

AGENDA TOPICS 10.A, 10.B & 10.C

TO: Mayor & City Council
FROM: Wayne Marshall, Director, Code & Planning
DATE: March 16, 2018
RE: Nordic Aquafarm Project - Proposed Ordinance & Land Use Plan Amendments

REQUESTED ACTIONS

The Council, at its meeting of March 20, is scheduled to conduct the First Reading and an accompanying Public Hearing regarding the following amendments that are associated with the proposal by Nordic Aquafarms to construct and operate a major salmon aquaculture farm project located on property now owned by the Belfast Water District and Sam Cassida near the lower reservoir on the Little River.

- 1) Amendments to the City Code of Ordinances, including:
 - Chapter 102, Zoning.
 - Chapter 82, Shoreland.
 - Chapter 66, General Provisions (Definitions).
- 2) Amendments to the 2009 adopted Future Land Use Plan that is part of the City Comprehensive Plan.

The Council conducted an Introduction of the amendments at its meeting of March 6 and at that meeting scheduled the First Reading for the meeting of March 20. A key difference between the Introduction (March 6 meeting) and the First Reading (March 20 meeting) is that I have now prepared formal language for all amendments for public and Council consideration, rather than the outline of the amendments that I presented on March 6.

I will separately discuss each of the proposals below, but first will identify specific actions that I am requesting of the Council. Most of the proposals involve the same public review process.

ACTION # 1: Council should first provide Department staff an opportunity to outline the proposed amendments in advance of the public hearing; Topic 10.A on the agenda.

ACTION # 2: The Council should conduct the scheduled public hearing identified on the agenda as Topic 10.B I recommend that the Council accept public comment on all proposed amendments at the same time (1 hearing) rather than conducting a separate public hearing on each of the 4 respective proposals. When all persons have provided comment to the Council, I intend to recommend that the Council recess the hearing to a date to be identified, rather than to close/adjourn the hearing. I am recommending that the Council recess the hearing in case it becomes necessary to reopen the First Reading hearing at a future meeting.

ACTION 3: I request that the Council provide direction on all of the proposed amendments; this is Agenda Topic 10.C. I recommend that the Council review each of the proposals

separately, starting with the proposed zoning amendments. As I am uncertain of the amount and nature of public comment that may be received, and the degree to which Councilors will have had an opportunity to become familiar with all of the proposed amendments, the Council will need to decide how much progress it will want to make on the proposals at this meeting.

I also note that the public hearing announcement I published for the March 20 meeting clearly identified the major issues that would be the subject of the March 20 hearing, however, I did not identify all specific amendments that I am now recommending the Council consider as amendments to Chapter 102 Zoning. For example, I did not identify potential amendments to the Protection Rural district regarding significant groundwater wells and water intake and discharge/outfall pipes, water intake and discharge/outfall pipes for the Residential II zone and changes to the Environmental Performance standards to address these two types of use. In short, it likely is advisable to conduct a follow-up First Reading hearing and to make the public aware that these and potentially other concerns will be considered at a follow-up public hearing. I can discuss this issue in greater depth at the Council meeting.

Continuing, I also have provided the draft language to legal counsel for Nordic Aquafarms, to the Shoreland staff at the State Department of Environmental Protection, and to City Attorney Kelly, for their review and comment, and to date, none have submitted any comment to me.

ACTION 4: The Council, based on your decision on Action #3 above (how to respond to the First Reading), should decide if you are comfortable in establishing a specific date for the Second Reading and accompanying public hearing. We preliminarily identified and publicly announced a target date of April 17 for the Second Reading. I believe it may be wise to reconsider this date, but that is an issue that the Council can better discuss at the March 20 meeting.

SPECIFIC INFORMATION ON EACH OF PROPOSALS

I have provided specific proposed language for the First Reading of each of the proposed amendments, and this language is included in the information that accompanies this memorandum. We have provided this information to the Council in a format that you can use to insert in the 'Notebook' that we provided to each of you at the March 6 Introduction (3 holed punched and separate dividers). I also note that the City has posted all of the information for the public hearing on the City website under "Nordic Aquafarms Information Page", that we published notice of the public hearing in the Republican Journal, and that we sent notice to about 111 property owners in the area.

Why is the City Pursuing the Proposed Amendments?

Nordic Aquafarms, a Norwegian company, on January 30, 2018, held a press conference in Belfast in conjunction with the City and Belfast Water District to announce their plans to locate a major land based salmon aquaculture farm in Belfast. Nordic Aquafarms has purchase and sale agreements to purchase about 40 acres of land from the Belfast Water District and Sam Cassida, a private property owner. The property is located on the westerly side of Route 1 near the Little

River Reservoir. The company is now doing their due diligence to determine if they can find the quantity and quality of water on the site that they need to support their proposed operations.

