

STATE OF MAINE

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

Law Court Docket No. Ken-25-468

LAUREN SHAW REVOCABLE TRUST

Plaintiff/Appellant

v.

TOWN OF BELGRADE

Defendant/Appellee

BRIEF OF APPELLEE

ON APPEAL FROM THE KENNEBEC COUNTY SUPERIOR COURT

ATTORNEY FOR
TOWN OF BELGRADE

Daniel J. Murphy, Bar No. 9464
BERNSTEIN SHUR
100 Middle Street, P.O. Box 9729
Portland, ME 04104-5029
dmurphy@bernsteinshur.com
(207) 228-7120

TABLE OF CONTENTS

TABLE OF CONTENTS	2
TABLE OF AUTHORITIES.....	3
INTRODUCTION/SUMMARY OF ARGUMENT	4
STATEMENT OF FACTS AND PROCEDURAL HISTORY	5
STANDARD OF REVIEW	12
ISSUES PRESENTED.....	14
LEGAL ARGUMENT	14
I. The Superior Court Did Not Err When It Remanded To The CEO For Additional Or Expanded Findings And Conclusions.	14
II. The Shaw Trust Is Not Entitled To Relief Based On Equitable Estoppel.....	17
III. The CEO Did Not Commit Legal Error Or Abuse of Discretion In Relation To The NOV And Additional Findings, Which Are Supported By Substantial Evidence.....	22
CONCLUSION.....	35
CERTIFICATE OF SERVICE	36

TABLE OF AUTHORITIES

Cases

<i>Aydelott v. City of Portland</i> , 2010 ME 25, 990 A.2d 1024	12
<i>Bisbee v. Mt. Battie Mfg. Co.</i> , 107 Me. 185, 77 A. 778, 781 (1910)	20
<i>Brackett v. Town of Rangeley</i> , 2003 ME 109, 831 A.2d 422	20, 21, 25
<i>Bryant v. Town of Wiscasset</i> , 2017 ME 234, 176 A.3d 176	12
<i>City of Auburn v. Mandarelli</i> , 320 A.2d 22 (Me. 1974).....	20
<i>F.S. Plummer Co. Inc. . v. Town of Cape Elizabeth</i> , 612 A.2d 856 (Me. 1992)	18
<i>Friends of Lincoln Lakes v. Bd. of Env't Prot.</i> , 2010 ME 18, 989 A.2d 1128	13
<i>Gensheimer v. Town of Phippsburg</i> , 2007 ME 85, 926 A.2d 1168.....	12
<i>Herrick v. Town of Mechanic Falls</i> , 673 A.2d 1348 (Me. 1996)	15
<i>Kittery Retail Ventures, LLC v. Town of Kittery</i> , 2004 ME 65, 856 A.2d 1183	19
<i>Lewis v. Maine Coast Artists</i> , 2001 ME 75, 770 A.2d 644.....	27
<i>Lewis v. Town of Rockport</i> 1998 ME 144, 712 A.2d 1047.....	12
<i>McLeod v. Macul</i> , 2016 ME 76, 139 A.3d 920.....	12
<i>Raposa v. Town of York</i> , 2019 ME 29, 204 A.3d 129	29
<i>Salisbury v Town of Bar Harbor</i> , 2002 ME 13, 788 A.2d 598	19
<i>Shackford & Gooch, Inc. v. Town of Kennebunk</i> , 486 A.2d 102 (Me. 1984) ..	passim
<i>Sproul v. Town of Boothbay Harbor</i> , 2000 ME 30, 746 A.2d 368	13
<i>Stewart v. Town of Sedgwick</i> , 2000 ME 157, 757 A.2d 773	14
<i>Tarason v. Town of South Berwick</i> , 2005 ME 30, 868 A.2d 230	18
<i>Waterville Homes, Inc. v. Maine Dep't of Transp.</i> , 589 A.2d 455 (Me. 1991)	18
<i>Wells v. Portland Yacht Club</i> , 2001 ME 20, 771 A.2d 371	15
<i>Wolfram v. Town of N. Haven</i> , 2017 ME 114, 163 A.3d 835	13
<i>Woodman v. Woodman</i> , 3 Me. 350 (1825)	25

Statutes, Rules, and Regulations

38 M.R.S. § 436-A	23
38 M.R.S. § 480-C	34
M.R. Civ. P. 80B	11
Town of Belgrade Shoreland Zoning Ordinance, § 12	25, 26, 34
Town of Belgrade Shoreland Zoning Ordinance, § 15	26, 30, 32, 34

INTRODUCTION / SUMMARY OF ARGUMENT

The primary question presented in this appeal is whether a 2002 Building Permit (allowing for construction of a bunk house on a single lot) and a 2021 Building Permit (allowing for construction of concrete foundation and 100-square foot staircase addition) are elastic enough to authorize or excuse nine additional construction activities that the Town of Belgrade's Code Enforcement Officer in 2023 identified as violations (the "Nine Violations") under the Town's Shoreland Zoning Ordinance (the "SZO").¹ In view of the limited scope of the Building Permits at issue in this matter, and the expansive scope of activities that encompass the Nine Violations, the answer to that question is "no."

