

**MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

Docket No. KEN-25-468

LAUREN SHAW REVOCABLE TRUST

Plaintiff/Appellant

v.

TOWN OF BELGRADE

Defendant/Appellee

On appeal from the Kennebec County Superior Court

BRIEF OF APPELLANT

Benjamin E. Ford (Bar No. 4528)
Michael J. Skolnick (Bar No. 6719)
Archipelago
1 Dana Street
Portland, ME 04101
bford@archipelagona.com
mskolnick@archipelagona.com
(207) 558-0102
Attorneys for the Appellant

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TABLE OF CONTENTS

INTRODUCTION4

STATEMENT OF FACTS6

I. FACTUAL BACKGROUND6

II. PROCEDURAL HISTORY9

STATEMENTS OF ISSUES PRESENTED12

STANDARD OF REVIEW13

ARGUMENT14

I. THE SUPERIOR COURT ERRED IN REVERSING ITS ORIGINAL FINDING OF INSUFFICIENT FACTS AND IN ITS PERFUNCTORY DISMISSAL OF ALL LEGAL ISSUES......14

II. SHAW IS ENTITLED TO RELIEF UNDER THE DOCTRINE OF EQUITABLE ESTOPPEL WHERE SHE REASONABLY RELIED TO HER DETRIMENT ON THE DETERMINATIONS OF THE PRIOR CODE ENFORCEMENT OFFICER.16

 A. Estoppel by Ordinance.....16

 B. Estoppel by Common Law.18

 C. Plaintiff is Entitled to Rely Upon the Prior Determinations of the Code Enforcement Officer.....19

III. NONE OF CEO RASMUSSEN’S ALLEGATIONS AMOUNT TO VIOLATIONS......23

 A. Alleged Violation #123

 B. Alleged Violation #2.....24

 C. Alleged Violation #3.....25

 D. Alleged Violation #426

 E. Alleged Violation #5.....28

 F. Alleged Violation #6.....30

 G. Alleged Violation #731

 H. Alleged Violation #832

 I. Alleged Violation #9.....35

CONCLUSION.....37

CERTIFICATE OF SERVICE.....39

TABLE OF AUTHORITIES

CASES

Auburn v. Desgrosseilliers, 578 A.2d 712, 714 (Me. 1990)	16, 18, 19, 26, 30
Britton v. Town of York, 673 A.2d 1322, 1325 (Me. 1996).....	13
E. Perry Iron & Metal Co. v. City of Portland, 2008 ME 10, ¶ 14, 941 A.2d 457..	17
Forest City, Inc. v. Payson, 239 A.2d 167, 169 (Me. 1968)	17
Kurlanski v. Portland Yacht Club, 2001 ME 147, ¶ 9, 782 A.2d 783.....	13, 15, 16
Lane Const. Corp. v. Town of Washington, 2008 ME 45, ¶ 11, 942 A.2d 1202....	13
Martin v. Prudential Ins. Co., 389 A.2d 28, 31 (Me. 1978)	16
Me. Sch. Admin. Dist. No. 15 v. Reynolds, 413 A.2d 523, 533 (Me. 1980)....	16, 18
Merrill v. Me. Pub. Emps. Ret. Sys., 2014 ME 100, ¶ 13, 98 A.3d 211	13
Perrin v. Town of Kittery, 591 A.2d 861, 863 (Me. 1991)	13
Rockland Plaza Realty Corp. v. City of Rockland, 2001 ME 81, 772 A.2d 256....	13
Senders v. Town of Columbia Falls, 647 A.2d 93, 94 (Me. 1994)	13
Wister v. Town of Mount Desert, 2009 ME 66, ¶ 17, 974 A.2d 903	14

STATUTES

30-A M.R.S. §§ 2101–2109, 3001 (2025).....	17
--	----

OTHER AUTHORITIES

09-096 C.M.R. ch. 305, § 1 (2022)	35
Me. State Hous. Auth., Quality Standards and Procedures Manual (Mar. 2024) ..	26, 27
Section 16 (I)(3) of the SZO	17, 24, 25, 28, 29, 30, 31, 32, 33

RULES

M.R. Civ. P. 52(b)	15
--------------------------	----

INTRODUCTION

When is it safe for a homeowner to rely on the terms of building permit when that permit is granted by one code enforcement officer but later interpreted differently by a different code enforcement officer? This case is about a Maine homeowner who spent \$300,000 to rebuild a cottage after receiving a building permit from the Town of Belgrade Code Enforcement Officer. Before doing anything, the homeowner met with the CEO on site. The homeowner wanted to put an old bunkhouse on a full foundation, finish the basement, enclose the deck and convert it into a living room. After walking through the building and measuring the distance to the shore, the CEO approved the building permit. Sadly, the CEO died shortly after the building was completed.

The Town then hired a new CEO who inspected the newly completed building. The new CEO issued nine separate notices of violation. Most of the issues stem from the fact that the new CEO disagreed with the prior CEO's measurements and concluded the building was much closer to the lake. The new CEO, in now requiring that most of the building be demolished, has wasted all of the homeowners' investment.

This Court has stated that parties may not rely on oral statements from CEOs. However, the law changes once those oral statements become official acts. The Town contends that Mainers may never rely on a prior CEO's determination, and

thus, armed with a tape measure and an agenda, a new CEO should be free to target any building he chooses and condemn that building should he, and he alone, find it to be in violation. Principles of fairness, equity, and due process require a different result.

STATEMENT OF FACTS

I. FACTUAL BACKGROUND

In 1984, Lauren Shaw purchased her property with her then husband located on Horse Point Road in Belgrade, Maine, also identified on the Town of Belgrade's Tax Map 16, as Lot 7B (the "Property"). (A.148-55.) The Property is on a peninsula that runs north and south and is bound on the east and west by Great Pond. (A. 148.) The Property is bisected by a roadway that was constructed prior to 1971. (A. 148.) The roadway runs over the Property splitting Shaw's land into two separate parcels, an "Eastern Lot" and a "Western Lot." (A. 148.) The roadway continues on, providing access to the adjacent lots. (A. 148.) The Western Lot contains an unwinterized camp that was constructed prior to the events leading to this dispute. (A. 150.)

