STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Docket No. BCD-25-153

September 11, 2025

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

Plaintiff / Appellant

v.

TOWN OF MOUNT DESERT, et al.,

Defendant / Appellee

ON APPEAL FROM THE MAINE BUSINESS AND CONSUMER COURT

BRIEF OF APPELLEE – TOWN OF MOUNT DESERT

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I. SUMMARY OF THE ARGUMENT

This appeal concerns Harold MacQuinn, Inc. and Freshwater Stone and Brickwork, Inc.'s (together "MacQuinn") application for a license to conduct quarrying activities (the "Application") in the Town of Mount Desert (the "Town"). There is only one threshold issue in this appeal: whether the Town Planning Board (the "Board") appropriately determined that the Application failed to satisfy the Town's Quarrying License Ordinance ("QLO") because MacQuinn could not ensure maintenance of the quarry's access road. The Board's decision is supported by substantial evidence in the record and was well within the Board's discretion. Accordingly, this Court need go no further and should affirm the judgment of the Business and Consumer Court (the "Business Court"), and in turn, the Boards' decision.

A long procedural history precedes this appeal. The following decisions provide the essential factual background for this Court's consideration: (1) the Business Court's January 2024 Order remanding this matter to the Board; (2) the Board's May 2024 decision; and (3) the Business Court's March 2025 judgment affirming the Board's decision. In 2022, the Board initially concluded that MacQuinn failed to satisfy section 6.2(A)(2) of the QLO—requiring maintenance of the site's access road—because it was "impractical to obtain the fee landowner's approval to repair and maintain the road from time to time ongoing." (A. 64-65, 90.) In its January 2024 Order, the Business Court remanded this case to the Board with a simple direction: issue a decision that

"ensure[s] that there are sufficient findings available to enable meaningful and proper judicial review." (A. 39.) The Board did just that in its decision executed in May of 2024. Following remand, the Board promptly met, expressly indicated the record evidence that it relied upon in concluding that MacQuinn could not satisfy the QLO, and finalized its decision. (A. 68-70.) Because the Board determined that MacQuinn could not satisfy a necessary component of the QLO, no further action was required. (A. 68-70.) On appeal, the Business Court agreed that the findings were sufficient for its review, the findings supported the Board's decision to deny the Application, and the Board acted within its discretion. (A. 40-50.)

Now, MacQuinn largely abandons the issues it argued before the Business Court. Rather, MacQuinn dedicates its brief to reframing the issues as ones of law revolving around ordinance and statutory interpretation and administrative standing. (Blue Br. 15-25.) MacQuinn spends large portions of its brief arguing that this Court should overturn caselaw related to administrative standing, particularly *Tomasino v. Town of Casco*, 2020 ME 96, 237 A.3d 175. (Blue Br. 29-36). MacQuinn likewise raises issues related to other aspects of the QLO that, as the Business Court noted, were "not ripe." (Blue Br. 36-39; A. 50.) Finally, MacQuinn argues that the Board has exhausted its opportunity to make a fair decision, and that this Court should take the extraordinary step of ordering the Board to approve the Application. (A. 39-43.)

Despite MacQuinn's obfuscations, the question before this Court is narrow and

straightforward: was the Board's decision regarding MacQuinn's inability to *ensure* maintenance of the quarry's access road supported by sufficient record evidence and within its discretion? The answer is yes. The plain language of the QLO requires MacQuinn to ensure maintenance of the quarry access road. (A. 90.) The Board's central focus throughout this case was determining whether the Application satisfies the Town's ordinances, including the QLO. MacQuinn's easement providing access to the site makes maintenance conditional on the consent of the servient title holder. (A. 146-49.) The Board pointed to ample record evidence—and relied on common sense—to conclude that MacQuinn could not guarantee the grantor's consent to maintain the road and, therefore, the Application did not satisfy the requirements of the QLO. Accordingly, this Court should affirm the Board's Decision.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

On June 12, 2014, MacQuinn filed the Application to engage in quarrying activities in the Town under the QLO. (A. 10; R. 8-136.) Over the following seven years, the Board held several hearings and preliminarily addressed a number of the parameters for approval under the QLO. (A. 41-42; *see, e.g.,* R. 1100-45.) MacQuinn likewise submitted significant revisions to the Application, resulting in the Board having to effectively begin their review anew. (R. 188-321, 331-497, 499-503). The COVID-19 pandemic and one appeal to the Business Court likewise occurred prior to March 2021, when the events relevant to this appeal began to transpire. (A. 53-54; R. 1269,

1292.)

