SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. BCD-25-153

HAROLD MACQUINN, INC.
and
FRESHWATER STONE AND BRICKWORK, INC.,

Plaintiffs/Appellants

- v. -

TOWN OF MOUNT DESERT, ET AL.

Defendants/Appellees

ON APPEAL FROM THE
MAINE BUSINESS AND CONSUMER COURT

BRIEF OF PLAINTIFFS/APPELLANTS

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INTRODUCTION & ARGUMENT SUMMARY

The quarrying license application for Appellants Harold MacQuinn, Inc. and Freshwater Stone and Brickwork, Inc. (together "MacQuinn") has been before the Town of Mount Desert Planning Board for over a decade. In that time the Board has held over 30 meetings where project opponents have had ample opportunity to present argument through various law firms and experts. Throughout this process MacQuinn has listened to the Board and opponents and agreed to numerous concessions. Despite the Board finding MacQuinn's compliance with all applicable performance standards of the Town's Quarry Licensing Ordinance ("QLO"), the Board, for the third time, denied MacQuinn's application based on standing, among other pretextual reasons. In doing this the Board also refused to accept evidence of an amended easement that unequivocally addressed any issues regarding right, title, or interest ("RTI").

The Board has exhausted its opportunities to render a fair, impartial, and expeditious decision. MacQuinn asks the Court to provide MacQuinn the relief it seeks while also using this case as an opportunity to clarify the legal standard for municipal review of standing and RTI issues, which should include overruling *Tomasino v. Town of Casco*.

STATEMENT OF FACTS

Granite has been extracted from Hall Quarry since the late nineteenth

century. *App.* 8. Quarries in this part of Mount Desert are famous for their pink granite, which has been used in major national construction projects such as the Congressional Library in Washington, D.C. and the United States Mint in Philadelphia. *Id.* Granite extracted from this area can be found throughout Acadia National Park, Mount Desert Island, and Maine in building foundations, steps, bridges, piers, boat launches, and mooring blocks. (R. 1290.)

Hall Quarry[1] long predates the Town's first Land Use Zoning Ordinance ("LUZO"), which was not adopted until 1978. *App.* 8. The LUZO did not regulate "mineral extraction" at all until late 2009, and even then, continued to allow mineral extraction without a permit in the area in which Hall Quarry is situated. *Id.*

On November 26, 2012, the Town enacted a moratorium on mineral extraction and then embarked on a public process that led to the development of the QLO. *App.* 9. After eight months of deliberation, the Town struck what it considered to be the appropriate balance and enacted the QLO. *App.* 10. The stated purpose of the ordinance was and remains "to put into law minimum removal and reclamation standards and municipal procedures to regulate the quarrying of rock or stone while at the same time respecting the rights of pre-existing operations." *App. 75* (QLO § 1.2).

MacQuinn filed an application for a permit under the QLO on June 12, 2014.

[1] The area of Mount Desert in which MacQuinn's quarry sits is known as the village of Hall Quarry. As used in this brief, "Hall Quarry" refers to MacQuinn's quarry off Crane Road. (R. 1290.)

(R. 1-136.) The Town's Planning Board concluded that Hall Quarry was a pre-existing use and was eligible to apply for a license under § 6.1 of the QLO. *App.* 10. Between 2014 and 2017, the Board reviewed and voted affirmatively on all but two of the thirteen performance standards for existing quarries set forth in § 6.2 of the QLO. *Id.*; (R. 516, 535, 1141, 1268-69.)

In May 2017, more than three years after MacQuinn applied for a license, the Board decided to revisit the issue of MacQuinn's standing to submit the application and found that MacQuinn lacked standing to apply for a quarrying license because it was not a "grandfathered . . . existing active quarry." (R. 511.) MacQuinn appealed, and the Business and Consumer Docket ("BCD") reversed the Board's decision, concluding that the MacQuinn's quarry was an "active un-licensed quarry" entitled to apply for a permit under the QLO, and remanded the matter for consideration of MacQuinn's eligibility for a quarrying license under the standards for existing quarrying activities. *App.* 25-26. On remand, the Board determined it would pick up the application where it was left in 2017; this meant that all performance standards other than noise and buffering and screening had been addressed and approved. (R. 535-39, 1141-44.)

The Board met on June 4, 2019 to consider § 6.2(F) of the QLO, regarding buffering and screening. (R. 565.) MacQuinn presented evidence showing that its existing operation was located less than 50 feet from the northern and northeastern

property lines and therefore must be permitted up to its existing edges pursuant to § 6.2(F)(2), rather than the 50-foot setback for new quarries. *App.* 196-201; (R. 567-68; 599-600.) Although the existing pit was closer to the property line than 25 feet in parts of this area, MacQuinn agreed to limit itself to a 25-foot setback. (R. 599-600.) Despite this, the Board voted that MacQuinn had met the standards but was limited to the 50-foot setback except for "two small areas" shown on the site plan "defined by the ledge cut on the North and the Northeast sides shown on the plan as the base of the ledge sawcut." (R. 608-09.) This had the effect of moving back MacQuinn's existing pit 25 feet or more along the northern and northeastern property lines to the 50-foot setback required for new quarries, even though § 6.2(F)(2) of the QLO permits existing operations to remain where they are. *App.* 93.

The Board then met to review the noise standards in the Fall of 2019. (R. 711-728; 730-744; 799-816.) The discussion continued March 12, 2020, at which time the Board decided to engage a third-party expert. (R. 823-834.) Due to the COVID-19 pandemic, the next Board meeting was not held until September 30, 2020. (R. 857.) The Board reviewed the opinion of the third-party expert regarding noise and concluded that MacQuinn's noise attenuation plan met the standards of QLO § 6.2(J). (R. 818-21.) Upon this vote, the Board had voted affirmatively for MacQuinn on all applicable performance standards. (R. 911-12.)

However, after the September 30, 2020 meeting, arguments were raised for the first time regarding the width of the 1983 easement for the access road to Hall Quarry (thirty feet), with opponents suggesting that the easement had to be at least fifty feet wide pursuant to the Town's Subdivision Ordinance they argued was incorporated into the QLO through § 6.2(G). (R. 899; 979-80.) The Board had voted affirmatively on the road and driveway design standards under § 6.2(G) of the QLO four years earlier without controversy. (R. 327.)

Responding to these newly raised concerns, in July 2021, MacQuinn acquired a new fifty-foot-wide easement from Michael Musetti, the owner of the property subject to the easement ("the 2021 Easement"). *App.* 146-149. Among other things, the new easement provided that construction or maintenance could be performed on the easement area with the grantor's consent, "such consent not to be unreasonably withheld." *App.* 147-48.