On September 24, 2002, Shaw applied for a building permit (the "2002 Application") to construct a bunkhouse on the then vacant Eastern Lot. (A. 158-60.) On October 3, 2002, the Town of Belgrade Planning Board ("Planning Board") held a public meeting to discuss Shaw's application. (A. 169.) Shaw was not in attendance. (A. 169.) The Planning Board approved Shaw's application to construct the bunkhouse. (A156-57, 169.) Without Shaw's knowledge, a Town representative added a note in the "Town Use Only" section of the 2002 Application, stating, "Bunkhouse will not have kitchen facilities." (A. 158-60.) The Town never provided

Shaw with a copy of the modified 2002 Application or approved building permit (the “2002 Building Permit”) which included the kitchen facilities restriction. (A. 156-57.) The owner’s copy of the building permit and application was never sent to Shaw and, in fact, remain in Shaw’s file at the Town. (A. 157, 159.) The Town only provided Shaw with the required public notice to be placed at the building site which contained no mention of the restriction. (A. 161.) Acting according to her originally submitted application, Shaw constructed the bunkhouse with kitchen facilities as she had originally planned. (A. 23.) The bunkhouse has contained a bathroom and kitchen facilities for the past twenty-one years. (A. 174.)

Over the years, the wood post footings under the bunkhouse became unstable. (A. 174.) On June 2, 2021, nearly nineteen years after Shaw constructed the bunkhouse, Shaw and her builder, Ken Frost (“Frost”), met with the Town’s prior CEO Gary Fuller (“CEO Fuller”) on-site to discuss plans to stabilize the bunkhouse with a concrete foundation and a finished basement and to enclose certain portions of the structure. (A. 174; *see also* A. 163). CEO Fuller inspected the bunkhouse and took measurements to determine whether the proposed renovations were compliant with the Town of Belgrade’s Shoreland Zoning Ordinance (“SZO”). (A. 174.) CEO Fuller inspected the building, including the kitchen and took several measurements. (A. 174.) He recorded the setback to Great Pond on the west side of the building as 165 feet and on the east side of the building as 225 feet. (A. 174.) CEO Fuller also

informed Shaw and Frost that the structure could be elevated to 25 feet in height. (A. 174.) Later that day, Shaw submitted the 2021 Building Permit Application (the “2021 Application”). (A. 162.) The application contains the following narrative in various sections:

- We are requesting a permit to replace existing posts on our camp with a concrete foundation. The existing building is sliding because the posts were not installed properly. After meeting with the Building Inspector, Gary Fuller, we would like to create a complete finished basement with 100 ft addition (sic) to the right side, facing the camp for 100 feet of enclosed stairs.
- Add complete Foundation LR/Bath (with arrows pointing to the camp and deck)

(A. 162-164.) CEO Fuller accepted the application and determined that the existing use and structure conformed with the SZO stating, “Conforming lot/Conforming structure.” (A. 162.) CEO Fuller then approved the application without conditions.

(A. 162.) Shaw completed the renovations in summer of 2022. (A. 15.)

On September 18, 2021, CEO Fuller passed away. (A. 174.) In September 2022, the Town hired the current CEO, Hans Rasmussen (“CEO Rasmussen”). In the Spring of 2023, CEO Rasmussen inspected the bunkhouse. (A. 171.) On May 21, 2023, CEO Rasmussen issued a Notice of Violation (the “2023 NOV”) relying on his own assessment of the bunkhouse and measurements and without consideration of the measurements completed by CEO Fuller which were represented within Shaw’s approved 2021 Application. (A. 22-24, 162-66.)

II. PROCEDURAL HISTORY

On June 16, 2023, by and through counsel, Shaw filed this appeal in the Superior Court requesting the Court “vacate the May 21, 2023 Notice of Violation issued by the Code Enforcement Office of the Town of Belgrade.” (A. 13.)

On August 8, 2024, after extensive briefing and oral argument, the Superior Court ordered the case be remanded back to the town CEO because the record was inadequate for appellate review. (A. 8-9.) Specifically, the court noted that the factual disputes included “the height of the house as modified and the distance from the house as modified both to wetlands and to Great Pond itself.” (A. 9.) The Court noted that there were specific disputes of mixed fact and law including: 1. The nature and legal effect of the road or driveway adjacent to the bunkhouse; 2. The source and configuration of certain fill generated by the foundation project; 3. The square footage added by the more recent project; and 4. Whether certain spaces in the house constitute bedrooms. (A. 9.) Additionally, in remanding the case, the Court’s order noted that it explicitly retained jurisdiction in the case. (A. 9.) On September 16, 2024, the Court held a conference in which clarified that the Town would be allowed to submit more fulsome findings based on the current record and that the CEO would be allowed to collect and submit whatever additional information he felt necessary, including the height of the building, the setback from the wetland or lake, and information about a road or driveway. (A. 5-6, 193.)

Following the Court’s remand, on January 23, 2025, the CEO submitted an “Additional Findings of Fact” with exhibits to support his mixed factual and legal conclusions in the 2023 NOV. (A. 25-53.) Then, on March 31, 2025, the parties met onsite so that the CEO could gather additional evidence to satisfy the court’s concern about there being an insufficient record. (A. 195-96.) The CEO was given free reign and access to the property. (A. 195-96.) Nevertheless, the CEO failed to produce any additional evidence to support his conclusions of nine separate violations, indicating in a letter through counsel: “the findings and conclusions of the CEO following remand are not materially altered following the View.” (A. 195-96.) The CEO’s additional findings slightly altered some measurements but then restated all the factual allegations in the 2023 NOV. (A. 195-96.) The letter never specifically addressed the six specific issues mentioned in the Court’s remand order. (A. 8-9.)