Section 6.2(A)(2) of QLO is the critical ordinance provision at issue here. That provision states that "[t]he owner and operator of a quarrying activity shall be responsible, both jointly and severally, for ensuring the maintenance of all infrastructure, structures and their sites." (A. 81.) Further, section 6.1(C) of the QLO requires the applicant to 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." (A. 88.) In March 2021, in an attempt to satisfy these requirements, MacQuinn submitted to the Board an easement over a road to access the proposed quarrying site, granted by Michael C. Musetti. (A. 142-45.)[1] This easement prohibited MacQuinn from building, repairing, servicing, or maintaining the access road without Musetti's consent. (A. 143.) In April 2021, the Board discussed concerns that the grantor could simply prohibit all maintenance from occurring over the access road. (R. 906.) In August 2021, MacQuinn submitted a slightly broader easement that Musetti had granted MacQuinn the previous month (the "July 2021 Easement"). (A. 146-49.) The July 2021 Easement, states that, except in the case of an emergency, MacQuinn "shall not undertake any construction or maintenance on the easement area without prior consent of the Grantor, such

[1] This easement superseded an earlier, narrower easement. (A. 138-141.)

consent not to be unreasonably withheld." (A. 147-48.)

At its October 20, 2021, meeting, the Board reviewed the July 2021 Easement and again expressed its concern that MacQuinn could not ensure maintenance, as Musetti could not be compelled to consent to repairs in non-emergency situations. (A. 162-63; R. 958-59.) Nonetheless, the Board granted MacQuinn leave to provide a revised easement that addressed this concern. (A. 162-63.)

By the time the next meeting was held on January 12, 2022, MacQuinn had failed to provide an updated easement. (A. 167-78). In light of MacQuinn's failure, the Board denied the Application, stating that "it was impractical [for MacQuinn] to obtain the fee landowner's approval to repair and maintain the road from time to time," and that MacQuinn "has not shown sufficient evidence of title, right, and interest." (A. 64-65; *see also* A. 173.) MacQuinn appealed to the Business Court.

On January 9, 2024, the Business Court reversed and remanded. (A. 27-39.) That Court stated that, as a matter of law, "a municipal board's determination of the sufficiency of an applicant's right, title, and interest in property relative to ordinance requirements . . . is a factual one that must be supported by the record evidence," and that the Board's conclusion was "untethered from specific record evidence and tells the court nothing about why the Planning Board concluded that maintenance would be 'impractical'." (A. 37.) Despite the "Board's diligent attention to this matter over many years and the hard work and time committed to review of MacQuinn's application by

its members," the Business Court determined that "remand [was] necessary . . . to ensure that there are sufficient findings available to enable meaningful and proper judicial review." (A. 38.) The Business Court concluded by providing explicit instructions to the Board on the scope of its remand:

> Specifically, on remand the Planning Board must determine whether MacQuinn supplied record evidence demonstrating that the easement's allowance "enables use of the property in a manner consistent with that use for which the permit is sought." *Tomasino*, 2020 ME 96, ¶ 12, 15, 237 A.3d 175. It will be up to the Planning Board to determine the nature of any additional proceedings on the issue of the sufficiency of MacQuinn's right, title, or interest in the access road. The Planning Board may make new findings of fact that support its conclusion that MacQuinn's right, title, or interest is inadequate relative to the QLO's requirements. If the Planning Board changes its conclusion concerning MacQuinn's right, title, or interest, then it will need to address the remaining criteria for approval.

(A. 38).

On April 3, 2024, the Board met to address the remand. (A. 179-87.) MacQuinn argued that the Board should reopen the record on remand and attempted to submit a broader easement from Musetti that provided that "[t]he Grantee has the right to maintain the easement and perform improvements within the easement area . . . as necessary to ensure compliance with applicable laws, rules and regulations . . . for Grantee's use of the benefitted property as a quarry . . . ." (A. 150-53, 180-81.) The record had been closed for well over a year before MacQuinn attempted to submit this new easement. (*See* A. 166, 171-72.) Moreover, MacQuinn had been granted leave to provide a new easement two-and-a-half years before, in October of 2022, but had failed

to do so until right before the April 3, 2024, meeting. (*See* A. 162-63, 166, 180-81.) Given these delays on MacQuinn's part, and considering the interest of the other parties in submitting additional evidence should the Board re-open the record, the Board exercised its discretion and declined to reopen the record. (A. 180.) The Board then substantiated its findings based on the existing record and denied the Application. (A. 180-87.)