At the Board meeting of October 20, 2021, MacQuinn argued that because § 6.2(G) of the QLO only incorporated the Subdivision Ordinance standards for "new" roads, and Crane Road was by no means new, those standards did not apply. (R. 964-65; 982-87.) Nevertheless, MacQuinn indicated that it would construct the road to those standards if required by the Board as a condition of approval. (R. 966; 982-87.) The Board voted that the Subdivision Ordinance standards did apply and requested that MacQuinn submit a plan showing compliance. (R. 989-90.)

In December 2021, MacQuinn submitted a road construction plan, along with the written consent of the easement grantor, Musetti, to the plan. (R. 994-1005.) After that time, MacQuinn made non-substantive changes to the plan in response to criticism from the Intervenors, none of which were on Musetti's land. (R. 1021-27; 1033-36.) The Board reconvened on January 12, 2022, and reviewed additional submissions regarding the proposed access road. MacQuinn presented the Board with evidence of Musetti's consent to the updated road design, but the Board declined to accept that submission. *App.* 167-68.

At the January 12, 2022 meeting, the Board voted that LUZO § 6B.11(2) imposed the street design and construction standards of § 5.14 of the Subdivision Ordinance and that QLO § 6.2(A)(2) "requires that the owner and operator ensure the maintenance of all infrastructures, structures, and their sites" and that "[t]he easement . . . provided by the applicant specifies that changes in construction or maintenance must be approved by the fee landowner" and that "it is impractical to obtain the fee landowner's approval to repair and maintain the road from time to time ongoing" and thus "the applicant has not shown sufficient evidence of title, right, and interest." *App.* 173.

The Board then met on February 9, 2022, and took its final votes to deny MacQuinn's application, where it also voted to deny the application based on the purpose section of the QLO, finding that because the quarry is located in a "quiet

rural residential neighborhood" that the nearby residents' "healthy state of mind, and general welfare were and will be negatively affected by quarrying operations." (R. 1082.) On March 24, 2022, the Board approved and signed written findings and conclusions. *App.* 63-67.

At these final meetings in 2022, Intervenors repeatedly urged the Board to revisit its earlier votes on each of the QLO performance standards since 2014, stating that these approvals would otherwise stand as previously decided. (R. 1040; 1089; 1091-92.) Counsel for the Board advised that all reasons for denying MacQuinn's application should be voted on and included the Board's decision. (R. 1039-40; 1044; 1074.) The Board declined to revisit its prior approvals on each of the QLO performance standards. *App.* 63-67.

MacQuinn appealed the Board's decision. On January 9, 2024, the BCD ruled against the Board. *App.* 27-39. First, the court held it was legal error for the Board to rely on the QLO's purpose statement to deny MacQuinn's quarry license. Second, on the issue of whether MacQuinn possesses sufficient "right, title, or interest" in the access road to the quarry site, the BCD remanded the matter back to the Board for findings of fact adequate for judicial review. *App.* 39.

On April 3, 2024, the Board took up the BCD's remand. Since the Board had last met on this matter two years prior, MacQuinn had obtained an easement amendment regarding road access to the Hall Quarry, recorded in the Hancock

County Registry of Deeds on March 26, 2024 ("the 2024 Easement"). *App.* 150-53. MacQuinn submitted the 2024 Easement to the Board prior to the April 3, 2024 remand hearing, along with additional argument. (R. 1288-1319). However, the Board Chair, on the advice of legal counsel, determined the meeting was not a public hearing and the Board would not allow any new argument from MacQuinn, nor would it entertain new submissions, as it was the Board's position that any new information since 2021 was not relevant to its decision in 2024. *App.* 180.

While the Board did not take up or consider any of the pre-hearing filings or evidence provided by MacQuinn, nor allow for any argument by MacQuinn, it did review and repeatedly rely on a filing by the Intervenors' legal counsel that included proposed findings and conclusions. *App.* 180-86. Indeed, the Board adopted many of the opponents' proposed findings and conclusions as its own and again voted – based on the 2021 Easement – to deny MacQuinn's application for a lack of RTI in a portion of Crane Road accessing the quarry property. *App.* 68-70; (R. 1282-86.)

MacQuinn appealed. On March 21, 2025, the BCD issued an order denying the appeal. *App.* 40-50. MacQuinn appealed to this Court.

STATEMENT OF ISSUES PRESENTED

1) Whether the Planning Board committed an error of law in concluding MacQuinn lacked standing to apply for a QLO permit.

2) Whether this Court should use this case as an opportunity to clarify the legal standard for municipal review of standing and RTI issues, which should include overruling *Tomasino v. Town of Casco*.

3) Whether MacQuinn's permit should be subject to the setback conditions erroneously imposed by the Planning Board.

4) Whether the QLO exclusively applies to MacQuinn's application.

5) Whether the Planning Board has exhausted its opportunities to render a fair, impartial, and expeditious decision.

ARGUMENT

I. This appeal turns upon issues of law reviewed de novo.

This Court reviews a municipal decision "for abuse of discretion, errors of law, or findings not supported by the substantial evidence in the record." *Wyman v. Town of Phippsburg*, 2009 ME 77, ¶ 8, 976 A.2d 985. Although this appeal follows an intermediate appellate decision, this Court reviews directly the original and operative decision—that of the Planning Board. *See id.*

Abuse of discretion review considers: "(1) whether the . . . factual findings are supported by the record according to the clear error standard, (2) whether the [decision maker] understood the law applicable to the exercise of its discretion, and (3) whether the . . . weighing of the applicable facts and choices was within the bounds of reasonableness." *Green Tree Servicing, LLC v. Cope*, 2017 ME 68, ¶ 12, 158 A.3d 931; *see also Sager v. Town of Bowdoinham*, 2004 ME 40, ¶ 11, 845 A.2d 567 ("An abuse of discretion may be found where an appellant demonstrates

that the decisionmaker exceeded the bounds of the reasonable choices available to it, considering the facts and circumstances of the particular case and the governing law.")

This appeal turns upon ordinance and deed interpretation. "The interpretation of an ordinance is a question of law that [this Court] review[s] de novo, with no deference to the local board's interpretation. [This Court] construe[s] the terms of an ordinance reasonably, considering its purposes and structure and to avoid absurd or illogical results . . . ." *Stiff v. Town of Belgrade*, 2024 ME 68, ¶ 12, 322 A.3d 1167 (citations and quotation marks omitted). The interpretation of an unambiguous deed is a question of law. *Silsby v. Belch*, 2008 ME 104, ¶ 7, 952 A.2d 218. Factual determinations are only appropriate where the deed is ambiguous; the threshold question of whether a deed is ambiguous is also a legal question. *Doyon v. Fantini*, 2020 ME 77, ¶ 7, 234 A.3d 1222.

