

**CITY OF BELFAST
ZONING BOARD OF APPEALS MEETING
THURSDAY, FEBRUARY 18, 2021 6:00 PM
MEETING CONDUCTED VIA A ZOOM WEBINAR
ADOPTED MEETING MINUTES
Adopted at meeting of March 4, 2021, by a Vote of 5-0.**

NOTES TO PUBLIC:

- 1) Due to the COVID-19 pandemic the Zoning Board of Appeals (ZBA) did not physically meet in the Council Chambers of Belfast City Hall to conduct the February 18 Board meeting. The Board conducted the meeting electronically via a ZOOM webinar.
- 2) The video recording of this meeting serves as the official record of the meeting and is available at the City of Belfast website, www.cityofbelfast.org. These minutes identify Board actions that occurred at the meeting and provide a general description of the Board's discussion.
- 3) The February 18 ZBA meeting involves the Board's review of administrative appeals filed by Upstream Watch regarding the following 5 permits approved by the Belfast Planning Board at its meeting of December 22, 2020 for Nordic Aquafarms, Inc. proposal to operate a land based salmon aquaculture facility on property located near the Lower Reservoir of the Little River:
 - Site Plan Permit issued pursuant to Chapter 90, Site Plan;
 - Zoning Use Permit issued pursuant to Chapter 102, Zoning;
 - Significant Groundwater Well Permit issued pursuant to Chapter 102, Zoning;
 - Significant Water Intake and Significant Water Discharge/Outfall Pipe Permit issued pursuant to Chapter 102, Zoning; and
 - Shoreland Permit issued pursuant to Chapter 82, Shoreland.

1. Call to Order & Roll Call.

Peter Nesin, Chair, called the meeting to order at 6:05 pm.

Present were Peter Nesin, Chair, Michael Nickerson, Douglas Smith, and Roger Pickering, regular members, and Lewis Baker, alternate member. Dana Keene, regular member, was absent.

2. Adoption of Agenda.

Motion by Roger Pickering, second by Doug Smith, to adopt the agenda as presented. Motion adopted 5-0.

Jon Boynton, Planner, Code and Planning Department, made a brief presentation on ZOOM protocols.

3. Introductions.

The individuals associated with the appeal were introduced. Representatives participating in the ZOOM webinar included: Kate Grossman, legal counsel to the ZBA; David Losee, legal counsel to Upstream Watch; Joanna Tourangeau, legal counsel for Nordic Aquafarms, and Ed Cotter, Senior Vice President, Nordic; William Kelly, legal counsel for the Belfast Planning Board and Code and Planning Department staff including Wayne Marshall, Project Planner, Bub Fournier, Department Director, and Jon Boynton, Planner.

4. Board consideration of potential conflicts of interest and the members who will serve on the Upstream Watch administrative appeals.

Kate Grossman requested that Wayne Marshall read the letter from Dana Keene regarding his decision not to participate in the review of this appeal. Wayne Marshall read the letter dated February 17, 2021 from Dana Keene.

Motion by Doug Smith, second by Roger Pickering, to accept Dana Keene's recusal. Motion adopted 5-0.

Motion by Dough Smith, second by Roger Pickering to accept Lewis Baker serving on this appeal. Motion adopted 5-0.

Kate Grossman asked if any parties wanted to raise any potential conflicts of interest regarding the Board members who would serve on this review. Neither Upstream Watch or Nordic raised any objections.

5. Board determination of standing for Upstream Watch to file an administrative appeal.

Lewis Baker raised a question regarding standing, stating that he is not sure that Upstream Watch has standing. Mr. Baker referenced information in the MMA Manual for Zoning Boards of Appeal regarding the issue of standing. noting that an appellant must meet two tests to establish standing. He stated that while Upstream clearly participated in the Planning Board process, he did not find sufficient information in their appeal regarding how members of the group would suffer a 'particularized injury' as a result of the project.

Attorney Grossman requested that Attorney Kelly describe the process the Planning Board used to determine Parties-in-Interest. Attorney Kelly referenced Planning Board Procedural Order # 1, and noted the proximity of the Good Karma Farm property to the Nordic project and potential impacts, particularly groundwater quality and monitoring of private wells.

Lewis Baker asked about the amount of distance between the Good Karma Farm and the Nordic site. Wayne Marshall responded that it is about 600 feet.

Attorney Tourangeau concurs with Mr. Baker that it is appropriate for the ZBA to make its own determination regarding standing and to not rely solely on the determination of the Planning Board.