Inexplicably, after receiving almost no additional information supporting the CEO’s conclusions after the remand, the Court denied Shaw’s appeal finding “substantial evidence” sufficient for appellate review to support the nine different allegations. (A. 10-11.) Moreover, after initially finding that at least four disputes involved a mix of facts and law, the Court concluded, “With respect to this violation and the eight others, the parties’ real disputes are factual.” (A. 11.) The Court went on to dismiss both factual and legal issues with a perfunctory sentence: “There is

substantial evidence, albeit contested, for each of the CEO's factual findings, and the court has not been persuaded of any legal error in his reasoning." (A. 11.)

STATEMENTS OF ISSUES PRESENTED

- 1) **Whether the Superior Court erred in reversing its original finding of insufficient facts and its perfunctory dismissal of all legal issues.**
- 2) **Whether Shaw is entitled to relief under the doctrine of equitable estoppel where she reasonably relied to her detriment on the determinations of the prior code enforcement officer.**
- 3) **Whether CEO Rasmussen's allegations amount to violations of the Shoreland Zoning Ordinance.**

STANDARD OF REVIEW

In an appeal under Rule 80B, this Court reviews the operative municipal decision directly “for an abuse of discretion, error of law, or findings not supported by substantial evidence in the record.” *Lane Const. Corp. v. Town of Washington*, 2008 ME 45, ¶ 11, 942 A.2d 1202. This Court will affirm the municipal determination if it is not “arbitrary, capricious, or unreasonable,” *Senders v. Town of Columbia Falls*, 647 A.2d 93, 94 (Me. 1994), however, it will reverse the decision if the evidence compels a different conclusion. *See Perrin v. Town of Kittery*, 591 A.2d 861, 863 (Me. 1991). The burden is on Plaintiff to prove that based on evidence in the record the municipality should have reached a different conclusion. *See Britton v. Town of York*, 673 A.2d 1322, 1325 (Me. 1996).

“The interpretation of the provisions of a[n] . . . ordinance is a question of law that [the Court] review[s] de novo.” *Kurlanski v. Portland Yacht Club*, 2001 ME 147, ¶ 9, 782 A.2d 783. The language in the ordinance must be construed reasonably and with regard to both the ordinance’s objectives and its general structure. *See Rockland Plaza Realty Corp. v. City of Rockland*, 2001 ME 81, 772 A.2d 256. The Court reviews the interpretation of statutory language “according to its plain meaning, seeking to avoid absurd, illogical, or inconsistent results.” *Merrill v. Me. Pub. Emps. Ret. Sys.*, 2014 ME 100, ¶ 13, 98 A.3d 211. “In interpreting a statute or ordinance, [the court will] look first to the plain meaning of its language to give

effect to the legislative intent, and if the meaning of the statute or ordinance is clear, [the Court] need not look beyond the words themselves.” *Wister v. Town of Mount Desert*, 2009 ME 66, ¶ 17, 974 A.2d 903.

ARGUMENT

I. THE SUPERIOR COURT ERRED IN REVERSING ITS ORIGINAL FINDING OF INSUFFICIENT FACTS AND IN ITS PERFUNCTORY DISMISSAL OF ALL LEGAL ISSUES.

The history of this case raises perplexing issues with respect to the factual record. In remanding the matter back to the CEO, the Court determined that the record was insufficient for appellate review. (A. 9.) The Court then declined to make any determinations as to what it characterized as a number of “mixed questions of fact and law.” (A. 9.)

The Counsel for the Town and the CEO then responded with almost no additional information. (A. 195-96.) Then, without receiving any additional substantive information from the CEO, the Court appeared to have changed its position, holding that the CEO’s findings were supported by substantial evidence and recharacterizing what were initially mixed questions of fact and law as only “factual.” (A. 11.) The Court failed to give the parties guidance on why or how it was convinced the record was now sufficient to pass judgment. (A. 10-11.)

The lack of legal reasoning is concerning. Every one of the nine alleged violations involves the interpretation of either an ordinance, a statute, or common

law that courts review de novo. While the CEO may be entitled to some deference with respect to his factual findings, the Superior Court should have reviewed the legal questions, including the CEO's interpretations of the ordinances, de novo. *See Kurlanski*, 2001 ME 147, ¶ 9, 782, A.2d 783.

The Superior Court's review of the legal issues consisted of half a sentence: "There is substantial evidence, albeit contested, for each of the CEO's factual findings, *and the court has not been persuaded of any legal error in his reasoning.*" (A. 11 (emphasis added).) There was no discussion about the relative positions of the parties. There was no decision concerning the delicate issue of municipal estoppel, nor was there any analysis of what constitutes a "road" or "bedroom" under state and municipal law. (*See* A. 10-11.) In so doing, the Superior Court disposed of two years litigation, along with hundreds of pages of developed record, with thirteen words.¹

The issue is one of judicial economy. The Superior Court was already familiar with the facts of the case, the positions of the parties, and the competing legal theories championed by each side. Had the Court explained its reasoning, this appeal might not have been necessary. Barring a remand for further explanation, this Court, with its seven Justices, must review the matter and the legal conclusions throughout

¹ If this were a case involving a trial of disputed facts, M.R. Civ. P. 52(b) would provide a remedy. Under that rule, the Superior court would be compelled to issue, or adopt, findings of fact and conclusions of law. However, because there was no trial on facts, Rule 52 does not apply.

the CEO's NOV and its additional findings de novo. *See Kurlanski*, 2001 ME 147, ¶ 9, 782 A.2d 783.

