

**TOWN OF ARUNDEL, MAINE  
BOARD OF SELECTMEN MEETING**

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**Monday January 13, 2020  
ML Day School  
7PM**

- I. Call to Order
- II. PUBLIC HEARING-Consent Order for Non-Action Map17 Lot11A**
- III. Approval of Agenda
- IV. Public Forum – Public comment on non-agenda items
- V. Approve Minutes of December 23, 2019
- VI. Committee and Board Reports
- VII. Manager’s Report
  - Municipal Building Status
  - Collaboration Meeting
  - Status on Budget Development
  - Status on BAN & Bond Application
- VIII. Business
  - Discussion Consent Order for Non-Action Map 17 Lot 11A
  - Determination of Legal Representation
  
- XI. Other Business and Adjournment
  - Approval Payable Warrant
  - Adjournment

# **TOWN OF ARUNDEL**

468 LIMERICK RD ARUNDEL MAINE 04046 (207) 985-4201 FAX (207) 985-7589

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## **BUSINESS MEETING 1-13-20**

### **EXECUTIVE SUMMARY**

BOS Members: The purpose of this summary presented is to give you some information over and above just the mentioning of the subject matter on the agenda. It is my hope that this information assists you in your decision making.

### **MANAGERS REPORT**

-Municipal Building Status: I will have some additional photographs of the project and by this report I believe the entire footings and foundation walls should be up. The geofoam is on site and will be placed shortly and covered with stone. It has been confirmed that the walls for the project will be built in Brunswick and delivered to the site on or around March/April at which time the Trusses will be set on and the building will be buttoned up so onsite work can continue. The site contractor may continue his/her work on site and the Public Works Department will arrive on site once frozen to remove trees and establish the area for the Septic System. Chips from their work will remain on site and be used by the Arundel Conservation Trust for their trail upgrades. A safe walkway for the ACT folks will be developed to allow their continued access but remove them from any serious onsite construction mishaps.

-Collaboration Meeting: This meeting will take place with two selectmen from each community (Dubois and Danylik) to discuss areas that our communities (K'Port, Kenn, Arundel) may be able to work together. Meeting is set for Thursday January 16, 2020 starting @ 6PM at the Kennebunkport Police Station on Main Street.

-Budget Preparation: This is a work in progress with an increase in equipment and personnel being requested by four departments. It is my hope to have these discussions with departments and modify requests as a result of these discussions.

-BAN & Bond Application: I was notified on Wednesday the 8<sup>th</sup> that the Biddeford Savings Trustees have approved our Bond Anticipation Note. Paperwork is forthcoming the town has yet to receive an invoice from the Contractor for the work at the site. To date the only invoices we have received are from Port City that includes the original contract and the Value Management Changes made as a result of changes in the Building design along with upgrading our permit requests from the DEP and the Army Corps.

### **BUSINESS**

-Discuss Consent Order for Non-Action on Map 17 Lot 11A: Earlier in the meeting you would have conducted your public hearing on this request. Advertising appeared in the paper and abutters to this lot were notified. As you know we have a lot that was given building permit in 1986 that had been a lot of

record since 1975 that contains 1.69 acres and should have been a minimum of 2.0 acres. Action by the Board is required to prevent this oversight to continue and provide guidance in making this lot a legal lot.

-Determination for Legal Representation: At your last meeting you were provided four firms that replied to your RFP. Firms primarily were located in the Portland area with one firm from Lewiston. Three of the firms were larger in scope and provided a Municipal Law Division within the practice with various lawyers that could be called upon to provide services. All firms provide various hourly rates and commitments to rates that may be appealing in terms of budgeting.

#### **OTHER BUSINESS AND ADJOURNMENT**

(a) Account Payable Warrant: Provided at Meeting for review.

STATE OF MAINE  
YORK, ss.

DISTRICT COURT  
DISTRICT: TENTH  
LOCATION: Biddeford  
DOCKET NO.

TOWN OF ARUNDEL,

Plaintiff

v.

