

**DAVID B. LOSEE, LLC**  
**Attorney-at-Law**

Admitted in Maine and Connecticut

7 HIGHLAND AVENUE, CAMDEN, ME 04843  
(860) 707-3215  
david@loseelaw.com

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**February 17, 2021**

Peter Nesin, Chairman  
Belfast Zoning Board of Appeals  
City Hall  
131 Church St.  
Belfast, ME 04915

RE: Letter dated February 12, 2021 from counsel to Nordic Aquafarms, Inc.

Dear Mr. Chairman and Members of the Belfast Zoning Board of Appeals:

I write to respond to the letter to you dated February 12, 2021 from counsel to Nordic Aquafarms, Inc. (“Nordic”). I respond to that letter in three parts.

First, counsel represents that the Nordic project enjoys “broad support”. As is obvious to anyone living in the area, that same project has also engendered strong opposition. And only two days ago an Upstream Watch volunteer lost the sale of a house and as the sole reason:

“Hi All, Yes the house is so,so charming. And we are heartbroken we had to withdraw our offer. We grew uncomfortable with the Nordic Aquafarm project. Best wishes with your future endeavors in Bayside!” This was written by a civil engineer who studied Nordic’s plans.

In addition, Upstream Watch denies that it has taken any action merely for the purpose of imposing delay or increased expense on Nordic. Rather, Upstream Watch pressed the Belfast Planning Board to require that Nordic comply with the regulations enumerated in the City Code and elsewhere. Upstream Watch regrets that it was necessary to do that and believes the entire process could have been foreshortened had Nordic from the outset submitted a completed application fully responding to the application requirements.

Second, counsel makes the point that the Belfast Zoning Board of Appeals cannot grant a “de novo” review of the decision of the Belfast Planning Board. Upstream watch agrees.

Third, the Belfast Zoning Board of Appeals may, on its own initiative or at the request of a qualified party, augment the record received from the Planning Board or, in the alternative, the Belfast Zoning Board of Appeals may “Remand to the Belfast Planning Board for further proceedings necessary to either:

- a) complete the record in the event the board finds it unable to render a decision due to the absence of critically important factual information; or
- b) remand for further proceedings consistent with the order of the Zoning Board of Appeals.”

Because the Belfast Zoning Board of Appeals has that authority, it is appropriate to offer to the Belfast Zoning Board of Appeals information that could have been, and should have been, considered by the Belfast Planning Board but was not because Nordic failed to disclose it even when specifically asked. Here it becomes important to understand a tactic employed by Nordic. There are two areas of concern in this case we will use to illustrate the point because their impact goes beyond Nordic and affects the people of Belfast directly. The tactic is to respond to an application requirement in such general terms that while not perhaps “wrong”, when all the facts are known those general terms are shown to be misleading and obscure the truth. Then, when Upstream learns information that Nordic withheld and tries to present it in an effort to illuminate the truth, Nordic complains that that information should not be considered because it is not in the record of the Planning Board. Of course, it is not in the record. Nordic withheld it. Nordic should not be rewarded for refusing to provide information directly and specifically requested by the Planning Board. This is akin to a child getting away with something for a while and complaining when a parent finally catches on.

The first example involves the Talbot Well. As a threshold requirement, Nordic had to demonstrate it had sufficient water to operate its project. Nordic introduced a letter from the Belfast Water District that said the Water district had enough water to supply Nordic. The record includes the 2018 report of A. E. Hodsdon Engineers, which indicated that in order to supply Nordic’s needs and meet peak demand of its customers, it was necessary for the Water District to put the Talbot Well online. From that, Upstream Watch and presumably the Planning Board assumed that the Talbot Well could simply be connected and turned on, in which case the letter from the Belfast Water District would have been accurate. During the course of the Planning Board hearings, various Planning Board members asked specific questions seeking detailed answers and/or data from Nordic and/or from the Belfast Water District about the Talbot Well and the Goose River aquifer. Those questions begin on or about January 22, 2020 and persisted through October 21, 2020. Those questions were answered with more generalities except that on February 26, 2020, the Planning Board and the public were told there was more than 50 years of data supporting their position. That data was promised but never placed in the record and so Upstream Watch asked the Water District if we could come in and review that data. A meeting was scheduled but then canceled unilaterally by the Water District without explanation, thereby keeping the data from public view. Suspicious that something was wrong, Upstream representatives drove to Swanville and located the Goose River aquifer and discovered the location of the Belfast wells. In the middle of the well field Upstream discovered the closed Swanville landfill and the operating Swanville Transfer Station. Upstream then located a map in the possession of the Maine Geological Survey that showed the landfill and transfer station listing them as “potential pollution point sources”, something not disclosed to the Planning Board by A. E. Hodsdon or by Nordic.