On May 22, 2024, the Board issued four findings supporting its conclusion that MacQuinn failed to satisfy Section 6.2(A)(2) of the QLO because MacQuinn could not *ensure* maintenance of the access road by way of the July 2021 Easement. (*See* A. 68-69.) Those findings state:

> Finding #2C: Heavy equipment, including trucks and trailers, will access the quarry on a regular basis, per the Quarrying Licensing Application, original application section 17, revised on September 28, 2016. Based on the Planning Board's experience with road maintenance, such traffic will necessarily damage the access road over time, thus requiring maintenance to keep the road up for the Applicant as well as for the neighbors. This may include, but is not limited to, potholes and movement of the travel surface outside of the travel right of way, all of which will need to be repaired. (See Meeting Minutes, at 4 (October 20, 2021); Meeting Minutes, at 11 (January 12, 2022).) Additional damage could be caused by plowing, grading, or heavy rainfall and storm damage.
>
> Finding #2D: The Planning Board also finds that the intensity and frequency of large storms appears to be increasing in recent years and that these events can exceed the typical design standards for roads, such as the use of 2-, 10-, and 25-year, 24-hour duration storm events in the stormwater management standards that apply to quarries in QLO §6.2. C.2. when large, intense storms occur in the future, the road may not be able to withstand them, even if designed and built in accordance with the Town's standards. If that occurs, a washout could damage Mr. Musetti's

property and he might reasonably refuse or delay consent to Co-Applicants to repair the road to its prior condition to avoid further damage to his own property. (See, Correspondence from Matthew D. Manahan, Dec. 28, 2021, at 3.)

Finding #2E: The amended license application containing access road improvements did not include an updated stormwater model or management plan, despite the proposed road specification changes, and increased danger of stormwater ponding on the Musetti property and exacerbated road damage due to freezing and thawing. (See, Correspondence from Mark Bergeron, P.E., December 23, 2021, at p. 3.) Mr. 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. (See Meeting Minutes at pp. 3-5 (January 12, 2022).)

Finding #2F: Complication of the written consent, based upon the language of the easement recorded in Hancock County Registry of Deeds, at Book 7146, Page 333, requiring written consent required by the fee landowner, Mr. Musetti, potential damage and timeliness of repairs as prescribed by the QLO could be potentially delayed or even denied.

(A. 68-69.)

MacQuinn again appealed to the Business Court. (A. 51-62.) On March 4, 2025, the Business Court (McKeon, J.) affirmed the Board's decision after finding that the Board pointed to sufficient record evidence to support its conclusion, that it acted within its discretion to keep the record closed on remand, and declined to reach issues that went beyond that threshold determination. (A. 40-50.) This appeal followed.

III. STATEMENT OF ISSUES PRESENTED

1. Whether the Planning Board Properly Determined that MacQuinn failed to satisfy Section 6.2(A)(2) of the QLO;

2. Whether this Court should overturn established caselaw regarding administrative standing;

3. Whether MacQuinn's permit should be subject to the setback conditions imposed on the Application by the Board;

4. Whether the Board misinterpreted the Land Use Zoning Ordinance (the "LUZO"); and

5. Whether the Board has exhausted its opportunity to render a decision.

IV. STANDARD OF REVIEW

This Court "directly reviews the operative decision of the municipality, in this case, the [Board], 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, 987 (quotation omitted).

Interpretation of a local ordinance is subject to de novo review. *Isis Dev., LLC v. Town of Wells,* 2003 ME 149, ¶ 3 n.4, 836 A.2d 1285, 1287. So too is the interpretation of deeds. *See Silsby v. Belch*, 2008 ME 104, ¶ 7, 952 A.2d 218, 221.