The issues in this appeal thus turn upon two pure issues of law reviewed de novo: (1) the interpretation of the municipal ordinance(s) implicated; and (2) the interpretation of the deed presented by MacQuinn and whether the plain language conferred sufficient RTI for standing to apply for the permit.

Any argument the Board's decision is subject to a more deferential standard is wrong. The issues in this appeal are, for example, not the type of mixed questions of law and fact in which the Board's factual findings "greatly inform"

the legal determination. *Tominsky v. Town of Ogunquit*, 2023 ME 30, ¶ 22, 294 A.3d 142. Instead, although this Court may review the Board's factual findings with deference, whether those findings are adequate to support the Board's legal conclusion is reviewed de novo. *See id.* ¶ 23 (deferring to factual findings while reviewing good cause conclusion de novo); *see also Stiff v. Town of Belgrade*, 2024 ME 68, ¶ 19 & n.10, 322 A.3d 1167 (accessory use conclusion reviewed de novo).

II. The Planning Board committed an error of law in concluding MacQuinn has not proven standing to apply for a QLO permit.

A. General legal standard for RTI.

A threshold requirement for administrative standing to apply for a land use permit is adequate right, title, and interest ("RTI"). RTI in the permitting context is easily satisfied with minimal evidence, such as a deed. As explained in case law, RTI requires an applicant have a "legally cognizable expectation of having the power to use [the] site in the ways that would be authorized by the permit. . . ." *Murray v. Lincolnville*, 462 A.2d 40, 43 (Me. 1983). "This principle is intended to prevent an applicant from wasting an administrative agency's time by applying for a permit or license that he would have no legally protected right to use." *Id.; see also Walsh v. City of Brewer*, 315 A.2d 200, 207 (Me. 1974).

A "cognizable" legal right is a right that is merely *capable* of being recognized. *See Tomasino v. Town of Casco*, 2020 ME 96, ¶ 23, 237 A.3d 175

(Connors, J., dissenting) (quoting *Cognizable*, Black's Law Dictionary (11th ed. 2019)). This does not require a perfect, irrefutable right, or even a present interest in the property; a facial showing of a mere contingency or expectation that the applicant appears to have or may acquire the right or title in the future is adequate. For example, both a contract to convey real estate conditioned upon subdivision approval, *Murray*, 462 A.2d at 43, and a pending adverse possession claim have been held adequate "cognizable" interests to establish administrative standing. *Southridge Corp. v. Board of Envtl. Protection*, 655 A.2d 345, 348 (Me. 1995). In neither case did the applicant own or even have a current interest in the property but still had administrative standing to apply for permits.

Notably, in *Southridge Corp.*, the Court concluded that even if the applicant later failed in their litigation and was held not to own the property, this possibility did not affect their RTI and standing to obtain the permit. *See id.* ("We fully acknowledge that it is possible that Cormier may not prevail in his adverse possession claim to the Southridge property. Should this happen, his permit might be revoked. This possibility, however, neither deprives Cormier and those he represents of their current interest in the land nor their administrative standing.").

Accordingly, a positive finding of RTI does not adjudicate title or confer property rights; it is merely a conclusion that a threshold permitting prerequisite is satisfied. The box is checked, allowing the application to proceed to the merits.

Whether the applicant has a property right in fact is a matter that could be decided differently in a court proceeding but that possibility does not change the administrative RTI determination. *See Mabee v. Bd. of Envtl. Prot.*, No. BCD-APP-2021-00009, 2022 Me. Bus. & Consumer LEXIS 19, at *16-17[2] ("The Water Permit does not give Nordic the *right* to build its pipes on the land in question, it is merely the fulfillment of a *prerequisite* to building its pipes. . . The right to use the land for pipes or otherwise is a matter for Nordic to resolve; BEP's permitting process simply ensures that environmental regulatory standards are met."); *Nangle v. Town of Windham*, No. AP-15-0040, 2016 Me. Super. LEXIS 50, at *12 (RTI determination does not allow the agency "to determine whether applicants have an actual right, title, or interest to use the property . . . only . . . whether the evidence of right, title, or interest put forth by applicants was sufficient to find that applicants have at least 'a legally cognizable' right to use the property in the manner for which they seek approval.").

With a RTI determination, there is no probing inquiry into title history nor the competing rights of private property owners; local and state agencies do not have the expertise or tools to adjudicate those complex issues and contentious disputes. Adjudication of title to real estate is a jurisdiction held exclusively by the

[2] Although later court adjudications of title affected the private rights of Nordic Aquafarms, that later possibility did not deprive the entity of administrative standing. A party with standing at the administrative level may be later determined to lack that interest in a full title adjudication by a court. Both can be true. They are separate, distinct inquiries and standards.

courts. *See* 4 M.R.S. §§ 105(1), 152(5). Agencies may create opportunities "to give the public an opportunity to present facts . . . for its consideration in reviewing [an] application [but] not for the purpose of adjudicating private rights." *Tomasino*, 2020 ME 96, ¶ 8, 237 A.3d 175 (quoting *Cunningham v. Kittery Planning Bd.*, 400 A.2d 1070 (Me. 1979)). This Court has further emphasized that deed interpretation and title questions "are matters that are well outside [a government agency]'s jurisdiction, authority, or expertise" and that administrative agencies are not the appropriate forum to litigate private rights. *Tomasino*, 2020 ME 96, ¶ 7, 237 A.3d 175. This standard is designed to avoid having government agencies make errors in deciding matters beyond their competence.

B. The ordinances governing RTI and the basis for the Board's conclusion.

This application was exclusively governed by the QLO. *See supra* at 38-39. Section 6.1(C) requires the applicant submit "[a] copy of the current deed, lease, option or other evidence of title, right or interest to the subject property together with copies of all covenants, deed restriction easements, rights of way, or other encumbrances, including but not limited to liens and mortgages currently affecting the property." *App.* 88. QLO § 6.2(A)(2) further imposes the following general obligation: "The owner and operator of a quarrying activity shall be responsible, both jointly and severally, for ensuring the maintenance of all infrastructures, structures and their sites." *App.* 90. The Board concluded that MacQuinn had not

proven, based on the 2021 Easement language, that it could "ensur[e] the maintenance" of Crane Road and, citing the principle from *Tomasino* that MacQuinn had the burden to prove the right to use the property in the manner consistent with the permit sought, concluded RTI was not met.

This appeal challenges the Board's interpretation of the pertinent easement deed, as well as the above sections of the QLO, which are reviewed de novo.[3] This Court should vacate the Board's legal errors.

C. The Board committed legal error or at least an abuse of discretion in refusing to reconsider the 2024 Easement in determining whether RTI was satisfied.

