

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

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**Monday December 23, 2019
ML Day School
7PM**

- I. Call to Order
- II. Approval of Agenda
- III. Public Forum – Public comment on non-agenda items
- IV. Approve Minutes of December 9, 2019
- V. Committee and Board Reports
- VI. Manager’s Report
 - Municipal Building Status
 - Enrollment Meeting RSU #21
- VII. Business
 - RFP for Legal Services
 - Consent Order for Non-Action Map 17 Lot 11A

- XI. Other Business and Adjournment
 - Approval Payable Warrant
 - Adjournment

TOWN OF ARUNDEL
BOARD OF SELECTMEN

Monday December 9, 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

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 and action on Credit Card Resolution)*

Public forum: Selectmen Hayes asked the Town to approve the writing of a letter of support for the Historical Society as they are seeking funds to build a community building. *MOTION Dubois second Labbe “authorize the Town Manager to write a letter of support for the Historical Society project” passed 4-0-1 (Hayes)*

Approval of Minutes: *MOTION Dubois second Labbe “approve Minutes of November 25, 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:

-Ground Breaking: Board advised the Manager that this event should be sooner than later.

-Next Municipal Building Committee Meeting. Board suggested a Tuesday meeting and again the sooner the better. Manager will reach out to Chairman Turcotte to coordinate.

-Manager reviewed the newspaper and television comments on the Town Signs along with the Editorial written by Resident Jack Reetz. This publicity has yet to provide any further leads as to what happen with the theft of the signs.

-Manager provided a list of write-off on personal property as requested by the Board.

-Contract for the construction of the Municipal Building with Ouellet Construction is in the 2nd draft. All parties are working to reach a compromise with portion of the contract to protect their interest.

-Enrollment Meeting with RSU #21 enrollment committee has been schedule for Monday January 13, 2020 @7PM. They will need a hour for their presentation and asking questions. BOS meeting will follow the presentation.

Business:

-RFP for Legal Services: *MOTION Dubois second Labbe approve the RFP as presented and modified at the meeting and proceed to advertising” passed 5-0.*

-Bond Anticipation Note: *MOTION Dubois second Labbe “approve the BAN of 1.67% as presented by Biddeford Savings and proceed to wrap up the BAN” passed 4-0-1 (Danylik)*

-Credit Card Resolution: *MOTION Dubois second Danylik “approve the application resolution request from Peoples United Bank and approve the signing of the application by the Board Chairman” passed 5-0.*

Other Business and Adjournment:

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

MOTION Hayes second Danylik “to adjourn” passed 5-0 @ 7:43PM

Respectfully submitted,

Keith M. Trefethen
Town Manager

TOWN OF ARUNDEL

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

BUSINESS MEETING 12-23-19

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 photos with me on the progress at the site. On Friday the footings were poured and on Monday the foundation will be poured (I have photos to share). After which the site work will be covered for the winter season. Ouellet will construct the wall system off site at their facility in Brunswick and then late winter early spring the walls will be delivered and then erected. Site work will continue and the Public Works Department will clear the area for the Septic System early winter. Solar contract close to signing and the GPS locations and work on the trackers will begin when the updated DEP Permits and Army Corps permits are in hand.

-Enrollment Meeting RSU #21: Attended on Wednesday. The enrollment committee has postponed their meeting of the 13th here in Arundel but is planning a series of updates of their work to the public beginning in February in order to provide information to the general public and receive feedback of their work to date.

BUSINESS

-RFP Legal Service: Eight RFP's were sent to various firms in York and Cumberland County that specialize in Municipal work. In addition advertising appeared on the MMA website that generated three additional inquiries. RFP are to be returned Monday by 2PM and I will have them at the meeting for opening and reviewing.

-Consent Order for Non-Action: As properties in Arundel continue to change hands various land use issues pop up from time to time. The Wrights are attempting to sell their home and a violation that was written about back in 1995 but never acted upon has been discovered. Our Attorney on the issue Sandy Guay has provided some documents for your review. If you decide to proceed we will need to notify abutters and conduct a public hearing prior to BOS action.

OTHER BUSINESS AND ADJOURNMENT

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

**Request for Proposals
Legal Services
for the
Town of Arundel, Maine**

The Town of Arundel, Maine hereby solicits proposals from legal firms to represent the Town as its legal counsel. The Town Attorney shall be appointed by the Board of Selectmen and shall serve as chief legal adviser to the Board of Selectmen, the Manager and all Town departments, boards, agencies and commissions. The Town Attorney shall represent the Town in all legal proceedings and shall perform any other duties prescribed by ordinance and law. In any matter where there may be a conflict between the Town Board of Selectmen and any other Town officer, department, board, agency or commission, the Town Attorney shall represent the Town Board of Selectmen only.

