
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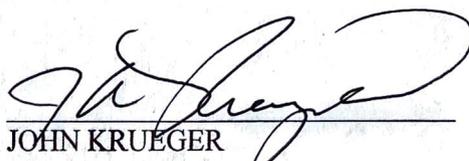
**BELFAST ZONING BOARD OF APPEALS HEARING ON APPEAL BY
UPSTREAM WATCH FROM THE DECISIONS OF THE BELFAST
PLANNING BOARD.**

AFFIDAVIT OF JOHN KRUEGER, MEMBER OF THE BOARD OF
UPSTREAM WATCH

JOHN KRUEGER, being duly sworn, states under oath as follows:

1. I am a resident of Northport, Maine residing at 291 Rocky Road, Northport, Maine, 04849, just inland from the proposed Nordic site.
2. My wife, Wendy, and I own and operate a home and farm at the above address. We are served by a private well that we use for domestic and for agricultural use.
3. Our across the street neighbor lost a lot of water from his private well when Nordic performed their pump tests on their proposed new wells. My neighbor was so worried by what he observed that he hired a driller and created a new well that he hopes will survive Nordic.
4. We have good reason to fear for the continued water supply in our well if Nordic is approved.
5. I earned a Bachelor of Science and a Master's Degree in Chemical Engineering from MIT.
6. I am the former Director of Licensing and Field Services for the Maine DEP.
7. I am the former Director of the Maine State Health and Environmental Testing Laboratory.
8. I am a consultant for the United States Environmental Protection Agency.
9. For many years I served on the Board of the Maine Organic Farmers and Growers Association (MOFGA)
10. I am a Member of the Board of Directors of Upstream Watch, a not for profit "501 C 3" corporation. The purpose of Upstream Watch is to bring about restoration of the Little River, in particular, the spawning grounds for fish in the Little River and the other rivers in the northern sector of Penobscot Bay to, among other things, increase the stock and availability of fish in the Gulf of Maine.
11. Upstream Watch is concerned about the use of the Little River by Nordic, the still undetermined effect of the extraction of water from the Little River by Nordic, and the impact of Nordic's proposed discharge of 7,700,000 gallons of wastewater from its fish rearing and processing operation into Penobscot Bay.
12. I believe that Upstream Watch representatives faithfully attended every meeting of the Planning Board at which Nordic's plan was discussed, from the organizational meeting on July 15, 2019 to the present.

Dated: February 25, 2021

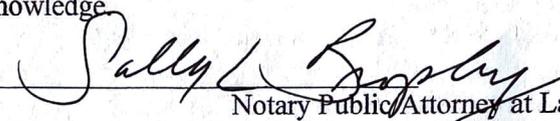


JOHN KRUEGER

COUNTY OF WALDO, ss.

February 25, 2021

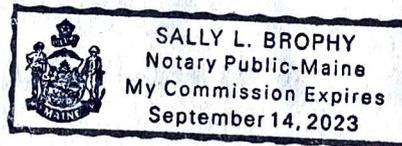
Personally appeared before me on this ___ day of February, 2021, the above-named John Krueger, who after being duly sworn, made oath that the foregoing statements made by him are true, based upon his personal knowledge.



Notary Public/Attorney at Law

My commission expires:

SEAL



**BELFAST ZONING BOARD OF APPEALS HEARING ON APPEAL BY
UPSTREAM WATCH FROM THE DECISIONS OF THE BELFAST
PLANNING BOARD.**

AFFIDAVIT OF AMY GRANT, PRESIDENT OF UPSTREAM WATCH

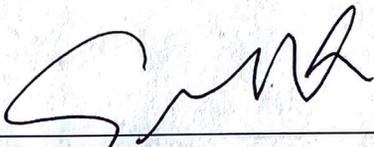
AMY GRANT, being duly sworn, states under oath as follows:

1. I am a resident of Belfast, Maine residing at 67 Perkins Road, Belfast, Maine, 04915.
2. My husband, James, and I own and operate "Good Karma Farm" at the above address.
3. We raise goats, sheep, and alpacas, we raise and keep bees and the products of the apiary, and we manufacture soap.
4. We collect, process, and sell the wool from the animals, along with other products.
5. We are active in the advancement of the fiber industry in the United States and abroad.
6. We have two wells reserved for agricultural use. Those wells are a few hundred feet from the proposed Nordic wells, and we fear for the continued water supply in those wells. Our fears were recognized by the Belfast Planning Board which included in their approval of Nordic's Significant Groundwater Wells permit a condition that requires Nordic to monitor our wells if and when Nordic begins to use its wells.
7. The view out our front door is currently and has been since before we bought the farm, a meadow and a forest. Nordic proposes to remove the forest and replace it with a 40-foot-tall industrial building completely changing our neighborhood from a rural/agricultural neighborhood to an industrial site.
8. Nordic proposes to raise 8 smokestacks 68 feet into the air. A year ago, Nordic raised balloons 45 feet into the air and assured all of us that that was the maximum height their construction would reach, and it was not true.
9. The prevailing winds are from the southwest. The 8 smokestacks are to our southwest so we will receive Nordic's air pollution. Dust, particulates and other air pollutants are incompatible with raising animals on our farm and threaten the farms very existence in the presence of Nordic.
10. The Nordic facility will produce noise, odor and other air pollutants (which Nordic refused to discuss with DEP), all of which will come on to our farm.
11. I am President of Upstream Watch, a not for profit "501 C 3" corporation. The purpose of Upstream Watch is to bring about restoration of the Little River, in particular, the spawning grounds for fish in the Little River and the other rivers in the northern sector of Penobscot Bay to, among other things, increase the availability of fish in the Gulf of Maine.
12. Upstream Watch is concerned about the use of the Little River by Nordic, the still undetermined effect of the extraction of water from the Little River by Nordic, and