A local board's factual findings, however, are subject to a highly deferential "substantial evidence" standard, and this Court may not substitute its judgment for Board's. *See Gensheimer v. Town of Phippsburg*, 2005 ME 22, ¶ 17, 868 A.2d 161, 166 ("We review factual findings of the Planning Board with deference and may not substitute

our own judgment for that of the Board."). This Court may only overturn a factual finding for lack of substantial evidence if "no competent evidence supports the local board's findings." *Thacker v. Konover Dev. Corp.*, 2003 ME 30, ¶ 8, 818 A.2d 1013, 1017. The party seeking to overturn a board's decision bears "the burden of establishing that the evidence compels a contrary conclusion." *Tomasino*, 2020 ME 96, ¶ 5, 237 A.3d 175, 178 (quotation marks omitted).

V. ARGUMENT

A. The Board's Determination That MacQuinn Did Not Satisfy the QLO is Supported by Substantial Evidence and the Board Acted Well Within Its Discretion.

This appeal turns solely on MacQuinn's ability to ensure maintenance of the access road to the quarry. This Court need only consider whether sufficient evidence supports the Board's decision and whether the Board acted within the bounds of its broad discretion. The record here indicates that this Court should affirm the Board's decision. To illustrate, the Town addresses, in turn: (i) MacQuinn's characterizations of the issue before the Court; (ii) whether sufficient evidence supports the Board's conclusion as to MacQuinn's ability to maintain the access road; and (iii) whether the Board properly closed the factual record on remand.

i. MacQuinn Seeks to Minimize Its Burden and Supplant the Board as Factfinder.

Throughout its brief, MacQuinn asserts that the issues on appeal are issues of

law, primarily relating to "right, title, and interest" ("RTI") as it applies to administrative standing.[2] (*See generally* Blue Br.) Contrary to MacQuinn's assertion, RTI as it pertains to administrative standing is not the issue before this Court. The Board's conclusion rested solely on section 6.2(A)(2) of the QLO, which is entirely distinct from the QLO's provision relating to RTI, contained in section 6.1 of the QLO. (A. 69, 88, 90.)[3] Section 6.2(A)(2), provides in full: "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." (A. 90.) The Board concluded that the July 2021 Easement, in conjunction with record evidence, failed to prove that MacQuinn could guarantee maintenance of the access road. (A. 68-70.) This is entirely distinct from the RTI analysis in the context of administrative standing.

MacQuinn's advocacy for *de novo* review of the Court's factual findings is nothing more than an attempt to strip down the standard of review. This Court should resist MacQuinn's call to invade the fact-finding provenance of the Board. This Court must

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[2] RTI is the relationship to a site "that gives . . . a legally cognizable expectation of having the power to use that site in the ways that would be authorized by the permit or license [sought]." *Murray v. Inhabitants of the Town of Lincolnville*, 462 A.2d 40, 43 (Me. 1983). Thus, *any* legal interest in the property is not sufficient; the right must allow the activity authorized by permit. *See Rancourt v. Town of Glenburn*, 635 A.2d 964, 965 (Me. 1993). Accordingly, easement grantees must demonstrate that the language of their easement is cognizable with the requirements of relevant ordinances. *See Tomasino*, 2020 ME 96, ¶ 15, 237 A.3d at 181 ("[E]asement 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."). An applicant bears the burden of "establishing a sufficient legal interest" to entitle them to apply for the application. *Sleeper v. Loring*, 2013 ME 112, ¶ 18 n.6, 83 A.3d 769, 776. To do so, they must present evidence to the finder of fact. See *Tomasino*, 2020 ME 96, ¶¶ 6-7, 15, 237 A.3d at 178, 181. The finder of fact must weigh this evidence and determine whether the burden has been met.

[3] Though the Board's decision referenced RTI, it did so in the context of MacQuinn's ability to maintain the access road. (A. 69.) The Board was not undertaking an analysis of administrative standing.

instead limit its review to the sufficiency of the facts supporting the Board's determination and whether the Board acted within the bounds of its discretion.

ii. Sufficient Evidence Supports the Board's Findings That MacQuinn Could Not Satisfy the QLO.

This Court must first determine whether the Board's factual findings are sufficient to allow for judicial review.[4] A planning board must "explain its conclusions," *Murray v. City of Portland*, 2023 ME 57, ¶ 15, 301 A.3d 777, 781, and produce "findings of fact sufficient to apprise the court of the decision's basis," *Chapel Rd. Assocs., L.L.C. v. Town of Wells*, 2001 ME 178, ¶ 10, 787 A.2d 137, 140. This Court may only overturn a factual finding for lack of substantial evidence if "no competent evidence supports the local board's findings." *Thacker*, 2003 ME 30, ¶ 8, 818 A.2d at 1017.