Proposal Submittal: Proposals will be received by the Town Manager, 468 Limerick Road Arundel, Maine, 04046 until **2:00 P.M. on Monday, December 23, 2019**, the Board of Selectmen will open proposals at their meeting scheduled for that evening. Proposals must be sealed and clearly marked, "Proposal for Legal Services". Respondents must submit an original proposal and six copies.

Miscellaneous Requirements: The Town will not be responsible for any expenses incurred by an attorney or firm in preparing, submitting or presenting a proposal. All proposals shall provide a straightforward, concise delineation of the attorney's or firm's capabilities to satisfy the requirements of the request. Emphasis should be on completeness and clarity of content. Any attorney or firm who submits a proposal in response to this RFP may be asked to attend an in-person interview with the Board of Selectmen.

Questions: All questions should be directed to the Town Manager via e-mail @ townmanager@arundelmaine.org

Selection: The Board of Selectmen's selection will be based on its evaluation of the written proposal, the firm's qualifications and experience, client references, and overall fee structure. The Board of Selectmen reserves the right to reject any or all proposals and to select the legal firm deemed to have submitted the most qualified proposal (fee and other factors considered), when in the judgment of the Town such an award is in the best interest of the general public. The Board of Selectmen further reserves the right to negotiate separately in any manner necessary to serve the best interests of the Town. Attorneys or firms whose proposals are not accepted will be notified in writing.

Background

The Town of Arundel has a Town Meeting/Board of Selectmen/Manager form of government, with the Town Manager operating as the Chief Executive Officer. The population of the Town is approximately 4,300+- with a land area of 26 square miles and an annual budget of approximately \$9,600,000, including RSU#21 and county assessment.

Like most towns, Arundel is involved in a variety of activities which require a diversity of legal services, but land use/planning/zoning matters represent a majority of them. The Town Board of Selectmen may choose to continue to retain separate counsel for the purpose of issuing municipal bonds, labor relations, etc..

Qualifications of Legal Counsel

The Town Attorney shall be an attorney and counselor at law of the courts admitted to practice before the courts and administrative agencies of the State of Maine and the United States District Court for the District of Maine. The legal firm shall incorporate within their proposal an outline of the size and experience of the law firm to include resumes of legal staff with whom town's representatives we will be working with, as well as a listing of municipal clients and other references (with addresses and phone numbers). The proposal should make particular note of the firm's expertise in municipal law and land use.

The proposal must indicate the key lawyer to be appointed Town Attorney and include an estimate of the percentage of time he/she spends on municipal legal affairs. In addition, it should include an explanation of how your firm envisions the legal transfer of authority and responsibility in the absence or inability to act of the appointed Town Attorney.

Scope Of Services

Illustrative examples of the anticipated services include:

1. Advise the Town Manager and Board of Selectmen: Advise the Town Board of Selectmen, Town Manager, upon specific authorization of the Town Manager, town committees, department heads and Town Assessor upon all legal questions arising in the conduct of Town business.
2. Prepare Ordinances: Prepare or revise ordinances when so requested by the Town Board of Selectmen, Town Manager, upon specific authorization of the Town Manager, town committees, department heads or Town Assessor.
3. Give Opinions: Give opinion upon any municipal legal matter or question submitted to him/her by the Town Board of Selectmen, Town Manager, upon specific authorization of the Town Manager, town committees, department heads or Town Assessor.
4. Attend Board of Selectmen and Committee Meetings upon request from Town Manager or Board Chair.
5. Prepare Legal Instruments: Prepare for execution all contracts and instruments to which the Town is party when so requested by the Town Board of Selectmen, Town Manager, and with special authorization from the Town Manager, town committees, department heads or Town Assessor.
6. Prosecute Offenders and Defend Officials: When authorized by the Board of Selectmen, prepare all charges and complaints against, and appear in the appropriate court in the prosecution of, every person charged with the violation of a Town ordinance. Under the direction of the Town Board of Selectmen, defend Town officials in any action or claim against them in their official capacity. In those claims where the Town's insurance company has appointed legal counsel, the Town Attorney shall provide only those services requested by the Town Manager.
7. Make Reports: Immediately report to the Town Manager and Board of Selectmen the filing of any litigation against the Town, as well as the final outcome of any such claims.

