

STATE OF MAINE
WALDO, SS.

SUPERIOR COURT
CIVIL ACTION
Docket No. WALSC-CV-2021-

JEFFREY R. MABEE, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 CITY OF BELFAST, MAINE,)
 And NORDIC AQUAFARMS, INC.)
)
 Defendants,)

**ORDER ON PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

Title to Real Estate Involved

Upon consideration of plaintiffs’ motion for preliminary injunctive relief, and responses thereto, with/without hearing, and upon consideration of the standard for the issuance of a preliminary injunction, *see Bangor Historic Track, Inc. v. Dept. of Agric.*, 2003 ME 140, ¶ 9, 837 A.2d 129, the court finds that plaintiffs have shown a substantial possibility of success on the merits of their claims, that they will suffer irreparable injury if the injunction is not issued, that the ongoing injury to plaintiffs in being deprived of their property rights outweighs any harm to the defendants City of Belfast and Nordic Aquafarms, Inc., and that the public interest will not be adversely affected.

The court waives the giving of security given the presumption of unlawful pretextual taking raised by the plaintiffs’ showing, under *Kelo v. City of New London*, 545 U.S. 469 (2005), that the taking of private property here occurred without a well-developed preexisting plan, and a known for-profit corporation was identified as a party to be benefited by the taking prior to the initiation of the taking proceedings. Indeed, the City of Belfast received substantial consideration from the private for-profit business that is the intended beneficiary of this taking, Nordic Aquafarms, Inc. (“Nordic”), in exchange for the City’s contractual commitment to use all means, including eminent domain, to take the intertidal land Nordic needs to place its three industrial pipes. Given the strong likelihood that the court will find the taking to be in violation of the Fifth Amendment to the United States Constitution, Article I, Section 21 of the Maine Constitution and 1 M.R.S. § 816(A)-(C) the court waives security.

The court also waives security because the plaintiffs have shown a strong likelihood of success that the City’s attempt to take the holder plaintiff Friends of the Harriet L. Hartley Conservation Area’s interest in the Conservation Easement recorded in the Waldo County Registry of Deeds at Book 4367, Page 273 is unlawful given that under 33 M.R.S. §§ 477(1) and (2) and § 478(3), conservation easements can only be terminated by court order. Unless and until a court of competent jurisdiction terminates the Conservation Easement, it remains in full force and effect and Plaintiff Friends as holder has the right and responsibility to enforce the conservation without payment of security, pursuant to 33 M.R.S. § 478(3).

Finally, the Court waives security because it would cause undue financial hardship to the Plaintiffs.

Accordingly, until further Order of this Court, the Defendant CITY OF BELFAST and Defendant NORDIC, and all those in active concert or participation, are ENJOINED from:

a) entering, or authorizing any others to enter, for any purposes, the Mabee/Grace Intertidal Property as shown on the survey by Donald R. Richards, P.L.S., recorded in the Waldo County Registry of Deeds at Book 24, Page 34 and attached hereto as Exhibit A and incorporated herein, other than for those purposes permitted by the terms of the Conversation Easement recorded in the Waldo County Registry of Deeds at Book 4367, Page 273 and/or permitted under the public’s common law rights to enter the property for fishing, fowling and navigation under the Colonial Ordinance of 1641-47;

(b) transferring any right, title or interest in the Mabee/Grace Intertidal Property, to anyone; and/or

(c) granting any right title or interest, to anyone, to use, occupy or possess the lot shown as Belfast Tax Map 29, Lot 36 for any non-residential purpose;

(d) take any action to terminate the conservation easement presently held by Friends of Harriet Hartley; and

(e) disturbing and/or conducting construction activities within the Intertidal Property including laying pipes.

IT IS SO ORDERED. The clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: _____

Justice, Superior Court