

STATE OF MAINE
WALDO, ss.

SUPERIOR COURT
Civil Action
Docket No. CV-2018-_____

ELEANOR DANIELS and DONNA)
BRODERICK,)

Plaintiffs)

v.)

CITY OF BELFAST,)

Defendant, and)

NORDIC AQUAFARMS, INC. and)
BELFAST WATER DISTRICT)

Parties-In-Interest)

AMENDED
COMPLAINT

Plaintiffs Eleanor Daniels and Donna Broderick, by and through their undersigned attorney, complain against Defendant, City of Belfast (“City”) as follows:

JURISDICTION AND VENUE

1. Plaintiff’s bring this Declaratory Judgment action against the City of Belfast, pursuant to 14 M.R.S. §5951 *et. Seq.* seeking a determination that the Belfast City Council actions taken on April 17, 2018 adopting Amendments to the City’s Zoning Ordinances and the City Future Land Use Plan (“Comprehensive Plan”) to allow a land-based salmon farm proposed by Nordic Aquafarms, Inc. are invalid and seeking such other relief as may be justified under the circumstances of the case. The Amendments are referred to herein as the April 17 Zoning Amendments and the April 17 Comprehensive Plan Amendments.

2. Plaintiffs are residents of the City of Belfast, owning real estate located at 38 Perkins Road, within close proximity to the land area that is subject to the April 17 Zoning Amendments and April 17 Comprehensive Plan Amendments.

3. Defendant, City of Belfast, is a body corporate and politic, located in the County of Waldo, State of Maine.

4. Party-in-Interest, Nordic Aquafarms, Inc. (“Nordic”) is a Delaware Corporation, doing business in the City of Belfast, State of Maine.

5. Belfast Water District is a quasi-municipal entity, owning real estate and doing business in the City of Belfast, County of Waldo, State of Maine.

6. The real estate that is subject to the April 17 Zoning Amendments and April 17 Comprehensive Plan Amendments is located in the City of Belfast, County of Waldo, State of Maine, and is shown in highlight on Exhibit A, attached hereto.

BACKGROUND FACTS

7. Upon information and belief, Nordic began discussions and negotiations with City officials sometime in the summer of 2017, proposing to develop a land-based salmon aquaculture operation with a proposed investment of \$150 million by 2020 and a future investment of \$400-500 million at full construction of the aquaculture farm.

8. Upon information and belief, sometime during the summer or fall of 2017, Nordic also began discussions and negotiations with the Water District to purchase land and water rights from the District to service the proposed salmon farm.

9. Upon information and belief, during 2017 and January of 2018, the City Council held multiple Executive Sessions to discuss the proposed Nordic project, as well as certain contracts with Nordic and the Water District, and the need for changes to the Zoning Ordinance and Comprehensive Plan.

10. Upon information and belief, during 2017 and January of 2018, the Water District held multiple Executive Sessions to discuss proposed contracts with Nordic and the City related to the sale of land to Nordic and the supply of water to Nordic for its proposed project.

11. After several months of negotiations, on January 29, 2018, after holding another Executive Session, the City Council voted unanimously to authorize the City Manager to execute a “certain Evaluation Agreement and an Options To Purchase Agreement” with directions that “the documents shall not be released to the public until they are in final form and signed by the City Manager. . .”

12. On January 30, 2018, the Water District, Nordic, and the City of Belfast, signed the Options and Purchase Agreement and the Evaluation Agreement, and the Water District and Nordic signed a third agreement, the Water Supply and Purchase Agreement. Copies of the three Agreements are attached as Exhibits B, C, and D.

13. On January 30, 2018, Nordic, the City, and the Water District held a press conference attended by Maine Governor Paul LePage and other state and local officials, to announce that Nordic had signed agreements to purchase 40 acres in Belfast, where it will build one of the world's largest land-based salmon farms.

14. The Options and Purchase Agreement signed that day provides for the sale of certain Water District property to Nordic upon which it will construct its facilities, and for the sale of other Water District Property to the City. The property to be purchased by Nordic is labeled "Realty" and "Additional Parcel," and the property to be purchased by the City is labeled as "Waterfront Parcel" on Exhibit A attached to the Options and Purchase Agreement

15. Under the Options and Purchase Agreement, the City agreed to purchase the "Waterfront Parcel" at a price to be determined by the Water District's sole discretion up to \$100,000, and "subject to easements necessary for the infrastructure related to NAF's land-based aquaculture facility. . ."

16. Nordic's purchase of the land to be developed is conditioned on the City contemporaneously purchasing the Waterfront Parcel.

17. The Evaluation Agreement states that "the City views the Project as an economic development opportunity which benefits the City and its inhabitants because it is investing in the future for generations of Belfast workers and ancillary businesses that will provide services to the Project."

18. Under the Evaluation Agreement, the City is obligated to pay one-half of Nordic's costs for water treatment over 6 years up to \$120,000, and to pay one-half of Nordic's costs for dam inspections up to \$20,000, and agrees to confer with Nordic if the inspection costs exceed \$40,000.

19. Under the Evaluation Agreement, the City, upon Nordic's reasonable request is obligated to cooperate with Nordic to obtain governmental approvals "(excluding its own municipal permits and licenses)."

20. Under the Evaluation Agreement, the City is further obligated to assist the Water District to identify a replacement site for the Water District's office and operations. The City has offered to sell land on Crocker Road to the Water District for this purpose for \$1.00.

21. The Water Supply and Purchase Agreement obligates the Water District to supply up to 262,800,000 gallons per year to Nordic, and for Nordic to purchase a minimum of 100,000,000 gallons per year of water from the Water District.

