

**UPSTREAM WATCH BRIEFS TO THE ZBA
MARCH 1, 2021
BRIEFS IN RESPONSE TO NORDIC AQUAFARMS BRIEFS SUBMITTED ON
FEBRUARY 22, 2021 AND
BY THE BELFAST PLANNING BOARD ON FEBRUARY 18, 2021**

NOTE: This is a merged file and includes the following 5 documents.

There are five documents for the ZBA:

- B1 - Groundwater Permit Brief - 2 Pages
- B2 - Intake/Discharge Pipe Permit Brief - 1 Page
- B3 - Shoreland Permit Brief - 2 Pages
- B4 - Site Plan Permit Brief - 6 Pages
- B5 - Zoning Use Permit Brief - 1 Page

CITY OF BELFAST
ZONING BOARD OF APPEALS

March 1, 2021

Significant Ground Water Wells Permit

Response of Upstream Watch to documents filed by Nordic Aquafarms, Inc. on February 22, 2021 and by the Belfast Planning Board on February 18, 2021.

1. DRAWDOWN: In its Appeal, Upstream Watch asserts that Nordic Aquafarms, Inc. (“Nordic”) failed to demonstrate that surrounding properties would not be unreasonably impacted by Nordic’s use of groundwater. The requirement is that the project would not cause “unreasonable impacts to groundwater flow patterns” or “substantially lower the water table beyond the applicant’s property lines”. Upstream Watch then demonstrated from the record that, during the testing of Nordic’s wells, nearby homeowners’ wells suffered significant drawdown, strongly suggesting that the above standards were not being met. Nordic claims that it meets the requirements because it will respond to the damage it causes to neighbors’ wells (assuming the injured neighbors are able to satisfy whatever standard of proof regarding Nordic being the cause of the drawdown”. Lowering your neighbor’s well to a point where it requires remediation is clearly an “unreasonable impact” and is something which “substantially lowers” the water table beyond Nordic’s property lines. One cannot say that living next door to someone makes it “reasonable” to draw down their well, cut their trees, or direct stormwater onto their property. That sort of behavior is simply unreasonable. It might be “reasonable” and a normal neighborhood burden to expect to receive some snow from your neighbor’s snowblower falling on your property, but the drawdown of your neighbor’s well is far more serious than a little snow which will quickly melt.
2. POLLUTION: Upstream expressed concern about saltwater intrusion into the aquifer from at least one of Nordic’s proposed wells. Nordic dismisses this concern, not because saltwater intrusion will not occur (because Nordic’s data showed it probably will), but because all of the homeowners in the area are connected to city water. It is not clear from the code

provision that where nearby city residents are connected to the municipal water system, pollution of the aquifer by saltwater is appropriate or allowed. And that is Upstream's point. The Belfast Code does not grant Nordic or anyone else the right to pollute a natural resource.

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CITY OF BELFAST
ZONING BOARD OF APPEALS

March 1, 2021

Significant water intake and significant water discharge/outfall pipes permit

Response of Upstream Watch to documents filed by Nordic Aquafarms Inc. on February 22, 2021 and by the Belfast planning board on February 18, 2021.

In response to the comments of Nordic Aquafarms, Inc. to the Belfast Planning Board regarding the Upstream Watch appeal of the Significant Water Intake and Significant Water Discharge/Outfall Pipes Permit awarded to Nordic Aquafarms, Inc. by the Belfast Planning Board, Upstream has no further comment except as may be reflected in its responses to the same, or substantially the same, issues explored in the file of other related applications.

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CITY OF BELFAST
ZONING BOARD OF APPEALS

March 1, 2021

Shoreland Zoning Permit

Response of Upstream Watch to documents filed by Nordic Aquafarms Inc. on February 22, 2021 and by the Belfast Planning Board on February 18, 2021.