As a threshold matter, the Board committed legal error in refusing to even consider the 2024 Easement. The legally operative deed—the 2024 Easement—was the only competent evidence upon which they could render a decision on the RTI question as a matter of law. Because the Board appeared motivated to buttress the prior 2021 denial rather than render a fair, impartial decision based on the evidence, the Board premised its decision on an easement that was no longer in force and thus moot. The Board effectively rendered an advisory opinion having no

[3] The BCD erroneously treated the RTI question as one entitled to deference, rather than a question reviewed de novo, and affirmed based on that standard rather than whether it was a correct interpretation of the deed and ordinance, noting the Board's rationale was "thin" and similar easement language is usually "sufficient." *App.* 49.

impact upon or relevance whatsoever to the parties' present legal rights.[4] This was legal error.

Even if reviewed under an abuse of discretion standard,[5] the Board's discretion is not unlimited. Whatever general discretion a municipal board has to determine whether and to what extent to re-open the record in a remand, that discretion is clearly exceeded where the Board refuses to consider the single material piece of evidence that governs the legal question before it. *See Sager*, 2004 ME 40, ¶ 11, 845 A.2d 567 (Board abuses discretion when "exceeded the bounds of the reasonable choices available to it, considering the facts and circumstances of the particular case and the governing law"). Notwithstanding cases that have affirmed the Board's discretion over the scope of a remand, that general rule necessarily meets an exception when the evidence implicated is a deed governing the applicant's RTI. The Board had no authority or jurisdiction to render a standing decision based on a deed no longer in force or effect. The Board committed a clear abuse of discretion in declining to consider the current operative legal document that governed the single narrow legal issue that they were deciding.

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[4] A recorded instrument is not subject to reasonable dispute and its accuracy cannot reasonably be questioned. *Finn v. Lipman,* 526 A.2d 1380, 1381 (Me. 1987); *see also Stickney v. City of Saco*, 2001 ME 69, ¶ 45, 770 A.2d 592, 608 (citing *Hendley v. Overstreet,* 253 Ga. 136, 318 S.E.2d 54, 55 (1984) (recorded deeds and restrictive covenants are constructive notice)).

[5] This is not like other cases in which the agency had express discretion by rule or ordinance to decide whether to re-open the record. *See, e.g., Friends of the Boundary Mts. v. Land Use Regulation Comm'n*, 2012 ME 53, ¶ 9, 40 A.3d 947. Neither the Town nor the Intervenors have cited any ordinance that conferred discretion regarding re-opening the record upon the Board.

Their refusal to consider the 2024 Easement, burying their heads in the sand to adjudicate a moot easement, was absurd and representative of the unfair review process below.

D. The 2024 Easement clearly satisfied RTI.

The 2024 Easement clearly satisfied minimum RTI requirements. In reviewing RTI, this Court looks first to the applicable municipal ordinance. *Tomasino*, 2020 ME 96, ¶ 6, 237 A.3d 175. To establish RTI, QLO § 6.1(C) required MacQuinn to provide a copy of his deeds and the easement, which there is no dispute that he provided. The 2024 Easement granted to MacQuinn states:

> Grantor grants the following rights to Grantee, and Grantee agrees: The Grantee has the right to maintain the easement area and perform improvements within the easement area (including without limitation maintenance and improvements to the road and other improvements, as may exist from time to time, therewithin). Without limiting the generality of the foregoing, such rights include the right of Grantee to maintain the easement area and perform improvements therewithin: (i) as necessary to ensure compliance with applicable laws, rules and regulations (as may exist from time to time) for Grantee's use of the benefitted property as a quarry and uses that are reasonably related thereto; however, Grantee will ensure any maintenance or improvements to the easement area do not exceed the minimum standards required pursuant any applicable laws, rules and regulations for a quarry and uses that are reasonably related thereto; (ii) as may be necessitated in an emergency; and (iii) such other and additional right to maintain and improve the road and easement area as may be consented to by the Grantor, such consent not to be unreasonably withheld, conditioned or delayed. The cost of such maintenance, service or repair work shall be paid by Grantee.

App. 150-153.

MacQuinn submitted the deeds—the only evidence of RTI the ordinance required—sufficient as a matter of law to show ownership of the parcel and an easement over Crane Road that established a "legally cognizable expectation of having the power to use [the] site in the ways that would be authorized by the permit. . . ." *Murray*, 462 A.2d at 43. Nothing more was required. The plain language of the easement conferred upon MacQuinn the rights to maintain and repair the road consistent with ordinance requirements that should have overcome any possible concerns the Board had raised. *App.* 150-153.

However, the Board erred by refusing to even consider the 2024 Easement. Instead, the Board concluded, and the Town and Intervenors in this appeal will argue, that language in the no-longer-effective 2021 Easement regarding consent of the servient estate to repair or maintain Crane Road means that MacQuinn failed to show that the easement confers adequate rights to comply with applicable repair and maintenance performance requirements in QLO § 6.2(A)(2) and thus RTI was not met. That is wrong, but to address that argument, this Court would be rendering a meaningless advisory opinion about a moot easement no longer in force. MacQuinn nonetheless addresses why the Board's RTI conclusion regarding the 2021 Easement was clearly incorrect.

E. Although the 2021 Easement was rendered moot by the 2024 Easement, even if the Planning Board could refuse to re-open the record to consider the amended easement, the 2021 Easement clearly satisfied RTI.

Although no longer controlling the parties' rights or this legal question, the 2021 Easement satisfied RTI pursuant to the QLO and this Court's case law. The basis for the Board's negative conclusion was the following language in the deed: "except for an emergency, no construction, repair, service, or maintenance work pursuant to this easement shall take place without the prior written consent of the Grantor. Such consent not to be unreasonably withheld." *App.* 147-48. The Board concluded "[t]he Applicant has a duty to ensure the maintenance of all infrastructures, structures, and their sites, per section 6.2A2 of the QLO, but the Applicant cannot fulfill that duty because of the limitations in the . . . . easement; . . . [it] does not allow for 'use of the property in a manner consistent with that use for which the permit is sought.'" (*App.* 69 (citing *Tomasino*)).

The interpretation of the easement language and the ultimate RTI determination based on the QLO are legal questions. The Board primarily erred in its legal analysis because there is no dispute that MacQuinn owns Hall Quarry; that it has a right-of-way over Crane Road to access that property; and that MacQuinn has the right to maintain and repair the road. That should have been the end of the Board's inquiry—the legal standard for RTI was clearly met.