II. SHAW IS ENTITLED TO RELIEF UNDER THE DOCTRINE OF EQUITABLE ESTOPPEL WHERE SHE REASONABLY RELIED TO HER DETRIMENT ON THE DETERMINATIONS OF THE PRIOR CODE ENFORCEMENT OFFICER.

As to the substance of the alleged violations, Shaw is entitled to rely upon the determinations of the prior Code Enforcement Officer even if a later Code Enforcement Officer disagrees with those findings. Courts in Maine have long recognized the doctrine of equitable estoppel based on the acts of municipal officials:

Proper application of the doctrine of equitable estoppel rests on the factual determination that the declaration or acts relied upon must have induced the party seeking to enforce the estoppel to do what resulted to his detriment, and what he would not otherwise have done.

Auburn v. Desgrosseilliers, 578 A.2d 712, 714 (Me. 1990) (quoting *Martin v. Prudential Ins. Co.*, 389 A.2d 28, 31 (Me. 1978)). “Depending on the totality of the particular circumstances involved, which will include the nature of the particular governmental official or agency acting and of the particular governmental function being discharged as precipitating particular considerations of public policy, equitable estoppel may be applied to activities of a governmental official or agency in the discharge of governmental functions.” *Me. Sch. Admin. Dist. No. 15 v. Reynolds*, 413 A.2d 523, 533 (Me. 1980).

A. Estoppel by Ordinance.

In Maine, any discussion of zoning must begin with the broad home rule authority granted to municipalities by the Maine Constitution, Me. Const. art. VIII, § 1, and by statute, 30-A M.R.S. §§ 2101–2109, 3001 (2025). Under this home rule authority, a municipality may enact ordinances regulating, *inter alia*, land use and related subject areas. There is a rebuttable presumption that an ordinance is a valid exercise of a municipality’s home rule authority. *Id.* § 3001(2)–(3); *see also E. Perry Iron & Metal Co. v. City of Portland*, 2008 ME 10, ¶ 14, 941 A.2d 457. Because the restrictions of zoning run counter to the common law rule that a person may do whatever he or she wishes with her property, ambiguities should be construed in favor of the property owner. *See Forest City, Inc. v. Payson*, 239 A.2d 167, 169 (Me. 1968).

Utilizing its home rule authority, the Town of Belgrade, in enacting its SZO, specifically authorizes municipal officers to enter into a consent agreement to allow continued non-conformance in situations where a property owner reasonably relied on a decision by a Code Enforcement Officer or other municipal official. Section 16 (I)(3) of the SZO, titled “Legal Actions,” provides a remedy where an illegal structure is constructed as a result of reliance on a municipal officer. That provision reads, in pertinent part:

The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use

to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith. . . .

(A. 129 (emphasis added).) The Town of specifically enacted this zoning provision allowing it to enter into administrative consent agreements to permit non-conformance in certain situations.

B. Estoppel by Common Law.

Furthermore, Maine courts have long recognized the doctrine of equitable estoppel based on the acts of municipal officials. *See Maine Sch. Admin. Dist. No. 15*, 413 A.2d at 533 (holding that equitable estoppel based on the common law may be applied to government officials in the discharge of government functions); *see also Desgrosseilliers*, 578 A.2d at 714. The standard for estoppel against a town officer in discharge of his duties is higher than it would be against an individual in a private transaction. *See Desgrosseilliers*, 578 A.2d at 714 (stating that application of the doctrine of equitable estoppel to government officials “depend[s] on the totality of the particular circumstances involved, which will include the nature of the particular governmental official or agency acting and of the particular governmental function being discharged”). Importantly, equitable estoppel requires courts to conduct a balancing test, weighing the cost of the party’s reliance on a town’s misleading actions against the Town’s interest in uniform enforcement. *Id.* at 715.

In *Desgrosseilliers*, property owners applied to the City of Auburn for a change in the zoning district to operate both a landscaping business and a plant and tree nursery. *See id.* at 712. The property owners informed the city of his intended use of the property. The city approved the zoning change, and the business owners operated their businesses in reliance on that decision. *Id.* Later, “the business owners were informed that their land uses in the general business district were unlawful.” *Id.* The Law Court determined that it should review the “particular circumstances surrounding [the landowners] claim of estoppel” on a case-by-case basis. *Id.* at 714. The Court then concluded that the property owners “were reasonably given to understand that in the General Business Zone they could carry on all of their intended operations,” “that the [landowners] invested well over \$500,000 to commence their businesses . . . in reasonable reliance that they could lawfully do so,” and that they received permits showing their operation of the businesses. *Id.* The Court held that “in balancing the interest in uniform enforcement against the city’s misleading actions and the injury that the business owners would suffer if enforcement was permitted, in the interest of fairness and justice the city was equitably estopped from enforcing the land-use ordinance against the business owners.” *Id.*

C. Plaintiff is Entitled to Rely Upon the Prior Determinations of the Code Enforcement Officer.

In 2002, the Planning Board reviewed and approved the proposed bunkhouse construction. (A. 156-57.) Upon approval, it placed a condition that the

“[b]unkhouse will not have kitchen facilities” which was memorialized in the “Town Use Only” section of the 2002 Application and Building Permit. (A. 156-160.) The Town however never provided Shaw either the revised 2002 Application or the 2002 Building Permit that included the condition of approval. (See A. 157, 159.) The 2002 Building Permit Application at its bottom left corner provides the yellow copy is to be delivered to the applicant, providing, “Copies: White-Town Yellow-Applicant.” (A. 158-60.) The 2002 Building Permit is similarly printed on yellow paper. (A. 157.) However, neither the 2002 Application nor the 2002 Building Permit were ever provided to Shaw and the yellow versions of both documents remains in the Town’s property files. (A. 157, 159.) The Town only provided the public notice required to be placed at the building site, which contained no mention of the restriction. (A. 161) CEO Fuller never provided any indication of conditions placed on the original bunkhouse application, nor showed any concern upon inspecting the bunkhouse after completion and again almost twenty years later.²

The bunkhouse does not violate the SZO, but even if it did, CEO Rasmussen must be estopped from enforcing penalties against Shaw because she reasonably relied upon CEO Fuller’s measurements and findings that the building was a conforming structure on a conforming lot.