DAVID H. WRIGHT JR and ANNALEE P.  
WRIGHT,

Defendants

**CONSENT JUDGMENT AND ORDER  
(M.R.Civ.P. 80K)**

NOW COME the parties in the above-captioned matter and STIPULATE AND AGREE to a Consent Judgment as follows:

1. Plaintiff, Town of Arundel, is a municipal corporation under the laws of the State of Maine.
2. Defendants, David H. Wright Jr. and Annalee P. Wright, are the owners of 725 Limerick Road, Arundel, Maine (the "Premises").
3. Both parties consent to the filing of this Consent Judgment and Order pursuant to the provisions of 30-A M.R.S. §4452 and M.R. Civ. P. 80K and waive any requirements of service of process, formal citation and any other jurisdictional issues; it is the intent of the parties to fully vest this Court with jurisdiction over the matters contained herein.
4. The parties stipulate to the following:
  - a) The Defendants acquired title to the Premises a little over a year ago by a deed from Verne E. Bodwell III and Margaret G. Bodwell dated October 30, 2018 and recorded in the York County Registry of Deeds in Book 17833, Page 432 (a corrective deed dated October 2, 2019 and recorded in said Registry in Book 18073, Page 890 fixes a typo in the execution clause of the original deed).
  - b) The Premises is identified on Arundel Tax Map 17 as Lot 11A.
  - c) The Premises, containing 1.69 acres, was created by a subdivision from a larger parcel by virtue of a deed from Bernon J. Madore and Suzanne Madore to Dennis G. Madore and Rachel Madore dated July 5, 1979 and recorded in said Registry in Book 2534, Page 66.

- d) Just a few months before the July 5, 1979 subdivision, the Plaintiff enacted the first iteration of its Land Use Ordinance (the “Ordinance”), which required a minimum lot size of 2 acres in the district where the Premises is located.
- e) The land use violation went unnoticed for years and a building permit was issued in 1986 in connection with the construction of the current single family home located on the Premises.
- f) In 1995, the Plaintiff’s then Town Planner Robert Georgitis became aware of the violation and sent a letter to the then owners, Roger and Clara Chambers, notifying them of the violation and that they must resolve the violation or face enforcement action. For reasons that are unclear, no enforcement action was ever taken by the Plaintiff until now. The Citation and Complaint filed in this matter was done so at request of the Defendants after a person who signed a purchase and sale agreement to buy the discovered the 1995 Georgitis letter in the code file for the Premises in Plaintiff’s offices. Although the Defendants had a title search performed when they purchased the Premises, it is not customary practice to review the code file for a residential property when purchasing a home unless new construction is contemplated. Accordingly, Defendants were unaware of the 1995 Georgitis letter until it was brought to their attention by the buyer.
- g) The Premises is currently located in the Suburban Residential (R-2) Land Use District under the Ordinance. At all relevant times since the Ordinance’s creation, the Land Use District where the Premises has been located has required a minimum lot size of 2 acres. That requirement is currently set forth in Section 6.2.3 of the Ordinance.
- h) The Defendants acknowledge that the Premises violates the minimum lot size requirements of the Ordinance as set forth above and as alleged in the Plaintiff’s Land Use Citation and Complaint pursuant to M.R. Civ. P. 80K and the violation continues unabated to the present day.
- i) The Plaintiff has investigated and has determined that the violation appears to be inadvertent, and does not pose any threat to health, safety or welfare.
- j) The Plaintiff and Defendants have reviewed this matter with the assistance of counsel and have agreed to the above referenced stipulated facts and future agreed to the entry of a Consent Judgment set forth below.

It is hereby ORDERED as follows:

1. The Defendants, and their heirs, successors and assigns, shall be allowed to maintain the Premises in its current lot size, subject to all the applicable requirements of the Town of Arundel Land Use Ordinance.
2. The Defendants, for themselves and for their heirs, successors and assigns agree to comply with the Ordinance, as amended from time to time, in all future use of and building on the Premises. This Consent Judgment and Order does not cause the Premises to become a

legally existing, non-conforming lot. Nor does this Consent Judgment and Order authorize any future alterations to the size or configuration of the Premises that cause the lot to become more non-conforming.

3. The Defendants shall pay to the Plaintiff, the sum of \$2,288.90 as a civil penalty on account of: (a) legal fees incurred in the resolution of this matter in the amount of \$2,245.00; and (b) publication and mailing fees incurred in the amount of \$43.90 to ensure appropriate notice of the public hearing held in conjunction with this matter, which hearing was held on January 13, 2020. Said payment shall be made within 30 days of the last signature below.