22. At the time these three agreements were signed, and for many months prior to the signing, the City Council and the City Director of Code and Planning (“Planning Director”) knew that both the Zoning Ordinance and the Comprehensive Plan would need to be amended to allow the Nordic project to be developed on the proposed site.

23. On January 31, 2018, Wayne Marshall, the Planning Director met with the Belfast Planning Board in a Work Session to inform the Planning Board that Nordic’s proposed project will require amendments to both the City Zoning Ordinance and its Comprehensive Plan.

24. At the January 31 Planning Board Work Session, the Planning Director informed the Planning Board that it would not be involved in the review of either the Zoning Ordinance or Comprehensive Plan amendments. He informed the Board that the City Council and Department Staff will be taking charge of developing and reviewing the amendments.

25. On February 21, 2018, at a Public Informational Meeting held at the Hutchinson’s Center in Belfast, the City stated its intent to amend the Zoning Ordinance and the Comprehensive Plan to allow the Nordic Aquafarm project development.

26. On March 2, 2018, the Planning Director provided a summary to the City Council of the amendments that would be required to the Zoning Ordinance and the Comprehensive Plan to allow the Nordic project to be developed.

27. On March 6, 2018, the City held its first public meeting to provide a summary to the public of the proposed amendments and the process that would be used to adopt the amendments.

28. On March 20, 2018, the City Council conducted its first reading of the proposed amendments and held a public hearing at which it accepted oral comments at the meeting as well as comments submitted in writing. The City Council voted unanimously to accept the first reading of the proposed amendments to the Zoning Ordinance, then voted 3 to 2, to accept the first reading of the proposed amendments to the Comprehensive Plan, and to have a second public hearing and second reading held on April 17, 2018.

29. On April 17, 2018, the City Council held its second reading and second public hearing.

30. At both public hearings, the majority of public comments requested that additional information be made available to the public and/or that the City slow down its review and approval process for the proposed amendments.

31. At the April 17 hearing, Plaintiff Eleanor Daniels expressed her concerns about the lack of information being provided before changing the Zoning Ordinance and Plaintiff Donna Broderick expressed her own concerns and those she reported hearing from many neighbors requesting that the City Council slow down the process until more information is made available.

32. After the Public Hearing was closed, and after a brief discussion considering a change to the height limit in the proposed new zone, the City Council voted unanimously to adopt the April 17 Zoning Amendments, and then voted unanimously to adopt the April 17 Comprehensive Plan Amendments.

33. The suggestion that the height limit be changed in the proposed zone was quickly rejected at the April 17 meeting after the Planning Director explained that this would require another public hearing.

34. The April 17 Zoning Amendments were not consistent with the Comprehensive Plan that was in effect at the time the Amendments were adopted.

35. Only after the City Council adopted the April 17 Zoning Amendments, did it attempt to revise the Comprehensive Plan to be consistent with the Amended Zoning Ordinance.

36. The City Council did not follow the citizen participation procedures required by 30-A M.R.S. §4324, including the appointment of a planning committee that would hold public hearings and solicit and consider a broad range of public review and comment before making recommendations to the City Council for an Amendment to the Comprehensive Plan.

37. As the “municipal reviewing authority,” the Planning Board did not conduct a public hearing or provide the notices required by 30-A M.R.S. §4352.

38. The City Council took actions to purposely avoid any citizen participation in any planning process related to amending the Comprehensive Plan to allow the proposed Nordic project.

39. The City Council took actions to purposely avoid having the Planning Board, or any other planning body, engage in any planning or review related to amending the Zoning Ordinance or the Comprehensive Plan to allow the proposed Nordic project.

40. These restrictive actions taken by City Council resulted in the Council members having sole responsibility for the planning process at a time when they had already taken actions that recommended the project and committed the City to expending funds and City land to the project.

41. The Belfast Zoning Ordinance requires that any proposed changes to the Zoning Ordinance first be reviewed by the Planning Board before being considered for adoption by the City Council. *See*, Section 102-182 of the Zoning Ordinance, a copy of which is attached as Exhibit E.

42. Because the April 17 Zoning Amendments were not pursuant to and consistent with the City's Comprehensive Plan as required by 30-A §4352(2), the City Council's action adopting the April 17 Zoning Amendments was unlawful and exceeded the City's home rule authority.

43. Because the April 17 Comprehensive Plan Amendments were adopted without following the required procedures for citizen participation set forth in 30-A M.R.S. §4324, the City Council action adopting the April 17 Comprehensive Plan Amendments was unlawful and exceeded the City's home rule authority.

44. Because the Zoning Ordinance Amendments were adopted without complying with the public hearing and notice requirements of 30-A M.R.S. §4352, the City Council's actions adopting the April 17 Zoning Amendments was unlawful and exceeded the City's home rule authority.

45. Because the City is subject to and bound by the terms and provisions of its own zoning ordinance (*see* 30-A M.R.S. §4352(5)), its actions adopting the April 17 amendments to the Zoning Ordinance without first having the proposed ordinance reviewed by the Planning Board, as Required by city Code Section 102-182, were unlawful and exceeded the City's home rule authority.

46. The April 17 Zoning Amendments sets forth conditions for its continuing effectiveness after December, 2019.

47. The April 17 Zoning Amendments do not satisfy the requirements and conditions for legal conditional or contract rezoning under 30-A M.R.S. §4352.

48. The April Zoning Amendments constitute illegal spot zoning.

WHEREFORE, Plaintiff's request that this Court grant a Declaratory Judgment in their favor, setting aside the April 17 Zoning Amendments, setting aside the April 17 Comprehensive Plan Amendments, declaring the Amendments to have no force and effect, granting Plaintiffs their costs and attorney fees, and granting such other relief as may be just under the circumstances of the case.

Dated at Portland, Maine this ^{7th} 7 day of July, 2018.



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Donna Broderick

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