² CEO Rasmussen admits Plaintiff had no knowledge of the kitchen restriction, stating, “[t]he provision for ‘No Kitchen’ would have been very apparent if proper procedures had been followed regardless of assumed or actual ignorance of the restriction.” (A. 179.)

Unlike many cases where the CEO's comments are based on statements received from the property owner, in this case, CEO Fuller determined for himself the bunkhouse measurements. By his own measurements, CEO Fuller determined that the existing structure was setback 225 feet from the shoreline of Great Pond and stood 19 feet 6 inches in height. (A. 174-76.) Additionally, after an internal inspection of the bunkhouse, CEO Fuller determined that the use was fully conforming with all applicable zoning requirements. (A. 158-60, 162-64.) Not only was he on-site when he made his determination, CEO Fuller was completely aware of the number of structures and the size of the lot as that information is listed on the application itself. (A. 174.) CEO Fuller also had full, first-hand knowledge of the existence of the kitchen and bathroom in the bunkhouse. (A. 174.) He had to walk through the kitchen to get to the deck to measure the setback and the bathroom is mentioned on the 2021 application. (A. 164.) CEO Fuller reviewed and approved that application on the same day that he physically inspected the Property and bunkhouse and made a determination of compliance. (A. 164.)

Relying on CEO Fuller's measurements and determination in good faith, Shaw submitted an application to fortify the bunkhouse foundation, create a finished basement, and add an enclosed stairway. (A. 162-64.) After construction, the setback from the adjacent wetland remained unchanged. Regardless of the actual setback, the evidence is clear and convincing that Shaw was induced to invest hundreds of

thousands of dollars to stabilize the bunkhouse based on the determination of CEO Fuller that the bunkhouse was a conforming structure on a conforming lot. Because the CEO Fuller's acts induced Shaw to invest to her detriment, the Town and the new CEO should be equitably estopped from its enforcement action.

CEO Fuller's approvals communicated to Shaw that she could continue to use the bunkhouse—as she had for the prior two decades—after the proposed renovations. (*See* A. 164.) Shaw had no reason to question CEO Fuller's determination that the Property was conforming or suspect that his advice was erroneous. In reliance on his determinations and permit approval, Shaw incurred roughly \$300,000 in expenses to complete the approved bunkhouse renovations. (A. 183.) She would not have done any renovations without relying on CEO Fuller's determination that the existing structure and proposed renovations were compliant.

Documents produced by the Town through a FOAA request revealed that CEO Rasmussen considered CEO Fuller to be a “patsy.” (A. 180.) Whether he intended that comment as an insult to Shaw or to CEO Fuller, is not relevant. What is relevant is that CEO Fuller was the duly appointed Code Enforcement Officer at the time and Shaw should have been entitled to and reasonably did rely upon his determinations and approval. Enforcement of penalties for non-conformance would result in grave injustice and substantial injury to Shaw who reasonably relied on CEO Fuller's

calculations and determination, whether erroneous or otherwise, in making a substantial investment to fortify and renovate the existing bunkhouse.

III. NONE OF CEO RASMUSSEN’S ALLEGATIONS AMOUNT TO VIOLATIONS.

A. Alleged Violation #1

Notice of Violation – Violation 1 states:

Unpermitted, 12 x 11, 132 sq. ft. addition with foundation added to south side of structure. This addition serves as an enclosed stairwell from basement to attic. This addition was built outside the scope of Permit 21-48.

(A. 22.)

The approved 2021 Application includes permitting for a “complete finished basement with a *100ft edition (sic.) to the right side, facing a ramp for 100 feet of enclosed stairs.*” (A. 163 (emphasis added).) Accordingly, Shaw’s plan to enclose the existing stairwell was approved by CEO Fuller on June 2, 2021, within the approved 2021 Application. (A. 162) Any square footage exceeding 100 square feet is resulting from the overhang of the roofline, which was omitted from the square footage calculation in the approved 2021 Application. (A. 164.) Regardless, an overhang existed prior to the stairwell being enclosed in accordance with the 2021 Application. Therefore, any pre-existing overhang was simply relocated to the external roofline of the 100 square feet stairwell enclosure. While the overhang must be calculated into the total “footprint area,” the additional square footage is *de*

minimus because the extra 32 square feet does not create any or add to any non-conformity within the expansion or lot coverage provisions of the SZO. *See* Belgrade SZO § 12; (A. 62-74).

B. Alleged Violation #2

The Notice of Violations – Violation 2 states:

The roof line has been raised to 33’ to accommodate attic access. Roofline at 60’ from high-water mark is 25’ (5’ violation), at 75’ from high-water mark is 33’ (8’ violation). (Shoreland Zoning Ordinance Section 12(C)(1)(B)(i); Section 15(B)(2)).

(A. 22.)

By his own measurements, CEO Fuller determined that the pre-renovation bunkhouse stood 19 feet 6 inches in height. (A. 174.) The addition of a concrete foundation raised the height of the structure approximately 30 inches. (A. 176.) Calculating the increase from CEO Fuller’s height measurement, the current total height of the structure is 23 feet. (A. 162-66.) The 2021 Application utilized those measurements provided by CEO Fuller to ensure the building remained compliant with applicable zoning regulations. Understanding the proposed increase in elevation, CEO Fuller approved the 2021 Application because, by his calculations, a 30-inch increase in height would not exceed the 25-foot height maximum permitted within the shoreland zone. (A. 162.)