The Board committed legal error by interpreting the 2021 Easement language regarding consent to deprive MacQuinn of an adequate right to ensure maintenance of Crane Road. In fact, the 2021 Easement allowed MacQuinn to undertake maintenance and repair, albeit not unilaterally, but with consent which cannot be unreasonably withheld. *App.* 147-148. If MacQuinn needs to repair the road due to storm damage and faces enforcement action by the Town, the Grantor's withholding of consent without strong justification would not be reasonable. At most, a disagreement might *delay* the repair, affecting not "if" but "when" the repair is completed. But the QLO does not require immediate repair or that the road be maintained to the Town standard at all times in perpetuity to the Board's subjective satisfaction and therefore cannot be a bar to a permit. It merely imposes responsibility—and liability[6]—on the permittee to ensure maintenance. *App.* 90. Bringing an action against Musetti or his successor to challenge an unreasonable withholding of consent (if that ever occurred) would be sufficient for MacQuinn to fulfill its duty to ensure the road is maintained.

RTI is about whether the applicant has the minimum right to undertake the contemplated permitted activity, not an unassailable right that meets a Board's subjective expectation of how quickly a damaged road must be repaired unmoored from the plain language of the ordinance. The Board erred in treating the consent

[6] *See* QLO § 8.8 (Enforcement) and § 8.9 (Penalties). *App*. 98-99.

provision and hypothetical future disputes as a substantive bar to permitting rather than a possible future enforcement issue. In rendering the negative RTI conclusion the Board fashioned from whole cloth requirements that are not codified in the ordinance—arbitrarily imposing ad hoc rules based on subjective concerns in an adjudication of a single application. This error is made clearer when considering the Board's factual findings.

F. The Board's speculative and attenuated hypotheticals masquerading as "factual findings" were not germane to the legal question that was presented.

The Board made factual findings about large trucks and equipment using Crane Road, intense weather and storm events, and infrastructure deterioration that could require repair or maintenance. *App.* 69. The Board postulated that if damage or deterioration occurred, Musetti "might reasonably refuse or delay consent to maintenance or reconstruction necessary to correct such problems and damage, preventing Co-Applicants from maintaining the road as required." *Id.* The Board found "potential damage and timeliness of repairs as prescribed by the QLO could be potentially delayed or even denied." *Id.* On the basis of findings of what "might" or "could" or "may" happen, the Board concluded that the applicant would categorically be unable to fulfill its duty to maintain the road pursuant to the QLO and thus lacked standing.

The Board's speculative and attenuated hypotheticals masquerading as "factual findings" were not germane to the legal question that was presented, which was a legal question based on the plain language of the deed, subject to de novo review by this Court. Nor were the Board's hypothetical concerns reflected in the plain language of § 6.2(A)(2) of the QLO, which merely states that the permittee "shall be responsible . . . for ensuring maintenance of all infrastructures, structures, and their sites." *App.* 90. The Board thus committed two related legal errors—misinterpreting both the deed language at issue and the ordinance governing the question.

The Board invented a private property dispute where none existed and disregarded the facts, instead developing extensive factual findings about hypothetical damage and withheld consent scenarios untethered from the evidence. The record established that Musetti not only granted the easement but affirmatively *consented* to MacQuinn's road construction plan and design. (R. 994-1005, 1029-31, 1033-34.) Unlike cases where the servient estate is hostile to the dominant estate's application for a land use permit for an activity within the easement, MacQuinn had Musetti's cooperation in obtaining and amending the easement and support in the application. (*Id.*) The record thus established that there was no dispute regarding MacQuinn's repair and maintenance obligations and rights in the road, yet the Board premised the mere possibility that this might change in the

future to mean that MacQuinn had no standing to even apply for a QLO permit. This is an error of law that this Court must vacate but even if reviewed as a factual issue, this is a textbook example of where the administrative record compels a contrary conclusion.

III. This Court should use this case as an opportunity to clarify the legal standard for municipal review of standing and RTI issues, which should include overruling *Tomasino v. Town of Casco*.

This case illustrates the havoc wrought when a municipal board attempts to adjudicate title without adequate competence and abutters leverage confusion to accomplish their goal to delay and defeat a project. This Court should clarify here the legal standards and simplify municipal adjudication of RTI in a manner that would produce more consistent and fair results, focusing boards on ordinance standards within their jurisdiction and leaving title disputes to the courts.

A. *Tomasino* transformed the law of administrative standing with a confusing rule resting upon contradictory policy justifications.

In *Tomasino*, this Court affirmed a Board of Appeals decision that the applicant lacked sufficient RTI to remove trees located within a right-of-way over which they held an easement. Distinguishing a line of cases involving fee title ownership, the Court created a rule for easement holders that required they must show more than a mere property interest to have standing:

> Unlike title owners, easement owners are subject to a second layer of necessary authority—what the easement itself allows—in addition to

> what the applicable ordinances and statutes allow. In this matter, even assuming that the Tomasinos demonstrated that they had *some* interest in the particular portion of property at issue, they failed to demonstrate that they have the kind of interest that would allow them to cut the trees if they were granted a permit to do so. Whatever minimum "right, title or interest" is required by ordinance, Casco, Me., Code, § 215-9.36(C)(2), we conclude that, in the face of a dispute between private property owners, that requirement is not met by an easement whose parameters have not been factually determined by a court with jurisdiction to do so.

Tomasino v. Town of Casco, 2020 ME 96, ¶ 15, 237 A.3d 175. *Tomasino* should be overruled or significantly qualified for at least three related reasons.[7]

First, although couched in the easement context, experienced municipal attorneys and the Attorney General's office have interpreted *Tomasino* to apply to fee title owners as well. This raises the question of whether the longstanding rule of administrative standing, requiring the applicant have a "legally cognizable expectation of having the power to use [the] site in the ways that would be authorized by the permit . . ."[8] remains good law. A "legally cognizable expectation" is not an actual, present legal right, much less an irrefutable one. It is

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[7] The great weight of stare decisis factors favor overruling the case. Stare decisis factors include "(1) whether the precedent is an anomaly nationally, (2) whether the precedent's rule is unworkable, (3) whether overruling the precedent is unlikely to upset settled expectations of parties, (4) whether overruling the precedent will advance sound public policy, and (5) whether overruling the precedent will maintain stability and consistency in the law." *Weinle v. Estate of Tower*, 2025 ME 62, ¶ 24, ___ A.4d ____. In short, *Tomasino* has been interpreted to be a jarring change to administrative standing principles that makes litigation of private property disputes in municipal forums more likely, contrary to the public policy principles *Tomasino* cited and has proven even more unworkable than initially feared by undersigned counsel. It is an anomaly compared to the precedents that preceded it. The proposed rule herein, which is grounded in the cases *Tomasino* appeared to qualify or overrule without saying so, will result in the stability and consistency needed to right the ship. The only parties whose expectations may be upset by discarding *Tomasino* would be abutters that would no longer have the same powerful tool to kill projects.

