

TOWN OF ARUNDEL  
**BOARD OF SELECTMEN**

Monday January 13, 2020  
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 Cressman, Jessica Gerard, Tom & Chris Prosser, David & Annalee Wright, Attorney Matt Williams, Attorney Joy Naifeh.

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

**PUBLIC HEARING:** Called to order by Chairman Nedeau at 7:00PM. Purpose is to consider a Land Use Citation and Consent Order for 725 Limerick Road. House built in 1980's at which time the lot requirement was 2.0 acres. Property has 1.69 acres and it was not identified when it occurred. Property now changing hands and this lack of acreage was identified. If approved this approval would only limit the property as a result of the Acreage requirements all other ordinance regulations for the property would be in play. Public Hearing closed at 7:06PM.

**Approval of Agenda:** *MOTION Hayes second Labbe "approve agenda as amended" passed 5-0. (RSU #21 Financial Report and take the action on the consent order out of sequence)*

**Public forum:** NO Action

**Approval of Minutes:** *MOTION Dubois second Labbe "approve Minutes of December 23, 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. The first construction meeting was held. Contractor will wrap up work on the foundation shortly and will return to site in March/April. Walls for the project will be built at his facility in Brunswick then delivered and erected on site.
- Collaboration Meeting for all Boards from all three communities set for Thursday January 16, 2020 @ 6PM @ Kennebunkport Police Station. Selectmen Nedeau and Danylik will attend.
- Status on Budget Development: Still a work in progress looking for February to start meeting on budget.
- Status on BAN & Bond Application: BAN approved closing to take place soon. Application on Bond still being worked on. Bond Attorney will review all materials prior to submittal.

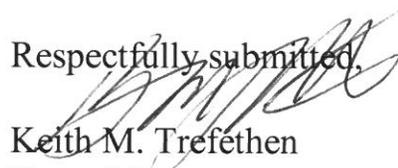
**Business:**

- Discussion Action on 725 Limerick Road: ***MOTION Hayes second Dubois “approve the issuance of a Land Use Citation for 725 Limerick Road as a result of the non compliance of the lot in terms of appropriate lot size (see citation) (attachment A) passed 4-0-1 (Danylik). MOTION Dubois second Labbe “approve and enter into a consent order and judgment for 725 Limerick Road and authorize the Town Manager to sign document on behalf of the town” passed 4-0-1 (Danylik)(see attachment B).***

**Other Business and Adjournment:**

- Payable Warrant: ***MOTION Dubois second Hayes “approve payable& payroll warrants as presented and reviewed” passed 5-0.***
- MOTION Dubois second Labbe “to adjourn” passed 5-0 @ 7:43PM***

Respectfully submitted,

  
Keith M. Trefethen  
Town Manager

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

<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:

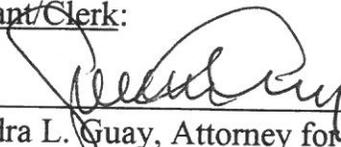
- Temporary restraining order (complete affidavit and certificate below)
- Preliminary Injunction
- Permanent Injunction
- Civil Penalty
- Removal of Violation
- Attorney's Fees and Costs

8. DATE OF COURT APPEARANCE:

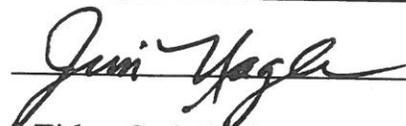
N/A, 2020 at \_\_\_\_\_ a.m./p.m. at the Biddeford District Court, 25 Adams Street, Biddeford, Maine 04005. (207) 283-1147.

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: Jim Nagle

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

City/Town: Arundel Title: Code Enforcement Officer

Date: 1/13/20

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

Dated: 1/13/20

David H. Wright Jr.  
David H. Wright Jr.

Dated: 1-13-2020

Annalee P. Wright  
Annalee P. Wright

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 Premises 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.

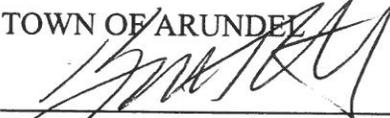
3. The Defendants shall pay to the Plaintiff, the sum of \$2,288.90 as a civil penalty on account of: (a) legal fees incurred in the resolution of this matter in the amount of \$2,245.00; and (b) publication and mailing fees incurred in the amount of \$43.90 to ensure appropriate notice of the public 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.

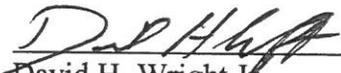
5. This Consent Judgment and Order is binding upon the heirs, successors, assigns, and grantees of all parties hereto. Defendants shall record this Consent Judgment and Order in the York County Registry of Deeds within 30 days of the last signature below. Defendant shall provide Plaintiff with proof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

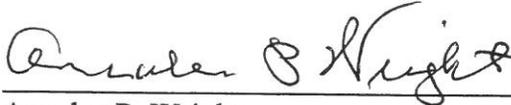
Date: 1/13/20

TOWN OF ARUNDEL  
  
By: Keith Trefethen  
Its: Town Manager  
DULY AUTHORIZED

Date: 1/13/20

  
David H. Wright Jr.

Date: 1-13-2020

  
Annalee P. Wright

**IT IS SO ORDERED:**

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

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

CERTIFICATE BY THE CLERK

I, \_\_\_\_\_, Clerk of the Maine District Court, pursuant to 14 M.R.S.A. §2401(3)(F) as amended, do hereby certify that the applicable time period for appeal from the above Consent Judgment and Order has expired without any appeal being taken.

\_\_\_\_\_  
Clerk, Maine District Court