Shaw relied on CEO Fuller’s measurements to renovate the bunkhouse to ensure its safety and to protect a \$300,000 investment that she would not have

otherwise committed. Therefore, CEO Rasmussen must be estopped from enforcing any penalties arising from the bunkhouse elevation.³

C. Alleged Violation #3

Notice of Violation – Violation 3 states:

Expanding structure foundation footprint 10’ toward wetland to convert former 8’ x 16’ deck into enclosed living space. The new distance from wetland is 60’. (Shoreland Zoning Ordinance Section 12(C)(2)(a)).

(A. 22.)

Section 17 of the SZO defines “Footprint Area” as “the entire area of ground covered by the structure(s) on a lot, including but not limited to cantilevered or similar overhanging extensions, *as well as unenclosed structures, such as patios and decks.*” (A. 133 (emphasis added).)

CEO Fuller determined for himself that the deck measured 225 feet from Great Pond. (A. 174.) The 2021 Application materials, which included photos and a site plan, showed the deck existing prior to the renovations and a description of the project proposing to “create a finished basement.” (A. 162-65.) The pre-existing deck was not expanded in any way during the 2021 construction. (A. 176.) The exposed deck prior to its enclosure was considered, and taken into account, by CEO Fuller when calculating the bunkhouse’s footprint area, which remained unchanged

³ Casting doubt on the validity of his factual findings, CEO Rasmussen in his additional findings admitted that his original roofline measurement was off by 76 inches. (A. 195.) Given the opportunity to remeasure, CEO Rasmussen revised his measurements so that instead of being 8 feet out of compliance, the roof is now supposedly just 1 foot, 8 inches out of compliance. (A. 195.)

by the 2021 renovations. (A. 164.) Enclosing the pre-existing deck to create living space did not expand the bunkhouse footprint towards the upland edge of the adjacent wetland.

Accordingly, Plaintiff cannot be held liable because a new CEO disagreed with a prior CEO's own measurements and his own finding that the existing footprint, which has not changed, was in compliance with the SZO. *See Desgrosseilliers*, 578 A.2d at 714.

D. Alleged Violation #4

Notice of Violation – Violation 4 states:

Unpermitted bedroom suite added to basement totaling 5 bedrooms being served by a septic field designed for 3 bedrooms. No internal plumbing or septic permits are on file for the bunkhouse, all fixtures and connections assumed to be installed without a permit. An internal plumbing inspection will be performed on new elements to confirm safety prior to resolutions. (2021 UPC Code, Chapter 1 Section 104.1 &: 02-394 Chapter 4, Maine PEB Rules, 104.5.3).

(A. 23.)

The Maine Housing's 2024 Quality Standards and Procedures Manual provides the only source of definitions and standards related to bedrooms. Me. State Hous. Auth., Quality Standards and Procedures Manual (Mar. 2024). That document provides that for a room to be considered a primary bedroom, the minimum area must be 120 square feet, and for two-bedroom structures a secondary bedroom must be a minimum of 80 square feet. *Id.* at 4. Additionally, it recognizes “[a] bedroom is

a fully enclosed room with fixed walls and a door that provides complete visual and acoustical privacy.” *Id.* at 5.

Prior to the 2021 construction, the bunkhouse featured only three general rooms and/or areas: 1) a main bunkroom, 2) a sleeping loft, and 3) a 70 square foot closet. (A. 176.) Neither the sleeping loft, nor the closet meet the minimum standards for a primary or secondary bedroom pursuant to Maine Housing Authority’s standards. The sleeping loft has no door and is not fully enclosed. The closet is below the minimum square footage requirement to be considered a bedroom. (A. 176.) The 2021 Application permitted the construction of a finished basement. (A. 162-164.) The basement is now used as a bedroom. In total, the bunkhouse has two bedrooms including the main bunkroom and the finished basement. (A. 176.)

Although the Town is unable to produce records of a plumbing and septic permit, Shaw has produced the approved 2021 Application which included detailed plans for enclosing the basement and adding plumbing to tie into the existing septic system. (A. 164.) CEO Fuller approved the application after performing an on-site inspection where he saw the existing kitchen and bathroom in the bunkhouse. (A. 162-64.)

Although CEO Fuller did not require a plumbing permit, upon receiving the Notice of Violation, Plaintiff filed for an after-the fact permit, corrected the cited issues, and paid the fees. (A. 167-68.) CEO Rasmussen refused to accept the check,

but the Town Clerk eventually accepted payment. In addition, upon learning that the septic system was too small to accommodate four bedrooms, Plaintiff had a new septic system designed and is willing to have that system installed upon the town issuing a permit.

E. Alleged Violation #5

Notice of Violation – Violation 5 states:

Unpermitted and disallowed plumbing to bunkhouse and kitchen in main living area creating two dwellings on one lot (Shoreland Zoning Ordinance Section 15(a)(5)).

(A. 23.)

However, because a road bisects the property and separates the two structures the SZO permits a Town to treat a lot as two separate lots. Section 12(E)(1) of the SZO states:

A non-conforming lot of record as of May 4, 1976, may be built on without the need for a variance provided that such lot is in *separate ownership and not contiguous with any other lot in the same ownership* that the State Minimum Lot Size Law and Subsurface Waste Disposal Rules are complied with, and that all provisions of this Ordinance except lot area, shore frontage, and minimum lot width can be met.

(A. 71 (emphasis added).) The ordinance defines “contiguous lots” as:

lots in common single or joint ownership and which adjoin at any line or at any point or are separated at any point by a body of water less than fifteen (15) feet wide and *lots on opposite sides of a public or a privately-owned road established by the owner of land on both sides thereof after September 22, 1971.*

Id. at § 17 (emphasis added); (A. 132). Accordingly, if a road bisecting a parcel of land existed prior to 1971, then the land on each side of the road should not be considered contiguous lots. This conclusion is bolstered by section 15(A)(3) of the SZO which states that “[l]ots in common ownership located on opposite sides of a public or privately owned road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.” (A. 83.)

