



**TECH environmental**

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August 13, 2019

Wayne Marshall  
City of Belfast  
Code & Planning Department  
131 Church St, Belfast, ME, 04915

**Re: *Nordic Aquafarm Hearings comments and request for Party of Interest - REVISED***

Dear Mr. Marshall:

This letter covers three items, the ultimate findings from the last meeting, a short summary of the information I had plan to present as a "Party of Interest" at that meeting, and a request for consideration for the Planning Board as a party of interest. This letter is an update from my letter yesterday. Thank you for pointing out my error with respect to Jim Merkel's request for Party of Interest being denied yesterday. This letter is simply an update of my previous letter to correct that error. Please note so you do not have to reread the whole letter, I updated this paragraph and the last section on Part of Interest.

There were four primary topics of discussion at the last meeting: Board member's potential conflict of interest, "Parties of Interest", right-title-and-interest (RTI), and "Financial Ability". This is a very large proposal and its review will clearly be an evolving process, so I am providing comments on the last three for future consideration.

## **RTI Discussion**

The RTI discussion was very interesting. There was quite a bit of discussion about minimum thresholds for review and whether the Board should move forward at this time while the RTI issue is handled in land court. There was a good argument made for not denying the applicant due process in a timely manner and that the Board does not have the expertise in house to "try" this issue as a second land court.

With respect to due process, it is agreed that the bar should be set low by public agencies and that agencies, including Planning Board members, are not expected to render decisions on items outside of their expertise, such as ownership, as long as the Planning Board has received survey documents from the proponent that shows a clear pathway to the water including the area between the high tide and the low tide. The previous documents I examined did not include a survey of this area, but I am the first to admit that I have not looked at all of the RTI submission, and it may very well be in there. Is it possible for you, since you are much closer to this project than me, to confirm that they do have stamped and sealed survey documents showing the complete pathway to state waters? If you or the proponent could show where this is in their information prior to, or at the next meeting, it would be helpful.

## **Financial Ability**

This topic was obviously the first attempt by the Planning Board to take on a specific discrete topic per the zoning requirements. Unfortunately, this topic, and all future topics, cannot be properly addressed as per the outline in the August 5, 201 agenda without first updating the existing Zoning documents. One simply cannot have an informed public hearing, where residents are allowed to ask questions of the

Board, if the qualifications for approval are not easily understood. If a member of the public requests a copy of a City Ordinance, and is notified or realizes that the ordinance is not up to date, as required by Maine State law, it can become extremely unclear.

I will not bore you with my presentation that I had planned for the hearing to explain the legal and morale significance of this issue, I will simply add an anecdotal example to illustrate it in this letter for brevity. It is insufficient to say to a member of the public, "here is the old ordinance, and here are the updates or updated inserts". While that may seem reasonable at first glance, since all of the information is provided, it is not because (1) Ordinances are already confusing to the public and this added layer that is simply not necessary, (2) Ordinances that are not complete or up to date add doubt to EVERY section about whether it was updated or not, and (3) updated Ordinances often have nuances that can only be resolved by incorporating them and then cross referencing them in use. For example, say someone requests a copy of the Ordinances to be met as part of these hearings. They are provided a copy of the old ordinance and the "updates". At this point the reader must assume that all parts of the Ordinance have been updated, so every time the section of concern for the reader has been found in the Ordinance, they must then scan an updates for this section, and then resolve any new references that are found. It is then the reader's responsibility to essentially fold these together as they read and interpret any perceived discrepancies. Not until someone that was involved in the process and has access to all the minutes and discussions as the Ordinance was updated folds these together can a unified interpretation of the Ordinance be possible. One would think, with a project of this magnitude, the first order of business would be to have all the city.