[8] *See Murray v. Lincolnville*, 462 A.2d 40, 43 (Me. 1983).

merely a box to check to avoid reviewing an application for a permit the applicant clearly cannot use. *See id.* ("This principle is intended to prevent an applicant from wasting an administrative agency's time by applying for a permit or license that he would have no legally protected right to use.") In undersigned counsels' experience, *Tomasino* is treated as having overruled or signaled a major qualification of *Walsh*, *Murray*, and *Southbridge* and raised the bar for standing when disputed. If that was not intended, the Court should say so here.

Second, *Tomasino's* professed policy concern—that boards lack jurisdiction and expertise to interpret deeds—requires a rule that is easy to apply and effectively prevents boards from wading into difficult questions of ambiguous title and real property law. *Tomasino*, 2020 ME 96, ¶ 7, 237 A.3d 175 (interpreting deeds based on statutes and case law "are matters that are well outside the Board's jurisdiction, authority, or expertise . . . ."). But by affirming the negative RTI determination in *Tomasino*, this Court paradoxically deferred to the municipality on a legal question that was purportedly beyond the board's authority and expertise. Further confounding is that this Court held that the legal argument rejected in *Tomasino* was not only correct but "clear" Maine law "for many years" in a case four years later.[9] Boards have jurisdiction pursuant to their ordinances to

[9] *Compare Tomasino*, 2020 ME 96, ¶ 6, 237 A.3d 175 ("They argue that, as a matter of law, the only facts necessary to establish sufficient right, title, or interest to remove the three trees are that the trees are located on property on which they claim some easement rights."), *with Kinderhaus N. LLC v. Nicolas*, 2024 ME 34, ¶¶ 31-32, 34, 314 A.3d 300 ("The trees located within the easement would require the

decide the threshold RTI question and take deeds into evidence to ensure a party has standing. *Tomasino* does not define the limits of the Board's authority and jurisdiction to interpret a deed, but the implication is that the Board should not be looking too deeply.

Third, the relationship between board adjudication of real estate questions and court adjudication is unclear. Final authority over real estate and title questions and deed interpretation resides with the courts. *Silsby v. Belch*, 2008 ME 104, ¶ 7, 952 A.2d 218; 4 M.R.S. §§ 105(1), 152(5). *Tomasino* appears to say that an applicant may be required to seek a declaratory judgment as a precondition to applying for a permit or join a Rule 80B appeal with an independent claim for a declaratory judgment, which contravenes rules regarding the availability of independent claims in administrative appeals.[10]

Fullertons to zig-zag or otherwise use only a portion of the twenty-foot right of way to avoid the trees. It may be argued that this is a trifling inconvenience, but as owners of the dominant estate, they have the unrestricted right to use the full extent of the described land for purposes consistent with the deeded easement.'" (citation omitted)). In *Kinderhaus*, the Court found that an easement holder with a right of way has a right to remove trees within a right of way to the full width as a matter of law, and Maine law "has been clear on this point for many years." 2024 ME 34, ¶¶ 31-32, 314 A.3d 300. If that were the case, then the Tomasinos' right to remove the trees was unassailable and would have necessarily granted them standing.

[10] The requirement to bring an independent declaratory judgment action would contravene the line of cases holding that independent claims in an administrative appeal are subject to dismissal unless the relief provided by Rule 80B is inadequate. *See Gorham v. Androscoggin Cty.*, 2011 ME 63, ¶ 22, 21 A.3d 115; *Cape Shore House Owners Ass'n v. Town of Cape Elizabeth*, 2019 ME 86, ¶ 8, 209 A.3d 102 ("*After* a municipal agency has adjudicated a matter, however, a contention that the decision was erroneous because it infringes upon some superior legal authority becomes subsumed within 'the essence of matters that must be brought pursuant to Rule 80B to question whether the particular action of a municipal administrative agency is consistent with the requirements of law.'" (citation omitted)).

Seeking a preemptive DJ is problematic because the applicant may not have anyone to sue if the third party challenging RTI does not claim the interest and possible interested claimants are unknown or do not object.[11] Seeking a separate court judgment is also impractical and inefficient, particularly when there is no meaningful title dispute except for general neighbor opposition grounded in concerns unrelated to title. Instead, the onus should be on a third party challenging the applicant's RTI to either appeal or bring a DJ action in court. The positive RTI conclusion will be made without prejudice to third parties' ability to challenge that decision in the courts if they disagree.

B. The legal standard for RTI should be the same for title and easement owners.

The standard should be the same for both fee title owners and easement holders. As Justice Connors noted in dissent, "[b]y elevating title ownership above other property rights or interests, the Court creates an unwarranted distinction; just like the easement at issue here, a person's title can, and often does, stem from less-than-clear deed language that may require legal parsing." *Tomasino*, 2020 ME 96, ¶ 24, 237 A.3d 175 (Connors, J., dissenting). This Court should hold that easement holders are not subject to greater or higher standards to establish RTI—the rule is the same, whether based on a title or some other interest.

[11] This occurs, for example, when intertidal land is at issue and the applicant has a deed that is ambiguous as to whether the intertidal is included. Who does the applicant sue if the other possible claimants of the intertidal are unknown?

C. The standard should be like the *prima facie* evidence standard and the summary judgment analysis.

In addition to adopting a uniform rule, the Court should create a legal standard that is easy for boards to apply and applicants to satisfy. Consistent with pre-*Tomasino* case law, and the idea that a finding of RTI does not adjudicate a title dispute or confer any property rights and is merely a check to avoid a meaningless review proceeding, the standard should be a *prima facie* evidence standard. This would make clear that the board only needs *some* competent evidence to make a positive finding and underscore that title-in-fact is not required. *See Lougee Conservancy v. CitiMortgage, Inc.*, 2012 ME 103, ¶ 12, 48 A.3d 774 ("The prima facie evidence standard addresses 'the preliminary burden of production of evidence; it requires proof only of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor.'"). The board would not be adjudicating whether the evidence presented would be enough for the applicant to prevail if litigated in court, no more than a court on summary judgment would find that a party has met their prima facie evidence burden to get to trial without deciding whether that evidence would ultimately win the day.

Only when the applicant's lack of RTI is clear and apparent from a facial review of the evidence presented on the question should boards render a negative RTI conclusion. Any ambiguity or "tie" would go to the applicant, leaving any third-party challenger to seek further review in the courts. Such a rule would return

boards to the pre-*Tomasino* regime and create an escape hatch early in the process to prevent Boards from wading beyond the facial threshold review into matters beyond their jurisdiction, authority, and expertise. This would limit litigation of private property disputes in municipal forums as *Tomasino* supposedly intended.