Deed records show the road that bisects Plaintiff’s land was established prior to 1971.⁴ (153-54.) The Eastern Lot where the bunkhouse was built is not contiguous with any other land owned by Plaintiff. The size of the Eastern lot exceeds the state minimum of 20,000 square feet. The existence of a kitchen in the bunkhouse does not give rise to a zoning violation because the bunkhouse complies with all ordinances, according to CEO Fuller, and because the land on which it sits meets the state minimum lot size standards. *See* SZO § 12(E)(1); (A. 71).

Moreover, CEO Fuller had full knowledge of the existing kitchen when he granted the 2021 building permit. (A. 173-75.) In 2002, CEO Fuller failed to provide any indication that any restriction existed, instead providing only the public notice to be placed on the building site. (A. 161.) In 2021, CEO Fuller had actual notice

⁴ CEO Rasmussen’s additional findings of facts argues that what exists is not a “private road” but a “right-of-way.” (A. 31.) However, this argument fails because the term “right-of-way” refers to the existence of an easement and speaks to ownership. The term “right-of-way” does not refer to what type of path or road functionally exists through the site.

that a kitchen was constructed in the bunkhouse prior to approving Shaw's 2021 Application for renovations and declared the use and lot conforming. (A. 162.) But for CEO Fuller's determination that the bunkhouse was conforming, Shaw would not have spent the money to winterize the structure. Similarly, if Shaw was required to remove the kitchen, she would not have proceeded to renovate the bunkhouse. CEO Rasmussen should therefore be estopped from reversing CEO Fuller's enforcement decisions, simply because he disagrees with them. *Desgrosseilliers*, 578 A.2d at 714.

F. Alleged Violation #6

Notice of Violation – Violation 6 states:

Unpermitted stone walkway added to landscape 4 x 34 = 136 sq/ft. (Shoreland Zoning Ordinance Section 15(B)(5)).

(A. 23.)

Section 15(B)(5) of the SZO discusses permitting “accessory structure stairways or similar structures. . . to provide shoreline access. . . .” The ordinance defines “shoreline” as “[t]he normal high-water line, or upland edge of a freshwater wetland.” (A. 86.) This section only contemplates accessory structures constructed to access a shoreline, not a landscape walkway used to traverse a structure.

The stone walkway is not intended to provide access to the shoreline of the adjacent wetland. The walkway is clearly a landscape walkway installed for access to the bunkhouse. CEO Rasmussen admits that the slope from the upland portion of

the Property to the wetland exceeds a 2:1 (or 50%) slope. (A. 23.) It is not possible to create a walkway that traverses a slope so steep to reach the “shoreline” of the adjacent wetland. Instead, stairs would need to be installed and approved by the Town in accordance with the ordinance. No stairway or walkway exists providing access to the wetland, and therefore, no violation arises due to the landscape walkway.

G. Alleged Violation #7

Notice of Violation – Violation 7 states:

Estimated 100+ cubic yards of unpermitted fill to support unpermitted patio deposited within 36’ of wetlands in shoreland zone. Encroaches on wetland and creates uncontrolled erosion situation. The slope of patio base is greater than 50%; 2’horizontal per 1’ vertical. The base edge of patio soils encroaches to 35’ distance from wetland. (Section 14 Table 1(5)(29); Section 15(S)).

(A. 23.)

The “fill” CEO Rasmussen refers to is the excavation from the finished basement and is therefore included in the 2021 building permit. Table 1(29) in section 14 of the SZO requires a permit from a CEO for “Filling and earthmoving of >10 cubic yards” within the Limited Residential District. (A. 81.) Section 15(S) of the SZO contemplates erosion and sedimentation control. (A. 110-113.)

The bunkhouse and all excavation work associated with its newly constructed concrete foundation is located within the Limited Residential District and therefore only requires a CEO permit. (A. 81.) CEO Fuller completed an on-site inspection of

the Property, reviewed the application material associated with the 2021 Application, and approved the 2021 Application knowing that the existing slope would require excavation and the concrete foundation would require backfilling. (A. 174.) This fill originated from the excavation of the finished basement and is required to support the integrity of the poured concrete foundation.

CEO Fuller never requested a separate permit in accordance with SZO § 15(S). (A. 162.) Instead, he reviewed the plans after conducting an on-site inspection and determined that the plans complied with the SZO as submitted. (A. 162.) Plaintiff reasonably moved forward relying on CEO Fuller and his approval of the 2021 Application to complete the work as proposed and therefore CEO Rasmussen must be estopped from reversing CEO Fuller's decisions.

H. Alleged Violation #8

Notice of Violation – Violation 8 states:

No revegetation plan implemented. (Shoreland Zoning Ordinance Section 12(O).

(A. 23.)

The SZO does not contain a § 12(O). It appears CEO Rasmussen meant to cite § 15(O). SZO § 15(O)(2) states:

Except in areas as described in Paragraph 1, above, within a strip of land extending one hundred (100) feet, horizontal distance, inland from the normal high-water line of a great pond or a river flowing to a great pond, or within a strip extending seventy-five (75) feet, horizontal distance, from any other water body, tributary stream, or the upland

edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

- a. There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forest canopy is not present) as measured from the outer limits of the tree or shrub crown

...

- c. In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a foot path or other permitted uses as described in Section (O) paragraphs (2) and (2)(a) above.

(A. 100, 102.) The SZO defines “Canopy” as “the more or less continuous cover formed by tree crowns in a wooded area.” (A. 131.) However, section 15(Q) creates “Exemptions to Clearing and Vegetation Removal Requirements,” stating:

The following activities are exempt from the clearing and vegetation removal standards set forth in Section 15(O), provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:

...