When Nordic Aquafarms first approached the City to express their interest in this property, the City explained that current City Ordinances do not fully support the potential use of this property for a land based salmon aquaculture farm. The City, at that time, also committed to pursuing potential Ordinance amendments to identify an aquaculture farm as an allowed activity in that area. Thus, the amendments to be considered at the First Reading are associated with identifying an aquaculture farm as an allowed use in this area. Stated simply, if the City does not amend its current Ordinances, the project cannot be located in this area.

What Does it mean if the City adopts the Proposed Amendments?

If the City adopts the proposed amendments identified in these proposals it means that Nordic Aquafarms would have the right to submit permit applications to the Belfast Planning Board that identify how the company would propose to develop and operate their project. The Belfast Planning Board would review the permit applications, conduct public hearings on the applications, and ultimately decide if the applications satisfy all City requirements and if the City permits should be approved. I specifically note that the Planning Board's role and their review of permit applications is an independent and separate process from the City Council's role in the review of the proposed Ordinance amendments. The Planning Board will only become involved in the review of the Nordic Aquafarms project if Nordic Aquafarms chooses to submit permit applications to develop the property.

I also note that the Nordic Aquafarms project will require permits from state and federal agencies, particularly the State Dept of Environmental Protection (DEP) and U.S. Army Corps of Engineers (ACOE). The state and federal agencies make their decisions independent of any decision made by the Belfast Planning Board on a permit application.

What is Involved in this Proposal - First Reading Hearing - to Amend City Ordinances and the Future Land Use Plan?

I believe the City needs to consider a series of amendments to current City Ordinances. Following is an outline of each of the proposed amendments.

Proposed Amendments to Chapter 102, Zoning

City Zoning Ordinances identify the range of uses permitted in a specific zoning district and the main dimensional and performance standards that apply to a respective zoning district that a project must satisfy. The main Zoning (Chapter 102) amendments associated with this proposal include:

- a) Chapter 102, Zoning, Article V, District Regulations, identifies the specific zoning districts identified in the City Code. At present, the zoning district designation for the area associated with the Nordic Aquafarms project is the Residential II district. This zoning district does not allow aquaculture or industrial activities as permitted uses. An adjacent zoning district, the Industrial IV Perkins Road district, where Mathews Brothers is located, now allows industrial

uses. The City proposes to change the zoning district designation for the area in which Nordic Aquafarms proposes to operate to Industrial IV Perkins Road. I have attached 2 maps that identify current zoning district designations and 2 maps that identify how the boundaries of the Industrial IV Perkins Road district are proposed to be changed to include the property associated with the proposed aquaculture farm.

- b) The City proposes to change the range of uses allowed in the Industrial IV Perkins Road district to specifically include a land based aquaculture farm and accompanying activities, including but not limited to offices, fish processing operations, water treatment, a visitors center and such. The intent is to create a zoning district that will support the proposed project. The proposal also identifies other uses that are proposed to be allowed in this district.
- c) Establishing a specific height limit for buildings. The proposed height limit is 50 feet; a standard which is used in several other districts that allow larger scale uses. At present, there is no height limit in the Industrial IV (Mathews Brothers) zoning district. I also note that this proposed height limit is partly associated with the company's desire to locate solar panels on the roof of the buildings in which the aquaculture tanks will be located.
- d) Establishing a lot coverage standard based on an impervious surface ratio of 70%. The current Industrial IV zoning district lot coverage standard of 65% is based solely on building coverage. Building coverage includes only the footprint of any building, while impervious surface ratio includes building footprints, parking lots, and all areas that are not 'green' or vegetated.
- e) Identifying structure setback requirements for all structures in the zoning district, generally 50 feet for all lot lines, and establishing a minimum naturally vegetated bufferyard standard for any structure from a lot line, generally 40 feet. The current Industrial IV zoning district does not require a specific vegetated buffer yard.

The proposed amendments also identify several proposed changes to two other zoning districts. The range of uses permitted in the Residential II zoning district is proposed to be changed to allow significant water intake and water discharge/outfall pipes, and the uses permitted in the Protection Rural zone is recommended to be amended to allow the same and the installation of a significant groundwater well. I note that neither of these uses are now defined in City Ordinances.

The amendments also involve potential changes to the Chapter 102, Article IX, Performance Standards, to identify specific performance standards for both the installation of a significant water intake or water discharge/outfall pipe and installation of a significant groundwater well. The recommended performance standards are the same as the standards that the City proposes to implement for the Shoreland Zone (Chapter 82 of City Ordinances).

Lastly, the amendments involve changes to the formal boundary descriptions of the Residential II zoning district and the Industrial IV Perkins Road district to reflect the proposed changes identified for the City Official Zoning Map.

Chapter 82, Shoreland

The area located within 250 feet of the Little River and the lower reservoir is in the City Shoreland Zone. Similar to City Zoning, the Shoreland Zone is divided into districts that identify the type of uses allowed in that district and the standards that apply to a project, such as the minimum amount of structure setback from the high annual tide (HAT) associated with the regulated waterbody (such as the Little River). A Shoreland Zone is an overlay zone, meaning that the more restrictive of the Zoning Ordinance or Shoreland Ordinance standards apply to a project. Also, unlike the City Zoning Ordinance, which is based almost entirely on local preferences regarding land use, the underlying basis for the City Shoreland Ordinance must comply with State guidelines that are identified by the Department of Environmental Protection (DEP). The DEP oversees and manages the State Shoreland Program and all municipalities in Maine are required to adopt a Shoreland Ordinance that is approved by the DEP.

