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March 4, 2021

Peter Nesin, Chairperson
c/o Kate Grossman, Esq.
Belfast Zoning Board of Appeals
City of Belfast
131 Church Street
Belfast, ME 04915

RE: Planning Board Opposition to 2 Motions by Upstream Watch, dated March 1, 2021

Dear Chair Nesin:

There are two pending Motions from Upstream Watch, both dated March 1, 2021, captioned as "Motion To Augment Record Or, In the Alternative, Remand To The Belfast Planning Board For Further Proceedings ..." followed by a requests to either "Remand" or to "Complete the Record". The Zoning Board of Appeals ("ZBA") should dismiss the Motions, as they essentially seek disposition of the matter before the ZBA has done its work, and seek a form of relief that the ZBA is without authority to provide. Therefore, by this letter, the Planning Board objects to the Upstream Watch pending Motions, which should be summarily dismissed.

The two Motions filed in a ZBA record review case (not de-novo review) are highly unusual and misunderstand the role of the ZBA. The ZBA is not a Court of Law with Motion practice. The only task before the ZBA is to review the Planning Board record in light of any legal arguments that are appropriately before it by an Appellant which has been determined by the ZBA to have standing. The ZBA must then conduct its deliberations of review of the record after legal argument is presented by each party. After the party presentations conclude, the ZBA will close the record for legal argument and make its determinations on the Planning Board record before it.

The Motions before you seek to have the ZBA modify the Planning Board record, by some form of Order. As you might expect, the ZBA is without authority to Order the Planning Board to add any particular document to its record. The Permits issued pursuant to the Planning Board determinations either are or are not supported by competent evidence in the existing Planning Board record; that is the sole task of inquiry the ZBA will undertake. The ZBA is not allowed to substitute its judgment for the Planning Board's fact finding, if there is competent evidence to be found in the record which supports the Planning Board's decisions. This is one of the reasons that the ZBA may not require incorporation of any new facts into the record before it. Another

compelling reason is the clear City Ordinance language which limits the ZBA's jurisdiction to a review of the Planning Board record, and no new evidence. These are routine and legally required procedures that the Upstream Watch is erroneously seeking to circumvent.

In summary, regarding the extensive Planning Board record before it, the ZBA is not free to substitute its discretion as to which evidence, conflicting facts, or expert opinions it might prefer; the ZBA is required to do its work solely upon the record created in the Planning Board's discretion, as applied during 38 meetings held over 18 months of detailed work.

Sincerely,

KELLY & ASSOCIATES, LLC

A handwritten signature in black ink, appearing to read 'W. Kelly', written over a horizontal line.

William S. Kelly, Esq.

Cc: City of Belfast Code and Planning Office