The July 2021 Easement plainly requires the grantor's consent to undertake maintenance. (A. 146-49.) The Board was thus tasked with determining—given that limitation—whether MacQuinn could "ensur[e]" maintenance. (A. 90.) On remand, the Board looked at its voluminous evidence and determined that MacQuinn could not do so. (A. 68-70.) To this end, it made four express findings relying on evidence properly before the Board or based on its members' personal knowledge. (*See* A. 68-70.)

[4] Even though this is the primary issue on appeal, MacQuinn devotes only four of its brief's forty-three pages to this issue. (*See* Blue Br. 25-28.) MacQuinn does not directly cite a single case in this portion of its brief.

For example, the Board relied on the record evidence contained in MacQuinn's Application that numerous heavy vehicles would be travelling on the access road each day to conclude that damage to the access road was all but certain. (R. 350; A. 69.) The Board likewise heard evidence regarding the shortcomings of the stormwater system that could cause further damage to the road and adjacent areas. (A. 69.) Finally, the Board recognized, based on the record before it, that the "grantor is not taking providing consent lightly."[5] (A. 186.) Accordingly, MacQuinn cannot seriously contend that no record evidence supports the Board's findings.

The record easily dispels MacQuinn's attempt to reclassify these findings as "speculative and attenuated hypotheticals." (*See* Blue Br. 27.) MacQuinn appears to take issue with the Board's finding that MacQuinn *might* not be able maintain the access road. The QLO, however, requires applicants to "*ensur[e]*" maintenance. (A. 90. (emphasis added)) In other words, the QLO requires the applicant to demonstrate certainty as to their ability to maintain the premises. *See, e.g., Ensure*, Merriam-Webster Dictionary (defining 'ensure' as "to make sure, certain, or safe"). Based on the record

[5] Indeed, the language of the July 2021 easement requiring written consent is, in and of itself, record evidence that the grantor, Mr. Musetti, was not going to freely approve required maintenance of the road. (*See* A. 146-49.) Likewise, the two-and-a-half-year delay between Musetti granting the July 2021 easement and then not granting another easement to MacQuinn until the spring of 2024 is further record evidence supporting the determination that this specific grantor was not readily going to provide consent for maintenance. (*See* A. 146-53.) As the Board recognized, "it is upon the Applicant to ensure that they can provide maintenance." (A. 186.) Based on the record before it, the Board appropriately determined that MacQuinn failed to provide evidence that it could guarantee maintenance when required to do so. (*See* A. 185-86.) As the Business Court recognized "[t]he Planning Board's concerns about the need for a prompt response to road damage and the risk that the language of the Easement would inhibit a prompt response are adequately founded on competent personal knowledge and record evidence." (A. 49.)

evidence, the Board was not satisfied that MacQuinn met this burden, and the Board was justified in denying the Application on these grounds.

Relatedly, this Court has long held that boards can make factual findings based on "readily foreseeable" results of proposed developments. See *Lippoth v. Zoning Bd. of App., City of So. Portland*, 311 A.2d 552, 557 (Me. 1973). For example, here, it was readily foreseeable to the Board that quarrying would cause an increase in road traffic—including from heavy trucks—which would in turn create increased strain on the access road. (R. 350.) Local boards must have the ability to make logical connections between proposed actions and their readily foreseeable consequences.[6] To hold otherwise would needlessly hamstring a local board's ability to make reasoned decisions.[7]

iii. The Board's Decision to Close the Record on Appeal Was Within its Discretion and Not Arbitrary or Capricious.

MacQuinn argues that the Board erred in refusing to open the record or otherwise consider the easement it attempted to introduce to the Board in 2024. (Blue

[6] MacQuinn argued below that the Board improperly relied on personal knowledge to make its findings. This argument has not been developed or argued before this Court and is waived. *See, e.g., State v. Rusher,* 468 A.2d 1008, 1009 (Me. 1983). In any event, a board's members are entitled to rely on their personal knowledge, including knowledge of local weather and traffic. *Lippoth*, 311 A.2d at 557; *Pine Tree Tel. & Tel. Co. v. Town of Gray*, 631 A.2d 55, 57 (Me. 1993). Accordingly, the Board properly found facts regarding potential damage the road based on its members' personal knowledge.