The main proposed amendments to Chapter 82, Shoreland, are as follows:

- a) Propose to expand the amount of area located in the General Development District to include about .5 acre of land area that is now in the Resource Protection District. This area is located near the existing Water District offices next to the lower reservoir and the District now uses this area for storage. I have included a map that identifies the area subject to Shoreland Zoning and the small area that would be affected by the proposed amendment.
- b) Proposal to clarify and amend the range of uses now allowed in both the Resource Protection Shoreland district, the General Development Shoreland district and other Shoreland Districts to identify where land based aquaculture and other forms of aquaculture would be allowed. The proposed amendments specifically would identify land based aquaculture as an allowed use on the property that Nordic Aquafarms intends to purchase and develop, and would allow Nordic Aquafarms to discharge water to Belfast Bay and to use marine water from Belfast Bay as part of their operations. I note that I believe current City Shoreland standards would allow a land based aquaculture use in this area, however, there is a need to clarify if waters could be discharged to Belfast Bay. Continuing, I note that State DEP Shoreland standards allow aquaculture in all Shoreland districts.
- c) Amendments include provisions to establish that the City has the authority to regulate significant groundwater wells and significant water intake and water discharge/outfall pipes as part of its Shoreland regulations. At present, the City does not have any direct regulatory authority for groundwater wells and limited jurisdiction over intake and discharge/outfall pipes. The amendments also include specific standards for the regulation of these two activities.

City amendments to its Shoreland Ordinances also require the review and approval of the DEP. I have discussed the proposed amendments with DEP Shoreland staff and I submitted the First Reading draft amendments to them on March 13 for their initial review, but understandably, I have not yet received any additional comment on the draft language.

Chapter 66, General Provisions & Chapter 82, Shoreland

I am proposing to establish revised definitions for specific terms in both Chapter 66, General Provisions, and Chapter 82, Shoreland, to ensure that the definitions support how the City desires to regulate the proposed Nordic Aquafarms project and a land based aquaculture project. It is critical that City Ordinances include specific definitions for unique terms. This proposal includes specific definitions for the following terms:

- Aquaculture, land based
- Aquaculture, marine waters
- Aquaculture, freshwater
- Significant groundwater well
- Significant water intake or water discharge/outfall pipe
- Accessory retail sales.

Future Land Use Plan Amendments

The City's adopted Future Land Use Plan, which is part of the City's Comprehensive Plan, dates to October 2009. A Future Land Use Plan identifies City policy and serves as the underpinning for City land use regulation reflected in City Zoning. To date, the City has not implemented needed amendments (adopted Zoning Ordinances) to reflect all policy direction identified in the 2009 adopted Future Land Use Plan. Many areas in the City still reflect the land use recommendations identified in the adopted 1997 Comprehensive Plan.

The area that Nordic Aquafarms proposes to develop as a land based aquaculture farm is identified in the adopted Future Land Use Plan as an area that would mostly remain rural in character. Most of this area is included in the proposed designation of Outside Rural, Rural Road Class II area. This area does not allow aquaculture or industrial uses. The proposed amendments to the Future Land Use Plan involve the following:

- a) Including the area that Nordic Aquafarms intends to develop as a land based salmon farm and the existing Mathews Brothers property in a new land use area identified as Perkins Road Business Park that would become part of the Near By-Pass area. The proposed language for this new land use area and maps that identify the location of the proposed area are included in this proposal.
- b) Proposed revisions to the existing Business Park land use area that is included in the Near By-Pass area to eliminate the Mathew Brothers property from this land use area. The Business Park area would include mostly the existing City Business Park and surrounding Airport lands on Congress Street. The text of the proposed revisions and maps that identify both the existing land use area boundaries and the proposed revised boundaries are attached.
- c) Proposed revisions to the Outside Rural, Rural Road Class 2 area. The main change is to eliminate the Water District lands that are proposed to be included in the new Perkins Road Business Park area. I have included the currently adopted language for the Rural Road Class 2 area, but also note that there are no proposed changes to the language. I have attached maps that identify the currently adopted boundaries of the area and that identify how the maps are proposed to be revised to eliminate the Water District owned lands.

Summary

The First Reading is an opportunity for the Council to receive public comment on the proposal and to provide direction on the language for the amendments that will be considered for adoption. The main goal for the March 20 First Reading is to accept public comment, to identify preferred language for the proposal, and to decide how (the schedule) you want to proceed.

I also note that the public hearing announcement identified that the Council would accept public comment in writing or via email. As of 3:00 pm on Friday, March 16, I had received two comments via email, both of which are attached.

I will do my best to respond to any questions.