4. The Plaintiff agrees, and does hereby relinquish, its right to further prosecute the Defendants, their heirs, successors and assigns, for the aforesaid violations of the Ordinance; provided, however, that if the Defendants or their heirs, successors or assigns shall breach or otherwise fail to meet the terms of this Consent Judgment and Order, Plaintiff may institute appropriate Court proceedings to enforce the provisions of Ordinance and/or this Consent Judgment and Order, and shall be entitled to monetary penalties, as well as injunctive relief. In any such enforcement action the Plaintiff shall be entitled to its costs of Court and attorney's fees.

5. This Consent Judgment and Order is binding upon the heirs, successors, assigns, and grantees of all parties hereto. Defendants shall record this Consent Judgment and Order in the York County Registry of Deeds within 30 days of the last signature below. Defendant shall provide Plaintiff with proof of recordation.

The Clerk is specifically directed pursuant to M.R.Civ.P. 79(a) to enter this Order on the Civil Docket by notation incorporating it by reference.

TOWN OF ARUNDEL

Date: \_\_\_\_\_

\_\_\_\_\_  
By: Keith Trefethen  
Its: Town Manager  
DULY AUTHORIZED

Date: \_\_\_\_\_

\_\_\_\_\_  
David H. Wright Jr.

Date: \_\_\_\_\_

\_\_\_\_\_  
Annalee P. Wright

**IT IS SO ORDERED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge, Maine District Court

STATE OF MAINE  
YORK, ss.

DISTRICT COURT  
DISTRICT: TENTH  
LOCATION: Biddeford  
DOCKET NO.

TOWN OF ARUNDEL,  
Plaintiff

v.

DAVID H. WRIGHT JR and ANNALEE P.  
WRIGHT,

Defendants

**LAND USE CITATION AND  
COMPLAINT  
PURSUANT TO M.R. Civ. P. 80K**

NOW COMES the Plaintiff, the Town of Arundel, and makes the following Complaint against the Defendants, David H. Wright Jr. and Annalee P. Wright, pursuant to Rule 80K of the Maine Rules of Civil Procedure as follows:

1. NAME AND ADDRESS OF VIOLATORS and PROPERTY OWNERS:

David H. Wright Jr. & Annalee P. Wright  
38 Laura Lane  
Arundel, Maine

2. LOCATION OF VIOLATION:

725 Limerick Road  
Arundel, Maine  
Tax Map 17, Lot 11A

3. TIME AND PLACE VIOLATION WAS FIRST OBSERVED:

On or about November 8, 2019 when the violation was reported to the Arundel Code Enforcement Officer Jim Nagle in a telephone call from Matthew J. Williams, Attorney for Defendants David H. Wright Jr. and Annalee P. Wright.

4. DESCRIPTION OF VIOLATION:

David H. Wright Jr. and Annalee P. Wright (the "Wrights") own 725 Limerick Road, Arundel, Maine (the "Premises") by virtue of a deed from Verne E. Bodwell III and Margaret G. Bodwell dated October 30, 2018 and recorded in the York County Registry of Deeds in Book 17833, Page 432<sup>1</sup>. The Premises is currently located in the Suburban Residential (R-2) Land Use District under the Town of Arundel Land Use Ordinance (the

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<sup>1</sup> A corrective deed dated October 2, 2019 and recorded in said Registry in Book 18073, Page 890 corrects the execution clause in the original deed to the Wrights.

“Ordinance”) which has a minimum lot size requirement of 2 acres. The Premises contains only 1.69 acres.

5. SUMMARY OF LAW VIOLATED

The Lot violates Section 6.2.3 of the Ordinance which requires a minimum lot size of 2 acres in the Suburban Residential (R-2) Land Use District where the Lot is located.

6. PENALTIES FOR VIOLATION:

Penalties are established by 30-A M.R.S.A. § 4452.  
Penalty Amount: \$100 to \$5,000 per day the violation exists.

7. RELIEF SOUGHT FROM COURT:

- Temporary restraining order (complete affidavit and certificate below)
- Preliminary Injunction
- Permanent Injunction
- Civil Penalty
- Removal of Violation
- Attorney's Fees and Costs

8. DATE OF COURT APPEARANCE:

N/A, 2020 at \_\_\_\_\_ a.m./p.m. at the Biddeford District Court, 25 Adams Street, Biddeford, Maine 04005. (207) 283-1147.