[7] MacQuinn paints a picture of a warm relationship between MacQuinn and Musetti. Blue Br. 28. The record evidence, however, demonstrates that Musetti seemed skeptical to grant consent or otherwise broaden the easement to allow MacQuinn to use the property as required by statute. The Board expressly allowed MacQuinn leave for three months to secure a broader easement. (A. 162.) He failed to do so for the next two-and-a-half years. The passage of time, and the repeated insistence of Musetti to retain some level of control over when and under what conditions MacQuinn could maintain the road is sufficient evidence that MacQuinn could not guarantee such maintenance. This Court should not take seriously any suggestion that the Musetti appeared willing to give up his control over the maintenance of the access road.

Br. 24.) The Board's decision, in this regard, was well within its discretion and was not arbitrary or capricious.

In *Lane Construction Corp. v. Town of Washington*, 2008 ME 45, ¶¶ 32-34, 942 A.2d 1202, 1212 this Court held that a Board *may* reopen the record on remand. The decision to open or close an evidentiary record is reviewed to determine whether the finder of fact acted arbitrarily or capriciously in doing so. *See* id. "An administrative board needs to strike a fair and reasonable balance between its interest in efficiency and the public's right to speak . . . ." Id. ¶¶ 31-34. Where there has been extensive opportunity for the public to present their arguments, a board may, in the interest of expediency, limit or close off the evidentiary record. *See* id. ¶ 34 ("[I]n view of the extensive hearings and deliberations conducted in this case, that balance [between expediency and the right to be heard] was properly struck in this instance.").

Here, the record is voluminous. Numerous meetings and hearings have been held over the last twelve years to ascertain whether MacQuinn's ever-changing Application satisfies the QLO. (*See, e.g.*, R. 188-321, 331-497, 499-503, 1100-45). MacQuinn cannot complain that it lacked the opportunity to present its arguments. This is particularly true here, where the Board granted MacQuinn leave in October 2021 to correct the issues in the July 2021 Easement. (A. 162.) He failed to do so. MacQuinn cannot now complain of a lack of opportunity to present its best arguments.

Similarly, the Board received explicit instructions from the Business Court on

how to handle the remand. (A. 38.) The Court instructed the Board to determine "whether MacQuinn supplied record evidence" that the easement provided sufficient RTI *"relative* to the QLO." (A. 38.) (emphasis added). In doing so, the Business Court stated that it would "be up to the [Board] to determine the nature of any additional proceedings on the issue of the sufficiency of MacQuinn's right, title, and interest." (A. 38.)[8] Here, the Board determined that there was sufficient evidence in the record supporting its finding as to MacQuinn's ability to maintain the access road and that – in the interest of finality and fairness to all parties – additional proceedings were not required. Given the procedural history of this case, the Board's actions were well within its discretion and were not arbitrary or capricious.

B. This Case Is Not An Appropriate Vehicle to Revisit Tomasino.

This case does not turn on the principles of RTI as it relates to administrative standing. Indeed, the Board did not deny the Application because MacQuinn lacked standing to apply for a quarrying license. Rather, the Board denied the Application because MacQuinn failed to satisfy a critical provision of the QLO. (A. 68-70.) The Board's obligation here was to ensure MacQuinn satisfied every provision of the QLO. Because MacQuinn failed to submit evidence that he could satisfy the provision

[8] The Town also notes the inherent tension between MacQuinn's complaint that processing the Application has taken too long and its attempt to introduce new evidence on remand. Indeed, the Board expressly stated it was declining to reopen the record in part because doing so would allow "[t]he process of submission and review to continue indefinitely." (A. 180.)

requiring maintenance of the access road, the Board denied the Application. MacQuinn's attempts to re-cast this case as something else are unavailing.

Nonetheless, MacQuinn focuses most of its brief on RTI and administrative standing. Even if the Board's determination is properly framed as a determination of administrative standing—which it is not—the Application was still properly denied. A fundamental tenet of *Tomasino* is that an applicant's individual interest in a property, when analyzed in the context of record evidence, must demonstrate the ability of that applicant to use the property in line with the permit sought. *See, e.g.*, *Tomasino*, 2020 ME 96, ¶ 15, 237 A.3d at 181 ("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."). It is the burden of an applicant to present factual evidence demonstrating administrative standing. *See* id. (noting that the applicants "failed to demonstrate that they have the kind of interest" to allow for the permitted use). To use the quarry site as sought, MacQuinn needed to demonstrate that the July 2021 Easement allowed for the "ensur[ed]" maintenance of the access road. (*See* A. 91.) As stated before, evidence supports the Board's decision that the access road would be damaged and that the easement did not guarantee necessary repairs. Thus, even if viewed as an administrative standing issue, MacQuinn's arguments fail.