D. An applicant should not be required to obtain a declaratory judgment before having standing to apply.

To the extent that *Tomasino* requires an applicant obtain a declaratory judgment before applying whenever a party appears in the municipal forum and challenges their RTI, the Court should overrule *Tomasino* or clarify that is not required. The primary problem with such a rule is that it gives private parties an extraordinarily powerful and effective tool to delay or summarily defeat an application merely by creating enough ambiguity and confusion, without having to actually prove anything. Third parties, as here, have pressured boards into rendering a negative RTI conclusion where there is no support for that either in the operative deed or title record, requiring years of appeals and litigation to reaffirm the rights the applicant had all along. Boards have increasingly become a battleground for private property disputes, which may further individuals' goals but ultimately does not help any stakeholders in the long run. Instead, the standard should keep boards making an easy threshold finding that the applicant presented some evidence sufficient for RTI without adjudicating the merits of the dispute,

leaving the private parties and abutters to challenge that conclusion in the appropriate forum.

IV. The full extent of MacQuinn's preexisting operation is not subject to the 50' setback conditions erroneously imposed by the Planning Board.

The Planning Board further erred when it found that MacQuinn could not operate less than 50 feet from the property line (except in two small areas) based on of the setback requirement in QLO § 6.2(F). MacQuinn submitted unrebutted evidence that its existing active extraction area was 25 feet or less from the property line, which the QLO permits to remain in place:

> Quarrying operations shall not be permitted within fifty (50) feet, horizontal distance, of any property line without written permission of the owner of such adjacent property. *Any existing operation which is located less than fifty feet from the property line shall not be located any closer than the existing location* without written permission from the adjacent property owner.

App. 93. (emphasis added). Although the QLO does not define "existing," the term is synonymous with "active." *App.* 15. The "active extraction area" for purposes of the QLO is "[t]he quarry itself, the actual hole in the ground, including side slopes and adjoining areas with overburden[12] removed, excluding roads, structures, stockpiles, etc., which is being worked to produce stone and/or that is yet to be reclaimed." *App.* 100.

MacQuinn presented unrebutted evidence, including testimony of Paul

[12] Overburden is "[t]he material (soil, rock, etc.) which overlies good stone in a quarry." *App.* 103.

MacQuinn, as to removal of the overburden from the quarry in the 1970s, as well site plans and aerial photographs, all showing that MacQuinn's existing operation was located less than 50 feet from the northern and northeastern property lines. *App.* 196-201; (R. 567-568; 599-600.) Aerial photographs from 1967 and 1985 submitted by two of the Intervenors were consistent with clearing of this area between those dates. (R. 567-568.) Mr. MacQuinn also testified that he cut a tree in this area in 2015 to confirm the age of the vegetation in the area—the tree was at that time around 20 years old, confirming that the vegetation had grown in after the area was cleared in the 1970s. (R. 568.) Site plans show that the existing limits of the quarry in the northernmost corner of the property are less than 25 feet from abutting property lines. *App.* 201; (R 558.) Although the existing pit is closer to the property line than 25 feet in much of this area, MacQuinn agreed to limit itself to the 25-foot setback shown on the plan. (R. 599-600.)

Despite this, the Board required MacQuinn to cease operations and move the existing operations back to beyond the full 50-foot setback except for "two small areas" shown on the site plan "defined by the ledge cut on the North and the Northeast sides shown on the plan as the base of the ledge sawcut." (R. 608-09.) The Board exceeded its authority by purporting to override MacQuinn's vested rights to maintain the "existing" operation, including areas much closer than 50 feet from the property lines where overburden has long since been removed, and which

MacQuinn is fully entitled to continue in its current location under Section 6.2(F) of the QLO.

Because the Board's determination misapplied the ordinance and purported to revoke MacQuinn's right to extract in areas that are part of its existing operation, contrary to § 6.2(F) of the QLO, the Court should hold that MacQuinn is allowed to extract fully up to the 25-foot setback line, as opposed to the 50-foot mark, as shown on the plans.

V. The QLO exclusively applies to MacQuinn's application.

To appreciate the context of this tortured permitting process and appeal, and to anticipate Appellee arguments, MacQuinn briefly addresses why the QLO—and no other ordinance—governs this application. The Board's first pretextual denial of MacQuinn's application was based on an interpretation of the LUZO to find MacQuinn lacked standing to apply for a quarrying license because it was not a "grandfathered . . . existing active quarry." *App.* 11; (R. 511.) In concluding Hall Quarry was an "active un-licensed quarry" entitled to apply for a permit under the QLO, the BCD found that "[n]othing in the LUZO appears on its face to apply to quarrying activities." *App.* 17, 133; *see also App.* 21 ("The LUZO explicitly states its performance standards do not apply to quarrying activities."). The BCD further noted "[t]he amendment to the LUZO (specifying that quarrying activities are regulated by the QLO) adopted as part of the enacting QLO demonstrates that the

Town intended the QLO to be the primary source of quarrying regulation." *App.* 19.

The QLO was developed after the LUZO to address issues relating to quarrying that "the LUZO was inadequate to address." *App.* 23. The BCD concluded that provisions of the LUZO would only apply to a QLO application if those provisions "(1) do not conflict with the QLO, (2) are not otherwise inconsistent with the QLO, and (3) do not render any provision of the QLO surplusage." *App.* 25. Moreover, the Intervenors conceded the QLO imposes greater restrictions upon the land than the performance standards of the LUZO. *App.* 16-17; *compare App.* 79-95 *with App.* 124-30, 133. Applying the performance standards of the LUZO to MacQuinn's application conflict with the QLO, are otherwise inconsistent with the QLO, and render the QLO's provisions surplusage.[13] This Court should reject any arguments by the Appellees that other ordinances apply.

VI. The Planning Board has exhausted its opportunities to render a fair, impartial, and expeditious decision.

Hall Quarry is a pre-existing quarry and is entitled to apply for a permit under the QLO. The purpose of the QLO was and remains "to put into law

[13] For this same reason, § 6B.11(2) of the LUZO does not apply to Crane Road. *App.* 131-132; (R. 1183-1188). Section 6.2(G) of the QLO provides that "[a]ny *new* driveway or road shall conform to the standards set forth in" the LUZO and Subdivision Ordinance. *App.* 93 (emphasis added). The Crane Road is not new. Application of this provision of the LUZO conflicts with, is otherwise inconsistent with, *and* renders § 6.2(G) of the QLO surplusage.

minimum removal and reclamation standards and municipal procedures to regulate the quarrying of rock or stone while at the same time respecting the rights of pre-existing operations." *App.* 75.