- (2) The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of section 15(B) are not applicable; ...

(A. 106.) Section 15(B)(1) requires:

new principal and accessory structures or expansion of existing principal and accessory structures shall be set back at least one hundred (100) feet from the normal high-water line of great ponds and rivers that flow into great ponds, and seventy-five (75) feet from the normal high-water line of other water bodies, tributary streams or the upland edge of a wetland ...

(A. 84 (emphasis added).)

The bunkhouse is approximately 225 feet from the normal high-water line of Great Pond, but within 75 feet of the upland edge of the adjacent wetland. (A. 164.) There is no evidence in the record supporting a finding that there is a 250 square feet clearing in the forest canopy within 75 feet of the adjacent wetland. The pre-renovation photos show that there is ostensibly continuous canopy covering the bunkhouse prior to any renovations. (A. 165.) From these photos it is also clear that minimal clearing of tree growth was required for the proposed renovations. Although certain vegetation required removal, this included minimal tree growth that contributes to the forest canopy. The excavation resulted in only the incidental removal of groundcover and low-lying vegetation.

The SZO's exemptions permit vegetation removal for improvements to legally non-conforming structures when the shoreline setback is not applicable. (A. 106.) The shoreline setback is not applicable because the legally non-conforming bunkhouse is within the setback and no expansion toward the wetland occurred as a result of to the 2021 renovations.

CEO Fuller never requested a separate revegetation plan. Instead, he reviewed the plans after conducting an on-site inspection and determined that the plans complied with the SZO as submitted. (A. 162.) Shaw reasonably moved forward relying on CEO Fuller and his approval of the 2021 Application to complete the work as proposed. CEO Fuller likely determined that raising the structure in place

and the required backfill did not result in excessive vegetation clearing outside the immediate footprint of the bunkhouse. Minimal vegetation was removed because only a small portion of the structure was expanded.

No violation exists because the vegetation cleared in accordance with the renovations is exempt from any applicable vegetation clearing standards. If this court determines a violation exists, the Town must be estopped from enforcement because CEO Fuller completed an on-site inspection, reviewed, and approved the 2021 Application, and appropriately determined a revegetation plan was necessary for the proposed renovations.

I. Alleged Violation #9

Notice of Violation – Violation 9 states:

No ‘permit by rule’ is on file from the DEP.

(A. 23.)

Under Chapter 305 of the Department of Environmental Protection (“DEP”) rules for administration of the Natural Resources Protection Act (“NRPA”), any “activity adjacent to, but not in. . . [f]reshwater wetlands consisting of or containing . . . [u]nder normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments. . . requires a “Permit-by-Rule.” 09-096 C.M.R. ch. 305, § 1 (2022).

In 2002, neither the Planning Board nor CEO Fuller believed a DEP permit-by-rule was required for construction of the bunkhouse and therefore they did not require a DEP permit for Town approvals. In 2021, CEO Fuller again did not believe a DEP permit-by-rule was required for the bunkhouse renovations and he therefore did not require a DEP permit for Town approvals. Both building permit approvals were issued without receiving approvals from the DEP at the direction and guidance of the Town's Planning Board and prior CEO. Shaw reasonably relied on the Town, through CEO Fuller, and its approval of multiple permits to conclude that no further permitting was necessary for the 2002 bunkhouse construction and the 2021 renovations. As a lay person, she reasonably relied on guidance from trained professionals to direct her through the permitting process, and if she is found to have violated the SZO, it was because she was misled by those trained professionals. Regardless, NRPA is administered and regulated by the DEP and any attempt to enforce its regulations exceeds CEO Rasmussen's jurisdiction.

CONCLUSION

The record in this case depicts a code enforcement officer seeking to make an example of Ms. Shaw while at the same time not understanding the limitation of his power. The principle of equitable estoppel is enshrined in both Maine Law and the Town's ordinances. Those principles render alleged violations 1, 2, 6, 7, and 8 moot. A plain and fair reading of the 2021 building permit would render alleged violation 3 nonsense. A casual review of the town ordinances regarding split lots would render alleged violations 4 and 5 as null. And a healthy respect for the limits of a code enforcement officer's authority makes alleged violation 9 irrelevant. Lauren Shaw did exactly what she was supposed to do. She asked permission before she built. She received that permission, and then she built. CEO Rasmussen seeks to make an example of her. Ms. Shaw sought protection of the Superior Court. Her pleas were rejected in a single sentence. She now seeks the protection of this court.

For all the foregoing reasons, the Appellant requests that this Court vacate the Superior Court's Order and remand to the Town with instructions to cease its unlawful enforcement action against the Appellant.

Dated in Portland Maine, this 19th day of February 2026.

Respectfully submitted,

/s/ Benjamin E. Ford
Benjamin E. Ford (Bar No. 4528)

ARCHIPELAGO

1 Dana Street

Portland, ME 04101

mskolnick@archipelagona.com

bford@archipelagona.com

(207) 558-0102

Attorneys for the Appellant

CERTIFICATE OF SERVICE

I, Benjamin E. Ford Esq., hereby certify that I have this day caused a copy of the foregoing Brief of Appellees to be mailed by U.S. Mail, first-class, postage prepaid and to counsel of record as follows:

Phillip Saucier, Esq.
Bernstein Shur
100 Middle Street
P.O. Box 9729
Portland, ME 04104-5029

Daniel Murphy, Esq.
Bernstein Shur
100 Middle Street
P.O. Box 9729
Portland, ME 04104-5029

Dated in Portland, Maine this 19th day of February 2026.

/s/ Benjamin E. Ford
Benjamin E. Ford (Bar No. 4528)

ARCHIPELAGO
1 Dana Street
Portland, ME 04101
mskolnick@archipelagona.com
bford@archipelagona.com
(207) 558-0102
Attorneys for the Appellant