Ordinances fully updated and readily available to the proponent and the general public. At the meeting I attempted to explain how the proponent testified earlier that their project was 80-90% designed and millions of dollars had been spent to comply with ordinances that are not fully up to date and clear, and that this needed to be fixed sooner rather than later. Unfortunately, I was badgered about staying on the topic of financial ability, agenda item 4.5 and not allowed to complete my thoughts that apply to this agenda items, and all agenda items going forward based on the current proposed review format. Yet, without these updates it was not possible for the Planning Board to properly address items 4.5.1, 4.5.2, 4.5.3, and 4.5.4 in the August 12, 2019 Agenda.

## **Timing of These Planning Board Hearings**

In all aspects of this hearing, DEP's findings and potential conditions were mentioned. It started in at the beginning of the RTI discussion, where Attorney Kelly quoted the DEP's statement about a right to apply and how the "bar is set low" for RTI at DEP and at the other state agencies. Essentially the Board was instructed that they do not have the expertise to make the decision on RTI so, they would need to differ to the court.

Later, during Agenda item 4.5.1, the proponent mentioned that investors are waiting for the DEP permits to provide funding commitments. This statement allow cannot allow Agenda item 4.5, or really any other further Agenda item in this hearing, to be closed at this time. Each item at the hearing will need to be revisited after the permits are issued.

Wayne Marshall, later during the discussion mentioned, and rightly so, that financial guarantees will be part of the DEP process. Attorney Kelly also mentioned that it is too early to get a guarantee to protect against disasters. In addition, Ms. Beal, at the end of the evening, questioned the process for performance guarantees. Once more, the response was that those will be handled by DEP, likely via

permit conditions. Again, it is not possible to fully address the Financial Ability issue without knowing what type of guarantees and permit conditions are going to be required.

The DEP will condition in the future was the answer to a lot of specific questions in Agenda Item 4.5, and this agenda topic was financial related, and not an environmental topic. It is clear already that when true environmental topics in the zoning ordinances are to be discussed like groundwater, odor, discharge, etc. or other environmental topic, referencing future DEP conditions will also be necessary. As responses to questions are differed, and not answered completely at the time of the Agenda item discussion, then all of these individual agenda items will need to be revisited with the actual permitted conditions, once known. If that is the case, why exactly are these hearings taking place before the permit conditions have been issued? It seems like a waste of valuable time for the Planning Board and the City.

Furthermore, attempting to take these items up now in their entirety, before state permitting, does a disservice to the local community at large. The most effective permitting processes start at a very high level, and then the process works its way down to the local level. Only after the proponent, City and public has been able to digest and understand the state permit conditions for a project of this complexity, can it ask specific questions about how this newly proposed project will fit into the fabric of the existing community, and what further local concerns should be addressed in addition to the federal and state requirements, which should be the primary focus of any local planning board.

Many communities recognize this benefit and actually in their ordinances require all state permits be in hand prior to considering the applications compete. For example here is an excerpt from the Land Use Ordinance of the Town of Searsport. It is available online.

***"F. OTHER PERMITS REQUIRED BEFORE APPROVAL***

*Applications for approval under this Ordinance will not be considered complete for processing until all other required local, state, and federal permits and licenses have been secured and evidence that they have been secured has been provided unless state or federal regulations require local approval first."*

Clearly, the presentation by Nordic Aquafarms did not address all the concerns of the Board of Financial Ability completely because the question and answer part of Agenda Item 4.5.4 was longer than the actual presentation. At the end of the financial agenda item, during deliberations, there was discussion of closing the hearing on Agenda Item 4.5 at that time. Closing this agenda item or any of these proposed zoning agenda items is just not realistic until the project conditions are known, and a local discussion of the individual agenda items can take place.

As Attorney Kelly pointed out the applicant is, and should be, entitled to due process, and there is no reason that the proponent should not provide updates to the Planning Board on a regular basis of how the project could fit into the community, but topics of concern in the zoning ordinance cannot be simply checked off as discussed and addressed completely at this time without knowing the permitted operating conditions. It is very likely that many of the questions asked at the last Planning Board hearing and future hearings will be fully addressed in the DEP process and therefore, the applicant can still receive due process in a timely manner, likely at a lower overall consulting cost, with a more streamlined Planning Board process after the state permitting process is complete. In the meantime the Board could focus staff on finalizing the zoning ordinances which will also help streamline the overall process.

