

STATE OF MAINE
WALDO, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. WALSC-RE-2021-07

JEFFREY R. MABEE, JUDITH GRACE,)
THE FRIENDS OF THE HARRIET L.)
HARTLEY CONSERVATION AREA, and)
UPSTREAM WATCH,)

Petitioners/Plaintiffs,)

and AARON M. FREY, ATTORNEY GENERAL)

Intervenor-Defendant)

v.)

CITY OF BELFAST, MAINE,)

Respondent/Defendant)

and)

NORDIC AQUAFARMS INC.,)

Intervenor-Defendant.)

**INTERVENOR-PLAINTIFF
ATTORNEY GENERAL'S
COMPLAINT FOR
DECLARATORY JUDGMENT**

(Title to Real Estate Involved)

INTRODUCTION

1. In his official capacity as the Attorney General of the State of Maine, Intervenor-Plaintiff Aaron M. Frey (the Attorney General) files his complaint in this action affecting a conservation easement to obtain a judgment declaring 33 M.R.S. § 477-A(2) and (2)(B) (2021) applicable to the City of Belfast's attempt to terminate a conservation easement by condemnation and, because the City of Belfast has not complied with 33 M.R.S. § 477-A(2)(B), declaring the conservation easement valid and in effect despite the City's condemnation of same.

PARTIES

2. Intervenor-Plaintiff Aaron M. Frey is the Attorney General of the State of Maine and files this complaint in his official capacity as the Attorney General pursuant to 33 M.R.S. § 478(1)(D) (2021), 5 M.R.S. § 194 (2021), and the powers vested in him at common law.

3. Plaintiffs Jeffrey Mabee and Judith Grace are individuals who reside in Belfast, Maine, and who claim title to certain intertidal land in Belfast and Northport (the disputed intertidal land).

4. Plaintiff Upstream Watch is a Maine nonprofit corporation to which Plaintiffs Jeffrey Mabee and Judith Grace conveyed a conservation easement, including over the disputed intertidal land.

5. Plaintiff Friends of the Harriet L. Hartley Conservation Area (the Friends) is a Maine nonprofit corporation to which Upstream Watch assigned the conservation easement.

6. Defendant City of Belfast is a municipal corporation in the State of Maine.

7. Defendant-Intervenor Nordic Aquafarms Inc. (Nordic Aquafarms) is a business corporation incorporated in Delaware and registered to do business in Maine.

JURISDICTION AND VENUE

8. The Court has jurisdiction over this matter pursuant to 4 M.R.S. § 105 (2021), 14 M.R.S. §§ 5951-5963 (2021), 14 M.R.S. § 6051(13) (2021), 33 M.R.S. §§ 477-A(2) and 478.

9. Venue is proper in Waldo County pursuant to 14 M.R.S. § 501 (2021) because Plaintiffs Mabee and Grace reside in Waldo County.

FACTS

10. Mabee and Grace claim ownership of the disputed intertidal land, title to which is being adjudicated by this Court in *Mabee v. Nordic Aquafarms, Inc.*, RE-2019-18 (Super. Ct., Waldo Cty.).

11. On April 29, 2019, Mabee and Grace conveyed a conservation easement to Upstream Watch, which conservation easement is recorded in the Waldo County Registry of Deeds, Book 4367, Page 273.

12. The purposes of the conservation easement include:

Preserve the Protected Property in perpetuity as open space and free from structures of any sort, especially any principal or accessory structures erected, constructed or otherwise located in furtherance of any commercial or industrial purpose.

Preserve the property in its natural condition. The term 'natural condition' as referenced in this . . . Conservation Easement shall mean the condition of the Protected Property as it exists at the time of this Conservation Easement, or other changes that may occur to the Protected Property related to restoration of the adjacent Little River as a natural Fishway.

Provide a significant public benefit by protecting and preserving, in perpetuity, the Protected Property in its present and historic, primarily undeveloped, natural condition.

13. The conservation easement expressly prohibits, among other things: filling, excavating, and removing natural materials; any alterations of topography; vegetation removal, except by the grantor in limited instances; industrial activities; commercial activities; and structures.

14. If Mabee and Grace owned the disputed intertidal land at the time they conveyed the conservation easement to Upstream Watch, then the property subject to the conservation easement includes the disputed intertidal land.

15. In November 2019, Upstream Watch assigned the conservation easement to the Friends, which assignment is record in the Waldo County Registry of Deeds, Book 4435, Page 344.

16. Nordic Aquafarms proposes to install water intake and water discharge pipes on the disputed intertidal land as part of its proposed land-based recirculating aquaculture system.

17. Nordic Aquafarms' proposed water intake and water discharge pipes are structures.

18. To install the water intake and water discharge pipes on the disputed intertidal land, Nordic Aquafarms plans to remove natural material from the disputed intertidal land and then cover the pipes with fill.

19. Nordic Aquafarms' proposed use of the disputed intertidal land is a commercial use.

20. Nordic Aquafarms' proposed use of the disputed intertidal land is an industrial use.

21. The conservation easement, if valid, prohibits Nordic Aquafarms' proposed use of the disputed intertidal land.

22. The City of Belfast condemned Mabee's and Grace's interest in the disputed intertidal land.

23. The City of Belfast condemned the Friends' interest in the disputed intertidal land (i.e., the conservation easement).