Upstream Watch is concerned about the impact of Nordic's proposed discharge of 7,700,000 gallons of wastewater from its fish rearing and processing operation into Penobscot Bay.

13. I believe that Upstream Watch representatives faithfully attended every meeting of the Planning Board ay which Nordic's plan was discussed, from the organizational meeting on July 15, 2019 to the present.

Dated: February 25, 2021

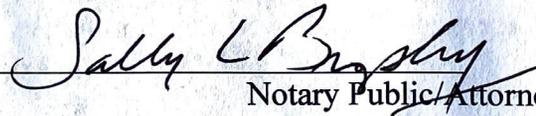


AMY GRANT

COUNTY OF WALDO, ss.

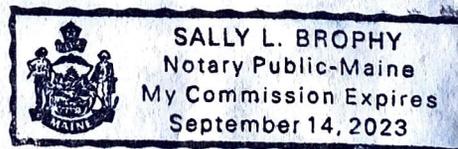
February 25, 2021

Personally appeared before me on this ___ day of February, 2021, the above-named Amy Grant, who after being duly sworn, made oath that the foregoing statements made by her are true, based upon her personal knowledge.



Notary Public/Attorney at Law
My commission expires:

SEAL



**BELFAST ZONING BOARD OF APPEALS HEARING ON APPEAL BY
UPSTREAM WATCH FROM THE DECISIONS OF THE BELFAST PLANNING
BOARD.**

AFFIDAVIT OF JAMES GRANT, MEMBER OF THE BOARD OF
UPSTREAM WATCH

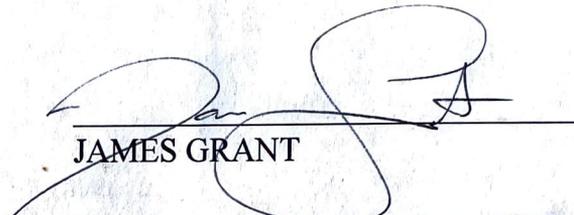
JAMES GRANT, being duly sworn, states under oath as follows:

1. I am a resident of Belfast, Maine residing at 67 Perkins Road, Belfast, Maine, 04915.
2. My wife, Amy, and I own and operate "Good Karma Farm at the above address.
3. We raise goats, sheep, and alpacas, we raise and keep bees and the products of the apiary, and we manufacture soap.
4. We collect, process, and sell the wool from the animals, along with other products.
5. We are active in the advancement of the fiber industry in the United States and abroad.
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10. The Nordic facility will produce noise, odor, dust, particulants and other air pollutants (which Nordic refused to discuss with DEP), all of which will come on to our farm.
11. I am a Member of the Board of Directors of Upstream Watch, a not for profit "501 C 3" corporation. The purpose of Upstream Watch is to bring about restoration of the Little River, in particular, the spawning grounds for fish in the Little River and the other rivers in the northern sector of Penobscot Bay to, among other things, increase the availability of fish in the Gulf of Maine.
12. Upstream Watch is concerned about the use of the Little River by Nordic, the still undetermined effect of the extraction of water from the Little River by Nordic, and Upstream Watch is concerned about the impact of Nordic's proposed discharge of

7,700,000 gallons of wastewater from its fish rearing and processing operation into Penobscot Bay.

13. I believe that Upstream Watch representatives faithfully attended every meeting of the Planning Board ay which Nordic's plan was discussed, from the organizational meeting on July 15, 2019 to the present.

Dated: February 25, 2021

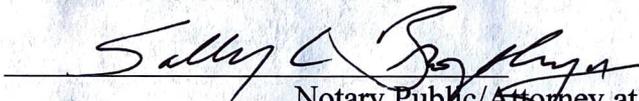


JAMES GRANT

COUNTY OF WALDO, ss.

February 25, 2021

Personally appeared before me on this ___ day of February, 2021, the above-named James Grant, who after being duly sworn, made oath that the foregoing statements made by him are true, based upon his personal knowledge.



Notary Public/Attorney at Law

My commission expires:

SEAL