## I am a Party of Interest

The Planning Board erred in denying my letter to be a "Party of Interest" at the August 5, 2019 meeting, as per the First Procedural Order of the Belfast Planning Board In RE: Applications of Nordic Aquafarms, Inc. this letter again requests Party of Interest status. I am formally requesting that be corrected at the next hearing.

I live very near the outfall. The proponent suggests it will take 14 days to clear the area. Much of that time the discharged material will be mixing with the water in front of my house. I am much closer to the outfall than Belfast City Hall or many of the residents in Belfast. I keep my boat in the West Bay and often must do maintenance to the boat on its mooring or underway in the bay. While there may be others that do keep their boat in the bay as well, not all the public does, so this activity does make my concern "distinct from any impacts to the general public". I acknowledge that for consistency the Planning Board rejected this argument from another concerned member of the public as well.

Furthermore, if the Planning Board allows this use, and it has some serious conditional defects, my business can be directly affected. I am not pro-NAF or Anti-NAF, but pro-process and noted in my previous letter my right as a Party of Interest to insure that the process is fair and complete. The last thing my firm needs is to be guilty by association. Publically, this is not a Belfast (city) project, or a county (regional) project, but a statewide project (and really nationwide story). The facility plans to provide enough salmon to satisfy up to 7% of the United States demand. It is being touted as the "first of its kind" and the future of aquaculture in Maine. As such it must follow a very deliberative process to prevent harm to the area.

I am an Overseer in a Northport village directly between the discharge and the open water. As I mentioned in my August 5, 2019 letter, the village has taken a neutral stance with respect to the project, but has continually voiced concerns with the process. As a registered Environmental Engineer, I have been tasked by the village to follow this process closely and to comment on the process, and to report on the progress. That fact alone, makes my interest "distinct from any impacts to the general public" and qualifies me to be a Party of Interest.

You mentioned in your email that Attorney Kelly has interpreted "Party of Interest" to be an "Aggrieved Party". Those are two very different types of participations. In a small project, it is possible that these two groups may be the same, but for this rather large project, which by its size and impact alone has an impact on the City's overall master planning, a broader brush definition and level of participation should be in order. A common definition of "Party of Interest" is "any of the people or organizations who may be affected by a situation". There are other legal definitions, such as, one "...who is not unbiased or unconnected so as to remain unaffected regardless of the outcome."

The goal is not to define "Party of Interest" directly herein, but to note that in almost all cases, an "Aggrieved Party" is simply a subset of the "Party of Interest" and I meet the typical definition of a Party of Interest. As I mentioned in my email, I have no problem with the City's definition of an "Aggrieved Party". I am not a direct abutter. Unfortunately, this project has the potential to impact an area well beyond the direct abutters, and that in my interest, especially with DEP permit conditions undefined and still outstanding. As such I request to be allowed to present my professional concerns for as long as I need to get to the point of understanding. Relegating me to 3 minutes at the last meeting and then interrupting me to ask if I am on point is simply not a genuine way to run a public process. I have no problem with the Board limiting time in the event I am presenting something that is redundant, but first one must be allowed to speak and present freely.

I have attached to previous my email to you and will not include it again with this letter. I know you have it already so I will not bother you with more paper again. I am attaching it again electronically because it does include the personal information required per the Order.

Lastly, you mentioned that the next meeting will be for direct abutters and will not be a formal public hearing. I do request that Board address this additional request for "Party of Interest" at this meeting, so that I can know whether to prepare a short reasonable presentation if allowed, or simply a basic overview if not allowed for the next meeting.

Thank you for your time.

Sincerely,  
**TECH ENVIRONMENTAL, INC.**



Michael T. Lannan, P.E.  
President