Perhaps realizing that even administrative standing case law is antithetical to its position, MacQuinn now advocates for an overhaul of RTI law. (Blue Br. 29-36.) Thus,

as a last-ditch effort, MacQuinn argues that this Court should overturn *Tomasino*, and, necessarily, the established case law that preceded it. In doing so, MacQuinn has the unenviable task of overcoming "the obvious need to promote consistency and uniformity of decisions." *Adams v. Buffalo Forge Co.*, 443 A.2d 932, 935 (Me. 1982).

Though this Court can overturn case law where "a departure from precedent [is necessary] to fulfill [this Court's] role of reasoned decision making," id., MacQuinn's argument does not meet this lofty burden. MacQuinn first argues that *Tomasino* "transformed" the law of RTI and was novel in distinguishing RTI between easement holders and fee title holders. (Blue Br. 29.) MacQuinn's argument, however, ignores long-established case law that emphasizes that the property rights of the *specific* applicant have long informed RTI analyses. *See Murray v. Inhabitants of the Town of Lincolnville*, 462 A.2d 40, 41, 43 (Me. 1983) ("An applicant for a license or permit to use property in certain ways must have the kind of relationship to the site that gives him a legally cognizable expectation of having the power to use that site *in the ways that would be authorized by the permit or license he seeks*.") (emphasis added) (quotation marks omitted); *Walsh v. City of Brewer*, 315 A.2d 200, 207 (Me. 1974) ("[T]he question is whether plaintiff had the kind of relationship to the [proposed] site which the . . . ordinances recognized as *sufficiently germane to the scope of their regulation* to confer status upon the plaintiff as a proper 'applicant' for a license, permit, or certificate of occupancy.") (emphasis added).[9] For

[9] MacQuinn's argument that *Tomasino* improperly creates a distinction between easement holders and fee title holders is misleading. *Tomasino* does not alter the general rule that RTI must be analyzed in the context of the

example, in *Rancourt*, the holder of a right of way to a lake sought an application to place a dock on the lakeshore. 635 A.2d at 965. *After reviewing the scope of applicant's easement and the record evidence*, the board determined that the applicant could not use the property in a manner consistent with the license sought. Id. This Court affirmed that decision. Id. Thus, *Tomasino* is hardly a break from established case law; applicants have long bore the burden of demonstrating that the scope of their property rights satisfies RTI.[10]

Further, MacQuinn's argument, if taken to its logical conclusion, would result in a standard that precludes local boards from considering the unique facts of each case. MacQuinn seems to advocate for an RTI standard that is not dependent on an applicant's actual interest in the property at issue. (*See* Blue Br. 31) (referring to RTI as "merely a box to check"). It is common sense—and consistent with case law—that an applicant should have to demonstrate to a board that it holds the necessary RTI to use the property in a manner that the license would allow. At its most extreme, MacQuinn's position would allow applicants to "wast[e] an administrative agency's time by applying for a permit or license that [they] would have no legally protected right to use." *Murray*, 462 A.2d at 43. In short, not only is this case the inappropriate vehicle to address

applicant's property rights. A fee title holder not subject to any easements indisputably has different RTI than the holder of an easement that only allows for a specified use.

[10] MacQuinn cites *Kinderhaus North LLC v. Nicolas*, 2024 ME 34, 314 A.3d 300 as somehow antithetical to *Tomasino*. Not so. *Kinderhaus* expressly held that the owners of a dominant estate "ha[d] the unrestricted right to use the full extent of the described land *for purposes consistent with the deeded easement*." *Id.* (emphasis added). Thus, *Kinderhaus*, like *Tomasino*, rests on the principal that RTI is necessarily dependent on the precise language of the easement and the supporting factual record. That *Kinderhaus* and *Tomasino* reached different results was a function of the language and purpose of the easements at issue; not a function of inconsistent application of law.

Tomasino, but MacQuinn has not established that *Tomasino* warrants a departure from the principles of *stare decisis*.