¹ Those Nine Violations are comprised of:

- 1) Building a staircase addition in a larger and different format than as approved;
- 2) Building a staircase addition up to higher floors so as to expand the roof line above the maximum allowable height of 25' in the Shoreland Zone;
- 3) Enclosing a pre-existing deck to create additional unpermitted living space and causing such living space to be even closer to the adjacent wetlands and Great Pond in violation of setback requirements;
- 4) Adding an unpermitted bedroom suite to the basement of the bunkhouse, rendering the septic system too small for the number of approved bedrooms for the single lot;
- 5) Adding an unpermitted kitchen to the bunkhouse, thereby creating two dwelling units on a single lot, when only one residential dwelling unit is permitted;
- 6) Installing a large, unpermitted stone hardscape walkway;
- 7) Depositing 100 cubic yards of fill for an unpermitted hardscape patio within setback areas near wetlands;
- 8) Failing to create and submit a re-vegetation plan after removing vegetation and trees for the unpermitted walkway and patio; and
- 9) Failure to obtain or submit a DEP permit by rule to the extent that any such exception was invoked.

The Town's CEO, through his initial Notice of Violation ("NOV"), and additional findings following remand by the Superior Court (the "Additional Findings"), has cogently explained how the activities described as the Nine Violations were unpermitted, violated the SZO. His findings and conclusions are supported by competent evidence in the record. On appeal, the Shaw Trust argues that the Nine Violations are without merit or force, relying upon equitable estoppel and other legal theories. However, under applicable authority, these arguments are unavailable or unreasonable as a matter of law, and are otherwise untenable based on the record. For all of the reasons set forth below, this Court should affirm the Rule 80B Order of the Superior Court and determine that the CEO did not commit any legal error or abuse of discretion in relation to the NOV and Additional Findings, which are otherwise supported by substantial evidence in the record. The Town further states as follows:

STATEMENT OF FACTS AND PROCEDURAL HISTORY

This appeal arises out of a property located on Map 16, Lot 7B, 736 Horse Point Road, Great Pond in Belgrade, Maine (the "Property"). A. 170. As reflected in property deeds that are part of the Record, the Property was owed by William S. Peck and Lauren Shaw Peck from June 19, 1984, and then Lauren Shaw as Trustee of the Lauren Shaw Revocable Trust of 1999 u/a dated June 9, 1999 as amended from March 12, 2013 to present. A. 153-155.

The 2013 Deed from Lauren Shaw to Lauren Shaw, Trustee of the Trust (the “Shaw Trust”), A. 155, shows the existence of an easement or right of way 25 feet wide in common with other travelers in a northerly direction from Forest Point, so-called, to the lot described as Lot # 2 according to the “Sunny Ridge Shores” Plan dated October, 1983, which was recorded in the Kennebec County Registry of Deeds, File No. E-83106. A. 155. The Property is described as having 1.28 acres of land. A. 155, 50, 170. The 1984 Deed to William S. Peck and Lauren Shaw Peck describes the Property in substantially similar terms, but notes that the 25 foot easement or right of way was reserved by the Grantors to William S. Peck and Lauren Shaw Peck to allow ingress and egress from the land of the Grantors. A. 153, 50.

2002 Permit. In or around October 3, 2002, Lauren Shaw submitted a building permit to build a bunkhouse, 02-1147 (the “2002 Permit”), that required and received approval by the Town’s Planning Board. A. 156, 161, 169. The 2002 Permit, which allowed construction of a bunk house on the Property, states: “The bunkhouse will not have any kitchen facilities.” A. 156. A public display document provided by the Town to Shaw does not contain all of the detail contained on the permit document. A. 161.

Importantly, when acting on Shaw’s application for the Permit, the Planning Board held a public meeting that Shaw did not attend. A. 169. The Planning Board

noted the scope of the request as a 16' x 20' bunkhouse with bathroom to be built on the other side of the road across from the applicant's existing camp. A. 169. The Planning Board on October 3, 2002 expressly noted that "[i]t was moved, seconded, and carried to approve the application with the condition the bunk house will not have kitchen facilities thereby making it a dwelling unit." A. 169. This condition represents official action on October 3, 2002 addressed to Shaw's application on the 2002 Permit, as reflected in Planning Board meeting minutes. A. 169.

The Application for the 2002 Permit ultimately was approved and signed by members of the Planning Board. A. 158. The 2002 Permit itself was noted as approved October 3, 2002 and expiring on October 3, 2003. A. 156. The 2002 Permit, like the Town-annotated Application for the 2002 Permit, states the "[B]unkhouse will not have any kitchen facilities." A. 156, 158.