8. **Keep Records:** Keep a complete record of all suits in which the Town had or has an interest, giving the names of the parties, the Court where brought, the nature of the action, the disposition of the case, or its condition, if pending, and the briefs of counsel. Keep a complete record of all written opinions furnished by him/her and of all certificates or abstracts of titles furnished by him/her to the Town, or any department or official thereof.

9. **Deliver Records to Successor:** Deliver all records, documents and property of every description in his/her possession, belonging to his/her office or to the Town, to his/her successor in office, who shall give him/her duplicate receipts therefore, one of which he/she shall file with the Town Manager.

10. **Unauthorized Activities:** It is specifically noted that answering inquiries from the general public and the press is outside the purview of the position of Town Attorney and that he/she shall courteously refer such inquiries to the Town Manager, unless otherwise instructed by the Town Manager. Since individual committee and Town Board of Selectmen members have no legal authority to incur expenses on behalf of the Town, the Town Attorney is not authorized to provide legal counsel to them individually on town business, with the exception of the Town Board of Selectmen chairman.

Contract for Services

It is anticipated that the Town and the legal firm will enter into a multiple year contract for services after appropriate negotiations. The contents of this RFP and the representations made in the proposal will become part of any contract awarded. In addition, the Town anticipates that the following provisions will become a part of that contract.

Compensation: The Town anticipates payment on an hourly basis. However, alternate proposals will be entertained including a lump sum retainer, a lump sum/not to exceed, payment on an hourly basis with an upset limit, or any combination thereof.

Request for payments must be submitted to the Town Manager monthly and shall, if on an hourly basis, breakout the bill by staff member, hourly rate, number of hours, subject matter and the nature of the service. The proposal should specifically address how the Town will be billed for consultations between two attorneys who are both members of the legal firm. (i.e.- Will the Town be billed twice for the same time?)

The Town typically pays bills within thirty days of receipt of invoice.

Supervision and Control: The Town Attorney shall be under the general supervision of the Town Manager, although as specified in the Scope of Services, the Town Attorney is expected to work cooperatively with and answer questions from the Town Board of Selectmen, and with specific authorization of the Town Manager to town committees, department heads and Assessor.

Termination: Subject to the provisions below, the contract may be terminated by either party upon thirty (30) days advance written notice to the other party; but if any work or services hereunder is in progress, but not completed as of the date of termination, then the contract may be extended upon written approval by the Town Manager until said work or services are completed and accepted.

Termination for Cause: The thirty (30) days advance written notice requirement is waived in the event of Termination for Cause. Grounds for termination for cause would include among other causes, suspension or disbarment.

Assignment

The selected attorney or firm will be prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of this agreement or its rights, title or interest therein or its power to execute such agreement to any other person, company or corporation without the previous consent and approval in writing of the Town Manager.

Hold Harmless Clause: The Legal Firm shall indemnify the Town from all suits, actions or claims of any kind brought on account of any injuries or damages sustained by any person in consequence of any negligence in performing contract work, or on account of any act or omission by the attorney or the firm or its employees, or from any claims or amounts arising or uncovered under any law, bylaw, ordinance, regulation, or decree, violated by such attorney or firm.

Insurance: The legal firm shall be required to carry Professional Liability Insurance. Proposals must specify the carrier and coverage limits of no less than \$1,000,000 per occurrence.

Unavailability: The attorney or firm must also provide advance notification to the Town Manager of times when counsel will be unavailable (e.g - vacations, professional conferences, etc.), and the name(s) of legal counsel who will handle Town legal affairs in his/her absence.

Specialized Counsel: The Town shall not be restricted from appointing specialized counsel when, in the judgment of the Town, the need arises.

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 \$_____ as a civil penalty on account of: (a) legal fees incurred in the resolution of this matter in the amount of \$_____; and (b) publication and mailing fees incurred in the amount of \$_____ to ensure appropriate notice of the public hearing held in conjunction with this matter, which hearing was held on _____. 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: Jim Nagle
Its: Code Enforcement Officer
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 432¹. The Premises is currently located in the Suburban Residential (R-2) Land Use District under the Town of Arundel Land Use Ordinance (the

¹ 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:

_____, 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: Jim Nagle

Signature of complainant: _____

City/Town: Arundel Title: Code Enforcement Officer

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: _____, 2019

, Town Clerk