C. MacQuinn's Arguments Concerning Additional Provisions of the QLO Are Not Ripe For Review.

Third, MacQuinn argues on appeal that the Board erred when it found that the heightened setback requirements applied to the Application. (Blue Br. 36-37.) As a threshold matter—and as the Business Court found—this issue is not ripe for review. (A. 50.) The Board's denial of the Application here was premised solely on MacQuinn's failure to satisfy the maintenance requirements of the QLO and did not rest on setback conditions. (A. 69-70.) Accordingly, this argument is not properly before this Court. *See Sultan Corp. v. Dep't of Env't Prot.*, 2022 ME 21, ¶ 9, 272 A.3d 296 ("[I]n dealing with a determination or judgment [that] an administrative agency alone is authorized to make, a court must judge the propriety of such action solely by the grounds invoked by the agency.") (quotation marks omitted).

D. The Board's Interpretation of the LUZO is Not Relevant to This Appeal.

MacQuinn next takes aim at the Board's interpretation of the LUZO. (Blue Br. 38-39.) In so doing, MacQuinn appears to argue that the Board's interpretation of the LUZO is somehow cause for remand. *Id.* As stated above, however, the Board's decision here was based on QLO section 6.2(A)(2), and the Board's interpretation of the LUZO is, accordingly, not ripe for review. *See Sultan Corp.*, 2022 ME 21, ¶ 9, 272

A.3d at 299.

E. The Board Rendered a Fair and Impartial Decision.

MacQuinn finally argues that the Board exhausted its opportunity to render a fair decision on the Application, and that this Court should simply approve the Application. (Blue Br. 39-43). This suggestion offends this Court's long-standing and oft-stated policy of leaving local decisions to municipal boards, particularly where, as here, the Board has not made final decisions on many of the requirements under the QLO. *See, e.g., Rossignol v. Me. Pub. Emps. Ret. Sys.*, 2016 ME 115, ¶ 6, 144 A.3d 1175, 1177.[11]

While this Court has recognized exceptions to this rule in extreme cases, *Carroll v. Town of Rockport*, 2003 ME 135, ¶ 20, 837 A.2d 148, 154, *Mutton Hill Ests., Inc. v. Town of Oakland*, 468 A.2d 989, 993 (Me. 1983), the record in this case falls far from those extremes. The Town acknowledges the duration of this proceeding. However, the duration is not indicative of an entity that has "based its decision on the amount of public opposition displayed for the project and on the members' general opinion that the project would have negative impacts on the neighbors." (Blue Br. 42.) To the contrary, the Board has carefully considered every aspect of this significant and complicated Application.

What is more, MacQuinn conveniently fails to recognize that many of the delays

[11] Contrary to MacQuinn's assertion, the Board has not yet made final decisions on any of the numerous criteria for satisfying the QLO. (*See, e.g.*, R. 548 (describing decisions made to date as "tentative").

in this case were of its own making. Indeed, far from treating MacQuinn unfairly, the Board allowed MacQuinn to resubmit the Application, permitted MacQuinn to submit more robust easements, and granted MacQuinn leave to fix the July 2021 Easement before the record closed in December of 2022. (*See, e.g.,* A. 162-63; R. 188-321, 331-497, 499-503.) That MacQuinn failed to satisfy the QLO is a product of the Application's shortcomings, not the Board's.

As the Business Court found, following the 2021 Appeal, the Board's efforts to review the application were admirable. (*See* A. 38) (noting the "Board's diligent attention to this matter over many years and the hard work and time committed to review of MacQuinn's application by its members" and appreciating the Board Chair's statement that the Board "has tried to make this a human process, despite the challenging issue at hand. All those in attendance have invested years of hard work, and the Planning Board has attired to accommodate all in a fair and thoughtful manner."). This Court need not look further than these acknowledgements regarding the fairness of the process from the Business Court. MacQuinn's weaponization of delay, when the delays were at times granted for its benefit, is completely inappropriate. If the Court rules against the Town on the merits (which it should not), remand is the only appropriate remedy.

VI. CONCLUSION

For foregoing reasons, the Town respectfully requests this Court affirm the

Board's decision to deny the Application.

Dated at Portland, Maine, this 11th Day of September, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Brief was served in accordance with M.R. App. P. 1E, via email on this 11th day of September, 2025 on:

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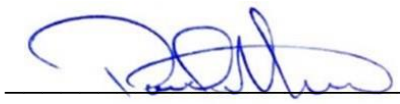

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