1. **COMPLETENESS:** Nordic Aquafarms, Inc. (“Nordic”) asserts that arguments regarding completeness are untimely. Nordic asserts that it filed its application in June 2019, the application was deemed preliminarily complete and a 30-day appeal ran from that determination. Assuming, arguendo, Nordic’s assertion is valid, Nordic can only assert that claim with regard to matters that are contained in its application as of that date. The Nordic dredge plan was revealed to the public on or about March 2, 2020. The Nordic plan to remove 20 to 50 feet of soil on its site was not revealed until the fall of 2020. To suggest that Upstream Watch was obliged to take an appeal in the summer of 2019 with regard to matters not revealed until 2020 is silly.
2. **HEARSAY:** Nordic claims that the rule against hearsay used in court proceedings is not applicable in an administrative land-use setting. While that may be true, it is worth noting the reason the hearsay rule exists is because hearsay evidence is inherently unreliable. It is no less unreliable simply because it occurs in a land-use setting rather than a court setting.
3. **POLLUTION OF SURFACE WATERS:** Nordic claims it has demonstrated that its project will not result in pollution of the surface waters because it had submitted an erosion and sedimentation control and storm water management plan and had them peer-reviewed by Oliver Associates. Although the peer review by Oliver Associates is problematic in itself, Upstream Watch does not challenge Nordic’s erosion and sediment

control or storm water management plan. Upstream Watch asserts that surface water, specifically Penobscot Bay, will be polluted by the Nordic discharge of wastewater. In Nordic's application, Nordic admits that it will be discharging pollution into Penobscot Bay. Under its MPDES permit, Nordic will discharge 7.7 million gallons of liquid containing 23 mg/l of nitrogen into Penobscot Bay every day, all year long, without a break. As long as the discharge is above 21 mg/l, according to DEP calculations, the discharge will compromise the water quality in the Bay, which is why the Nordic MPDES permit requires, as a condition, Nordic to somehow reduce its discharge to an acceptable nitrogen level. Nordic has not demonstrated that it can do so. Without that demonstration, Nordic's discharge will compromise and lower water quality in Penobscot Bay, and that is "undue" and will pollute the surface water of the Bay. That is prohibited by the city code and it is that to which Upstream Watch refers.

4. **WASTEWATER DISPOSAL**: Upstream Watch asserts that Nordic's proposed discharge of dewatering fluids from its dredge spoils is a discharge for which Nordic has neither sought nor obtained a permit. In response, Nordic asserts it will comply with its MPDES permit and waste discharge license. In its application for an NPDES permit and a waste discharge license, Nordic never mentioned the discharge of fluids from dewatering dredge spoils. The dewatering activity requires proper permitting and until that occurs the condition is not met.

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CITY OF BELFAST
ZONING BOARD OF APPEALS

March 1, 2021

Site Plan Permit

Response of Upstream Watch to documents filed by Nordic Aquafarms Inc. on February 22, 2021 and by the Belfast Planning Board on February 18, 2021.

- 1. Significant intake and outfall pipes: setback requirements.** Nordic relies on an alleged 2018 ordinance (chapter 82, division 17 (3)) to support its argument that only aboveground structures need to comply with the setback requirements. Quite possibly, in some way, Nordic is correct. However, that ordinance is not available online. That ordinance is not available in hard copy form at City Hall. That ordinance and the rest of the ordinances are not available for purchase by the public as required by statute. See MRSA Sec. 3005:

Every ordinance of a municipality shall be on file with the municipal clerk and shall be accessible to any member of the public. Copies shall be made available to any member of the public, at reasonable cost, at the expense of the person making the request. Notice that the ordinances are available shall be posted.

- 2. Notice of laws.** It is axiomatic in our American's system of justice that the public must be placed on notice of the laws it is expected to obey. In this case, allegedly, a land-use law was altered by the legislative authority of the city of Belfast to accommodate Nordic's pipes. There is no way for a citizen who didn't happen to participate in that process to know about the change in the law. That deprives citizens of the due process and the equal protection of the laws to which they are entitled under the federal and state Constitution. Until the city of Belfast complies with state statute and makes its ordinances available to the public, the city of Belfast, including the Planning Board, must be prohibited from using such "hidden ordinances" and "secret laws" in this or any other proceeding. Nordic cannot be allowed to profit by the illegal behavior of the city of Belfast. The law that is to be followed is the law that is publicly available and the law of

which the public is placed on notice. The only law so qualified contains no exception for pipes or other subsurface structures but rather prohibits all structures “on or below” the surface from being constructed in the setback. See: Code Section 66-1 “Structures”.