Attorney Grossman suggests that both Upstream Watch and Nordic submit briefs to the ZBA on the issue of standing, and that the Board consider such information at the next ZBA meeting rather than trying to decide the issue of standing at tonight's meeting.

The Board concurs with the approach outlined by Attorney Grossman. Lewis Baker also stated that the Board should not conduct any substantive review until the issue of standing is established.

6. Explanation by Attorney Grossman of the Administrative Appeal process for a Planning Board decision that is identified in City Code of Ordinances, Chapter 102, Zoning, Article II, Administration, Division 4, Appeals and Variances. Explanation will involve the process for conducting public hearings.

Attorney Grossman describes the process for conducting a record review for an Administrative Appeal. She recommended that the Board first hear from Upstream Watch, that they then hear from Nordic representatives, and that they next decide how to break the review up into manageable pieces of work. In conducting this process, Attorney Grossman recommended that the Board wait until they have heard all arguments before making any specific decisions, particularly because on potential future appeals to the Superior Court and the desirability of having only a singular date for the filing of subsequent appeals.

7. Description of information presented to the ZBA regarding the administrative appeals filed by Upstream Watch.

Wayne Marshall, at the request of Attorney Grossman, describes information in the 'Notebooks' that were provided to all ZBA members and to all parties involved in the appeal.

Peter Nesin references the letter dated February 12 submitted by Attorney Tourangeau. Attorney Grossman suggests that issues such as the ones raised in Attorney Tourangeau's letter could be addressed at the next Board meeting after the Board considers the issue of standing.

The Board also determined that all information regarding this appeal is to be directed to Attorney Grossman and she will be responsible for the distribution of such; she is the 'gatekeeper' for this appeal.

8. Discussion of the process the Board will use to conduct its review of the administrative appeals, and how it will render decisions on the appeals.

Attorney Grossman described a proposed process for the review of the appeals, including a briefing schedule for both Nordic and Upstream Watch.

Attorney Tourangeau stated that she can submit Nordic's overall briefs and a brief on the issue of standing by Monday, February 22.

Peter Nesin suggests that the Board meet regularly on Thursday evenings to consider the appeal, however, there would be no meeting next Thursday, February 25. He also suggested that the meetings begin at 6:00 pm and that they end no later than 10:00 pm. Members expressed general support for this schedule.

Attorney Grossman suggested that Upstream be provided 5 - 7 days to submit their briefs after receipt of the Nordic briefs. David Losee indicated that he would need 7 days to prepare a reply brief, including briefing the issue of standings. Attorney Tourangeau voiced her objections to Upstream's response time. Peter Nesin proposed that the Board set February 22 as the deadline for Nordic's submission and March 1 as the deadline for any reply, and obtained a consensus from the Board on this schedule. Attorney Kelly requested that Attorney Grossman clarify the scope of the reply brief from Upstream, and Attorney Grossman stated that it would be limited to new matters raised by Nordic in its brief.

Attorney Grossman described the briefing process and indicated that the next meeting (March 4) would first involve the issue of standing, and would then consider Nordic's objections to certain testimony submitted by Upstream.

Attorney Kelly suggested that the process should next involve Upstream, and subsequently Nordic, offering their presentations on all appeals and permits under consideration. In response, Attorney Losee stated that he had no preference, but does not want to know the process that will be used so he can prepare.

The parties further discuss the process for receiving oral arguments and considering the appeals. There is discussion of an approach that involves first focusing on the overarching issues that have been raised in the appeals that apply to all permits, and then focusing on the individual permits. Attorney Kelly asks Attorney Losee if he could estimate the amount of time he may need to present his information to the ZBA, however, he stated he could not offer an estimate at this time. Attorney Tourangeau estimated that she would need about one-half hour for her presentation, not including time to respond to questions from members of the ZBA.

The general consensus was that Attorney Grossman would work with the respective parties to better address these concerns and to prepare a procedural order for the ZBA regarding the briefs submitted by the parties.

Wayne Marshall requested that all information be submitted by 12 noon on the date it is due so hard copies of all information could be distributed to all ZBA members.

9. Discussion of Board schedule for the review of the administrative appeals, including any public hearings.

The Chair noted that the Board had discussed the schedule for future meetings.

10. Other. - None

11. Adjournment.

Motion by Roger Pickering, second by Doug Smith to adjourn. Motion adopted 5-0.
Meeting adjourned at 7:17 pm.