This matter has been before the Planning Board for over a decade. In that time the Planning Board has held over 30 meetings where Intervenors have had ample opportunity to present argument through three different law firms, in addition to their own sound and stormwater experts. Throughout this process MacQuinn has listened to the Board and opponents of the quarry and agreed to numerous and significant concessions, including: limiting hours of operations; limiting quarrying operations to 65 days a year; not operating in the summer months; use of noise mitigation technologies supported by the Board's own expert; limiting the number of trucks that go to the site each day; agreeing not to use blasting; and providing buffering and property line setbacks. (R. 746-51; 753-61; 792-96; 876; 1046-65.) During this long, drawn out process, the Board voted that MacQuinn met all applicable performance standards of the QLO, except for RTI. Those votes took place on the following dates:

QLO §	Performance Standard	Vote	Record
§ 6.2(B)	Erosion Control	Dec. 1, 2015	1111-34
§ 6.2(C)	Stormwater Management	Dec. 1, 2015	1111-34
§ 6.2(D)	Closure and Reclamation Plans	Dec. 1, 2015	1111-34
§ 6.2(E)	Petroleum Usage	Dec. 1, 2015	1111-34
§ 6.2(F)	Buffering and Screening	July 17, 2019	599-614
§ 6.2(G)	Road and Driveway Design, Circulation and Traffic	June 14, 2016	323-39

§ 6.2(H)	Ground Water Impacts	Aug. 11, 2015	1101-09
§ 6.2(I)	Signs	June 14, 2016	323-39
§ 6.2(J)	Noise	Sept. 30, 2020	857-79
§ 6.2(K)	Hours of Operation	Dec. 1, 2015	1111-34
§ 6.2(L)	Dust Control	June 14, 2016	323-39
§ 6.2(M)	Blasting	June 14, 2016	323-39
§ 6.2(N)	Lighting	June 14, 2016	323-39

Despite this, the Planning Board has now, for the third time, denied MacQuinn's application for pretextual reasons unrelated to the QLO performance standards. If this Court vacates the Board's RTI conclusion, there is nothing left to do except grant the QLO license.

Where a project complies with all relevant ordinance requirements, a planning board must approve the application. *WLH Mgmt. Corp. v. Town of Kittery*, 639 A.2d 108, 110 (Me. 1994) ("Having complied with the relevant sections of the ordinance, the corporation is entitled to its permit."); *see also Stucki v. Plavin*, 291 A.2d 508, 511 (Me. 1972) ("There should be no discretion in the Board… as to whether or not to grant the permit if the conditions stated in the ordinance exist."). The reason for this rule is to ensure that objective legal standards, and not the vague subjective policy preferences of the board membership, decide whether an application is approved or denied. To hold otherwise would risk arbitrary ad hoc decision making based on standards that are not codified in the ordinances. This rule is of a constitutional dimension. *See, e.g.*, *Stucki,* 291 A.2d at 510; *Kosalka v. Town of Georgetown*, 2000 ME 106, ¶ 17, 752 A.2d 183; *Wakelin v. Yarmouth*, 523 A.2d 575 (Me. 1987).

Rather than do its job, the Board has instead based its decisions on the amount of public opposition displayed for the project and on the members' general opinions that the project would have negative impacts on the neighbors. *App.* 32-34; 184-86; (R. 1080-82). When given a third opportunity to finally grant MacQuinn's quarry license, the Board elected to instead ignore the duly recorded 2024 Easement and issued "findings" untethered from facts in the record (because none exist) based solely on road maintenance hypotheticals and speculation.[14]

As the fact finder, the Board should have welcomed the 2024 Easement to ensure it gets its decision right. Deliberately ignoring this information was an abuse of discretion, violated principles of due process, and severely prejudiced MacQuinn by only further delaying final resolution of this long, drawn out matter. Such actions make clear the Board's true motive is to deny MacQuinn's permit application regardless of its status as a pre-existing quarry and its satisfaction of all relevant QLO performance standards.

Nothing in the record indicates a remand by this Court for further proceedings will result in anything other than further delay from the Planning Board. "At some point, excessively long, repeated, and inconsistent consideration of an issue, without a final result, may become a due process concern. . . ." *Carroll*

[14] All the while not permitting any argument from MacQuinn but adopting the proposed findings of the Intervenors, not fielding a full complement of 5 members of the Board, and under the advice of legal counsel that made clear of their intent to ensure MacQuinn's application would be denied following the remand. *App.* 179-187.

v. Town of Rockport, 2003 ME 135, ¶ 20, 837 A.2d 148; *Lane Const. Corp. v. Town of Washington*, 2008 ME 45, ¶ 29, 942 A.2d 1202 ("A party before an administrative board is entitled to a fair and unbiased hearing under the Due Process Clauses of the United States and Maine Constitutions."). Under similar circumstances, courts have found it necessary not to remand matters back to municipal boards:

> While good faith of administrative boards will be presumed, the history of this case gives the court concern as to whether [the applicant] could get a fair, impartial, and expeditious hearing and decision from the Planning Board. . . . There is no assurance that [the applicant], if [it] went to the expense of another hearing, would not face yet another mountain of procedural roadblocks and improprieties not of [its] own doing, but beyond [its] own control, which could forever delay [its] effort to get a final determination, at some level, regarding [its] [] application. . . . The Boards have exhausted their opportunities to render a fair, impartial and expeditious decision.[15]

Mutton Hill Ests., Inc. v. Town of Oakland, 468 A.2d 989, 992–93 (Me. 1983) (citing Superior Court decision on appeal).

CONCLUSION

The circumstances here necessitate the Court issue an order reversing the decisions of the Planning Board, order the Planning Board approve MacQuinn's

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[15]

> While it is true that a remand order to the agency is the usual remedy chosen by the Superior Court when errors are found in administrative decision making, M.R.Civ.P. 80B(c) explicitly gives the court authority to 'affirm, reverse, or modify the decision under review or . . . remand the case to the governmental agency for further proceedings.'

Mutton Hill Ests., Inc. v. Town of Oakland, 468 A.2d 989, 992 (Me. 1983) (citing M. R. Civ. P. 80B(c)). This Court held that "the Superior Court's decision not to remand [was] a reasonable means of according [the applicant] its due process rights." *Id.* at 993.

application for a license under the QLO without the erroneously imposed setback conditions, and award such other and further relief as the Court deems proper.

Dated at Ellsworth, Maine, this 24th day of July, 2025.

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CERTIFICATE OF SERVICE

I, Patrick W. Lyons, hereby certify that an electronic copy of the Brief of Plaintiffs/Appellants and an electronic copy of the Appendix were served on the following at the addresses set forth below by email on the 24th day of July, 2025:

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