3. **Smokestacks are not chimneys.** Everyone knows what a chimney looks like. Most of us have them on our houses to accommodate a furnace flue and a living room fireplace flue. Everyone knows what a smokestack looks like. It is a great huge thing protruding into the sky next to an industrial facility. Nordic would have us believe that they are the same thing simply because neither includes habitable space. As ridiculous as that is, Nordic misses the point. Whether you call Nordic’s eight 68-foot exhaust structures chimneys, smokestacks, or eggplants they are not architectural features. Non-architectural structures have a height restriction of 45 feet. It is that simple. Nordic showed the neighbors the height of its proposed construction by flying balloons at 45 feet. At that time, Nordic did not need to have the 8 generators and so its exhaust could be discharged at a lower elevation. But as Nordic’s plan changed, Nordic needed 8 powerful generators and the only way to satisfy the Clean Air Act requirements was to exhaust at 68 feet. That violated what Nordic promised the neighbors. That was illegal because of the 45-foot limitation. So, Nordic cleverly called the smokestacks “architectural elements” like a steeple on a church, and the Planning Board allowed it. A utilitarian 68-foot smokestack is not an architectural element (much less 8 of them) and to claim it is constitutes an abuse of the discretion vested in the Planning Board and must be reversed.

4. **Undue water pollution.** Under its MPDES permit Nordic will discharge 7.7 million gallons of liquid containing 23 mg/l of nitrogen into Penobscot Bay every day, all year long, without a break. As long as the discharge is above 21 mg/l, the discharge will compromise the water quality in the Bay, which is why the Nordic MPDES permit requires, as a condition, Nordic to somehow reduce its discharge to an acceptable nitrogen level. Nordic has not demonstrated that it can do so. Without that demonstration,

Nordic's discharge will compromise and lower water quality in Penobscot Bay, and that is "undue".

- 5. Unreasonable burden on the existing municipal water supply.** Nordic claims it can obtain adequate water from the city of Belfast based on a report by A. E. Hodsdon. While that report suggests that there exists enough water to meet Nordic's demand as is, the report points out that the two wells to provide water to Belfast are old and are not in great shape. Beyond that, the Nordic demand will leave no "margin for error" should one of the old wells fail and will leave no additional water for any new business that may want to come to Belfast or any additional demand from existing Belfast customers. For that reason, the report says that Belfast should bring the "Talbot well" online. The report failed to explain that the Talbot well is not licensed as a public water supply well and would have to go through a significant and lengthy process in order to qualify for a license. Part of that process is an examination of potential polluting sources in the area from which the Talbot well may draw its water. In addition to not revealing that the Talbot well had no license the report also failed to state that they were to of what the state classified as potential points sources of pollution, to wit a landfill in a transfer station unfortunately close to the three Belfast drinking water wells. The report also failed to disclose that a plume of contamination emanating from the landfill had spread 460 feet toward and into the aquifer as of 1993. There have been no studies to determine how much farther that plume of contamination has advanced toward the area of the Talbot well. The omissions of the Hudson report whether deliberate or negligent make the conclusions of that report disingenuous and provided to the Planning Board and unjustified sense of security. To the credit of the Planning Board, members asked Nordic the right questions about the Goose River system, questions that were never answered. Those questions were important. To award a permit without knowing the answers to those questions is an abuse of the discretion vested in the Planning Board.

6. **Financial capacity.** Nordic asserts the planning board found that Nordic demonstrated “sufficient financial capacity”. The record reveals that Nordic demonstrated no financial capacity at all but rather a willingness to try to obtain financing in the future. The Planning Board allowed that as a permit condition and granted the permit. There was no basis on which to conclude Nordic demonstrated financial capacity. There is simply nothing in the record other than a letter saying that some point in the future a lender might consider the project coupled with Nordic’s promised to find financing somewhere sometime. That does not satisfy the permit requirement. To grant the permit with no evidence of financial capability in the record is an abuse of the discretion vested in the Planning Board.