24. The City of Belfast conveyed to Nordic Aquafarms an easement over the disputed intertidal land (the Nordic easement).

25. The Nordic easement, if valid, allows Nordic Aquafarms the right to install, operate, and maintain its water intake and water discharge pipes on the disputed intertidal land and includes a temporary construction easement.

26. The Nordic easement, if valid, affords Nordic Aquafarms the right to remove vegetation and change the grade of the property.

27. The Nordic easement, if valid, would allow the disputed intertidal land to be used in a manner that violates the conservation easement.

28. The conservation easement, if valid, would need to be terminated or amended to allow Nordic Aquafarms' proposed use of the of the disputed intertidal land.

29. Title 33 M.R.S. § 477-A(2) provides: "Amendments and terminations of a conservation easement may occur only pursuant to this subsection."

30. Title 33 M.R.S. § 477-A(2)(B) provides in pertinent part: "A conservation easement may not be terminated or amended in such a manner as to materially detract from the conservation values intended for protection without the prior approval of the court in an action in which the Attorney General is made a party."

31. Title 33 M.R.S. § 478(3) provides in pertinent part: "The court may permit termination of a conservation easement or approve amendment to a conservation easement that materially detracts from the values its serves, as provided in section 477-A, subsection 2(B)."

32. No person has filed a court action, in which the Attorney General is named as a party, to terminate the conservation easement described in this Complaint to allow Nordic Aquafarms' proposed use of the disputed intertidal land.

33. No person has filed a court action, in which the Attorney General is named as a party, to amend the conservation easement described in this Complaint to allow Nordic Aquafarms' proposed use of the disputed intertidal land.

34. The City of Belfast claims that it may terminate by condemnation a privately held conservation easement such as the conservation easement described in this Complaint without seeking court approval in an action in which the Attorney General is made a party.

COUNT I
(Declaratory judgment)
(Violation of 33 M.R.S. § 477-A(2) and (2)(B))

35. The Attorney General repeats and realleges the allegations set forth in the preceding paragraphs of this Complaint.

36. Title 33 M.R.S. § 477-A(2) and (2)(B) vests in the courts alone the power to terminate a conservation easement.

37. Pursuant to 33 M.R.S. § 477-A(2)(B), the City may terminate a privately held conservation easement such as the conservation easement described in this Complaint only by receiving court approval in an action in which the Attorney General is a party.

38. Title 33 M.R.S. § 477-A(2)(B) does not admit of any exceptions to its rule that only a court may terminate a conservation easement.

39. The City of Belfast contends that through condemnation it may terminate a privately held conservation easement such as the conservation easement described in this Complaint without obtaining court approval in an action in which the Attorney General is a party.

40. The City of Belfast conveyed the Nordic easement, which allows uses of the disputed intertidal land prohibited by the conservation easement, without terminating the conservation easement described in this Complaint pursuant to 33 M.R.S. § 477-A(2)(B).

41. A present dispute exists between the Attorney General and the City of Belfast as to whether the City's condemnation of a privately held conservation easement—namely, the conservation easement described in this Complaint—is exempt from 33 M.R.S. § 477-A(2)(B).

42. A present dispute exists between the Attorney General and the City of Belfast as to whether the City's condemnation of the conservation easement described in this Complaint terminated that conservation easement.

COUNT II
(Declaratory judgment)
(Violation of Conservation Easement)

43. The Attorney General repeats and realleges the allegations set forth in the preceding paragraphs of this Complaint.

44. If both the conservation easement described in this Complaint and the Nordic easement are valid, then Nordic Aquafarms' use of the property pursuant to the Nordic easement is prohibited by the conservation easement.

45. If both the conservation easement described in this Complaint and the Nordic easement are valid, then Nordic Aquafarms' use of the property pursuant to the Nordic easement will violate the conservation easement.

RELIEF REQUESTED

Wherefore, the Attorney General respectfully requests that this Court enter judgment in his favor and against the City of Belfast as follows:

- A. Declare that 33 M.R.S. § 477-A(2)(B) prohibits the City of Belfast from unilaterally terminating a privately held conservation easement;
- B. Declare that the City of Belfast's condemnation of the conservation easement described in this Complaint did not terminate that conservation easement because it was not approved by a court in an action in which the Attorney General was made a party;
- C. Declare that the City of Belfast's condemnation of the conservation easement described in this Complaint did not amend that conservation easement so as to allow Nordic Aquafarms' use of the property subject to the conservation easement because it was not approved by a court in an action in which the Attorney General was made a party;
- D. Declare that the conservation easement described in this Complaint remains valid and in effect as to the disputed intertidal land;
- E. Declare that Nordic Aquafarms' use of the disputed intertidal land pursuant to the Nordic easement will violate the conservation easement described in this Complaint;

- F. Enjoin Nordic Aquafarms from using the disputed intertidal land until such time that this Court either determines that the conservation easement described in this Complaint is not valid or approves an amendment or termination of that conservation easement so as to allow Nordic Aquafarms' use of the disputed intertidal land in an action in which the Attorney General is a party;
- G. Award the Attorney General his costs of suit, as permitted by 14 M.R.S. § 5962 (2021); and
- H. Award the Attorney General such other and further relief as this Court deems just and proper.

Dated: December 23, 2021

Respectfully submitted,

AARON M. FREY
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