NOTE: IF YOU DO NOT APPEAR IN COURT ON THE DATE SPECIFIED ABOVE, A JUDGMENT BY DEFAULT MAY BE RENDERED AGAINST YOU.

Signature of Complainant/Clerk:

Signature: \_\_\_\_\_  
Sandra L. Guay, Attorney for Plaintiffs

Name of complainant: Keith Trefethen

Signature of complainant: \_\_\_\_\_

City/Town: Arundel Title: Town Manager

Date: \_\_\_\_\_

WE, THE UNDERSIGNED, ACKNOWLEDGE RECEIPT OF THIS LAND USE CITATION AND COMPLAINT.

Dated: \_\_\_\_\_

\_\_\_\_\_  
David H. Wright Jr.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Annalee P. Wright

**ORDINANCE CERTIFICATION**

I, \_\_\_\_\_, the duly appointed Town Clerk for the Town of Arundel, hereby certify pursuant to 30-A M.R.S.A. § 3006 that the attached is a true and accurate copy of Town of Arundel Zoning Ordinance Subsection 6.2.3 *Space & Bulk Requirements in the R-2 District*, and that this section has been in effect without change since prior to \_\_\_\_\_ the date hereof. The complete text of the Town of Arundel Zoning Ordinance may be found at the Town of Arundel offices.

DATED: \_\_\_\_\_, 2020

\_\_\_\_\_  
, Town Clerk

TOWN OF ARUNDEL  
**BOARD OF SELECTMEN**

Monday December 23, 2019  
ML Day Library  
7 PM

Members present: Selectmen Jason Nedeau, Dan Dubois, Tom Danylik, Phil Labbe, Velma Hayes

Others: Town Manager, Jack Reetz, John Bell, Tara Bach, Ryan Cristman.

**Call to Order:** Chairman Nedeau called the meeting to order @ 7:00PM

**Approval of Agenda:** *MOTION Dubois second Labbe “approve agenda as amended” passed 5-0. (RSU #21 Financial Report)*

**Public forum:** John Bell reminded the Manager to provide him the Holiday Schedule so he may post on website.

**Approval of Minutes:** *MOTION Dubois second Labbe “approve Minutes of December 9, 2019 as presented” passed 5-0.*

**Committee & Board Reports:** Selectmen Hayes provided a review of the Financial Committee meeting she attended of RSU #21.

**Managers Report:**

-Municipal Building Status: Manager provided photos of the work being performed. Selectmen Dubois had some aerial photos that he shared as well. Solar contract is still a work in progress. Army Corps Permit has been modified and has been issued, still waiting for the DEP Permit. Foundation work will proceed until completed. Walls for project will be built by contractor at his warehouse and then trucked to site.

-Enrollment Meeting RSU #21: Manager attended a meeting where discussion on various data on enrollment was discussed. Committee not yet ready to make presentation to Arundel Public at a Selectmen’s meeting. The meeting established for January 13, 2020 has been postponed.

**Business:**

-RFP for Legal Services: Four vendors provided information for the Selectmen to review. Trafton and Matzen (\$90-\$185/hr), Jensen, Baird, Gardner & Henry (\$95-\$200/hr), Bernstein Shur (\$275-\$365/hr), Drummond and Woodsum (\$150-\$275/Hr). The Board will review in detail the proposals submitted and take action at their next meeting.

-Consent Order for Non-Action Map 17 Lot 11A. The Board reviewed materials submitted by Attorney Sandy Guay which included a Consent Order and 80K complaint to resolve the Land Use Issue recently discovered. ***MOTION Hayes second Labbe “proceed with a public hearing and action upon the Consent order and Land Use violation at the next scheduled meeting” passed 4-0-1 (Danylik abstains).***

**Other Business and Adjournment:**

Payable Warrant: ***MOTION Hayes second Danylik “approve payable warrant as presented and reviewed” passed 5-0.***

***MOTION Dubois second Hayes “to adjourn” passed 5-0 @ 7:44PM***

Respectfully submitted,

Keith M. Trefethen  
Town Manager