7. **Adequate disposal of solid waste.** The Planning Board found that Nordic could “manage all types of solid wastes generated by their proposed operation, and that Nordic can maintain safe and healthful conditions.” Part of a safe and healthful condition is provision for emergency conditions, particularly storage in the event of an electrical outage resulting in a fish kill. Acknowledging that there is no facility for storing solid waste and emergency (nor is there a plan to do so), the Planning Board included a permit condition requiring Nordic to create a plan for emergency storage. A plan is one thing. The physical space to implement the plan is something else. The record reveals availability to store emergency solid waste regardless of what the plan says. If there is no physical space, any plan is meaningless. Again, allowing the application to proceed without a workable emergency management plan in place was an abuse of the discretion vested in the Planning Board.

2. **Adequate Electrical Power.** In its Approval Condition 12.2 the Planning Board found that Nordic had not supplied to the Planning Board evidence that it had secured an adequate supply of electric power. Rather, the Planning Board found that Nordic and/or Central Maine Power may be able to provide assurance at some undetermined date in the future. In short, there was no evidence that Nordic had adequate electric power as of the date of the permit (or to the date hereof). This is not a matter of sufficiency of the evidence presented. No evidence was presented at all. The

permit should have been denied. At the very least, the matter should be remanded to the Planning Board to address Nordic's electric power needs. See Condition 12.2, below.

12.2 Off-Site Electrical Service. *Based on preliminary information provided by Nordic to the Belfast Planning Board, Nordic's operations may require extensive off-site improvements to Central Maine Power's (CMP) facilities to address electrical demands associated with Nordic's facilities and operations. To date, however, Nordic has provided no specific information regarding the extent of improvements required to CMP's facilities, how such improvements (or lack thereof) could impact electrical service to Belfast and surrounding communities, when such improvements may be constructed and who will pay for such, and how such improvements may interface with Nordic's on-site power generation facilities. Further, the Minor Air Emissions Permit issued to Nordic by the Board of Environmental Protection establishes maximum limits on the amount of power (limits on amount of emissions that can occur based on amount of fuel used) that Nordic can produce from its on-site generators, meaning that Nordic, as identified in its Site Plan application, will be reliant on CMP for the majority of its power.*

Planning Board approval of the Nordic project is predicated on information provided in the Nordic application and testimony from Nordic representatives to the Board, including: Nordic shall rely on CMP for the majority of its power; improvements are required to CMP's facilities to support Nordic's operations, and Nordic's on-site power generation will occur within the parameters established in the BEP Minor Air Emissions Permit. As only limited information has been provided to date to the Planning Board regarding Nordic's use of electricity, Nordic, within one year of the date of issuance of a Site Plan Permit, shall provide information to the Code and Planning Department that identifies the following: off-site improvements that CMP must make to support the Nordic facility; how and when CMP will make required improvements; the party responsible for the cost of making required improvements; how Nordic's on-site electrical power generation will interface with CMP's service; and the degree to which Nordic will rely on power provided by CMP. The Board anticipates that most of this information can be provided through documentation provided by CMP to the Public Utilities Commission.

58 The Code and Planning Department shall review the above information, determine if the identified approach is consistent with the Nordic permit application submitted to the Planning Board, and report its findings to the Planning Board. In particular, any proposal by Nordic to change the classification of Air Emissions Permit issued to Nordic by the Board of Environmental Protection shall require Nordic to submit an amendment to the City Site Plan Permit for Board review and approval.

12.3 On-Site Power Generation. *Nordic, as identified in 12.2 above, has obtained a Minor Air Emissions License (Permit) from the Department of Environmental Protection to operate a series of 8 on-site generators to provide both peak shaving and emergency*

power for Nordic's operations. The Planning Board, recognizing that the City has minimal definitive standards to regulate air emissions, has determined that it largely will rely on the above DEP Permit to regulate specific air emissions associated with Nordic's on-site power generation activities, and by extension, regulating the amount of power (amount of fuel used) that Nordic can operate its on-site power generation facilities. And, as identified in 12.2 above, any proposal by Nordic to change the classification of the DEP Air Emissions license shall require the review and approval of the Belfast Planning Board as an amendment to this Site Plan Permit. Further, any proposal by Nordic to increase the height of the exhaust pipes (chimneys) to greater than 70 feet, shall require review and approval by the Planning Board as an amendment to this permit application to determine if the proposed increase in height has any adverse impact on air quality, air emissions and odors, and to determine if there is any adverse impact on public views.

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Zoning Use Permit

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