Further, from DEP Upstream learned the Talbot Well is not licensed by the State of Maine for use as a public water supply well. In order to obtain a license, the Talbot Well must be subjected to a 72-hour pump test, tests must be conducted to determine the zone of influence of the Talbot Well

under pumping conditions, and the Talbot well must be evaluated under the “Maine Public Drinking Water Source Water Assessment Program” and tested under the “Pump Test and Delineation Plan Guidance: New Well Sources for Large Community Water Systems”. Specifically, currently the records for the Talbot Well are missing descriptions of, at a minimum:

1. aquifer flow;
2. hydraulic boundaries;
3. recharge conditions;
4. the interaction of the source of withdraw with the surrounding water resources; and
5. the estimated zone of contribution.

The last requirement, the “zone of contribution” is critical. There is an old landfill about 2,000 feet from the Talbot Well. (25 years ago, pollution “landfill leachate” was emanating from the bottom of the landfill 460 feet toward the Goose River aquifer from which the Talbot Well would draw its water. And no one has tested to see how far the plume of contamination extends today and whether pumping the Talbot Well will draw the pollution into the well (which would also pollute the Smart Road well which, according to A. E. Hodsdon, “communicates” with the Talbot Well).

So, the Talbot Well cannot simply be “turned on”. It cannot be used at all. It cannot be counted in the water the Water District assures everyone can be used to satisfy Nordic’s needs and the peak demand of the Belfast water customers.

Contrast those requirements with the simple letter from the Belfast Water District saying that they had enough water. If a trial, whether in court or before administrative agency, is a search for the truth, this matter must be remanded to the Planning Board so that the Planning Board can learn the whole truth and complete its job.

Nordic and/or the Belfast Water District could have completed this testing and could have been able to provide assurances to everyone. They knew about these requirements and did nothing. Upstream is not obstructing. Upstream is protecting the people who drink Belfast Water District water. Upstream Watch will volunteer to engage and pay for Katahdin Analytical Services in Scarborough to perform the sampling and testing, splitting samples with Nordic and the City if requested, and to report the laboratory data to the City, to Nordic, and to DEP, and to do so as soon as the schedule of Katahdin allows.

The second example involves electrical power needs. Central Maine Power (“CMP”) provided a letter saying it could meet Nordic’s demand. Nordic requires approximately 28 MW to operate its facility. Currently, CMP’s facilities are insufficient to add even the 4 MW from the Perkins Road solar farm adjacent to the Nordic site. Although members of the Planning Board asked, Nordic has not explained how 28 MW can be added to CMP’s lines and substation when CMP has publicly stated that 4 MW cannot. Obviously, Nordic would be consuming any potential redundancy that CMP might use in an emergency to begin to restore power. CMP’s customers will be out of power more frequently

than at present. Further, according to the records of the Maine Public Utilities Commission contained in a 2011 docket (never disclosed to the Planning Board by Nordic) in the event of an emergency, CMP can ask Nordic to “get off the grid”. Were that to happen, Nordic would have to generate its own power from its eight generators. The theoretical capacity of those generators is 14 MW but since they cannot be run at 100% for more than a short period of time, the effective generation is more like 12.4 MW. At the same time, the docket reveals that Nordic would be asked to provide 4 MW to the grid reducing its available power generation to 8.6 MW. Nordic would have to run a 28 MW facility on 8.6 MW including its circulators, aerators, heating, cooling, and the operation of its wastewater treatment plant. Nordic has never explained how they could do that. The Planning Board asked Nordic numerous times and Nordic merely said that they could “work it out”. Another concern garnered from the Maine Public Utility Commission docket is that apparently CMP can ask Nordic to use its generators to assist the grid at any time for as long as may be necessary. However, Nordic’s air emissions license obtained from DEP constrains them to their operation as a “synthetic minor” meaning that it cannot use more than 900,000 gallons of diesel fuel per year. That fuel restriction is inconsistent with Nordic’s open-ended obligation to assist central Maine power. That open-ended obligation invalidates Nordic’s air permit. Again, if a trial, in court, or before an administrative agency is a search for the truth, this case must be remanded to the Planning Board for them to complete their obligations.

Nordic’s tactic can survive only if the truth remains obscured. It should not be the mission of the ZBA or the mission of the Planning Board to be complicit in obstructing the truth.

Prior to receiving the February 12, 2021 letter from Nordic’s lawyers, Upstream was preparing a formal request that the ZBA remand the case to the Planning Board to resolve the Talbot Well and the electric power issues. Upstream will still do that, but at a time to be determined at the ZBA Meeting on February 18, 2021.

Very truly yours,



David B. Losee

Attorney for Upstream Watch