2021 Permit. On or about June 2, 2021, Lauren Shaw submitted an application for a permit to construct a concrete foundation and a 100-foot addition (the "2021 Application"). A. 162-166. This request for a permit to build a concrete foundation under the bunkhouse and 100-foot addition was granted by then-CEO Gary Fuller on June 2, 2021 (the "2021 Permit"). A. 162-166. The 2021 Application only requests a concrete foundation and 100 square foot addition on the right side of the 16' x 20' camp/bunk house for enclosed stairs. A. 162-166.

On May 1, 2023, the Town’s CEO, Hans Rasmussen, performed an inspection of the Property in relation to Drainage, Vent and Water Supply, and Plumbing Systems (the “May 2023 Order of Correction”). A. 171-172. The May 2023 Order of Correction noted that plumbing permits were required for plumbing work and that Shaw was in violation by commencing plumbing work prior to receiving a permit. A. 171. The May 2023 Order of Correction also noted additional violations, including the failure to obtain an inspection of plumbing systems requiring a permit by a local authority having jurisdiction, A. 171, failures concerning dishwasher and clothes washer water supply lines, and failures concerning hangers and supports for pex water lines. A. 171. The May 2023 Order of Correction sought corrections within 30 days of receipt of the Order, and required an after the fact plumbing inspection permit and reinspection of corrections. A. 171-172.

2023 Plumbing Application. On or about May 16, 2023, Shaw, as Trustee of the Shaw Trust, applied to the Town for a plumbing permit (the “2023 Plumbing Application”). A. 167-168. The 2023 Plumbing Application sought approval of hook up of 1 water filter/treatment device, 1 ice maker, 2 showers, 1 sink, 2 wash basins, 1 toilet, 1 clothes washer and 1 water heater. A. 168. The 2023 Plumbing Application was incomplete and was not approved. A. 167-168.

2023 Notice of Violation. On May 21, 2023, the Town’s CEO sent a Notice of Violation, the NOV, to Shaw in relation to the Property following discovery of

violations. A. 22-24. The NOV notes that the 2002 Permit authorized the construction of the 16' x 20' bunkhouse with no kitchen facilities. A. 22, 119. The 2021 Permit allowed for a concrete foundation under the bunkhouse with 100 square foot addition, with a staircase to the lower floors and no additional bedrooms. A. 22, 162-166.

In the original NOV, the CEO found the following violations on the Property:

1. An unpermitted 12'x11,' 132 square foot addition with foundation added to the structure, which was larger than approved under the 2021 Permit (the "Larger Addition Violation");

2. A roof line extended to 33' height to accommodate attic access. The maximum allowable height within shoreland zone is 25,' rendering the bunkhouse 8' feet out of compliance (the "Roof Line Violation");²

3. Expansion of the structure foundation footprint toward wetlands to convert a former unpermitted deck into enclosed living space, shortening the distance of the structure to the wetland to 60' (the "Deck Enclosure/Wetland Encroachment Violation");

4. Adding an additional, unpermitted bedroom suite to the basement, resulting in 5 bedrooms being served by a septic system designed for 3 bedrooms;

² On remand, the CEO took new measurements that resulted in the roof line being extended to 26', 8," which still yields a roof line in excess of the 25' limit. No permit was obtained to extend the roof line to upper floors. A. 195.

no permits reflect approval for internal plumbing or septic for the bunkhouse (the “Additional Bedroom/Internal Plumbing Permit Violations”);

5. Unpermitted and disallowed plumbing to bunkhouse and kitchen in main living area, creating two dwelling units on one lot (the “Kitchen Bunkhouse/Additional Dwelling Unit Violation”);

6. Unpermitted stone walkway added to the landscape totaling 136 square feet in the shoreland zone (the “Stone Walkway Violation”);

7. Estimated 100+ cubic yards of unpermitted fill to support unpermitted patio deposited within 36’ of the high-water mark of wetlands in the shoreland zone, with slope of patio base greater than 50 percent (2’ horizontal per 1’ vertical) and based edge of patio soils encroaching 35’ from wetlands (the “Unpermitted Patio/Fill Violations”);

8. No revegetation plan implemented (the “Revegetation Plan Violation”);
and

9. No “Permit by Rule” on file from the DEP (the “No Permit By Rule Violation”). A. 22-24.

The NOV called for corrective action to be taken in relation to the Nine Violations,³ as well as potential fines for continued violation after specified dates.

³ The (1) Larger Addition Violation, (2) Roof Line Violation; (3) Deck Enclosure/Wetland Encroachment Violation; (4) Additional Bedroom/Internal Plumbing Permit Violations; (5) Kitchen Bunkhouse/Additional Dwelling Unit

On or about June 20, 2023, the Shaw Trust appealed the NOV to the Superior Court pursuant to M.R. Civ. P. 80B.

After briefing, the Superior Court on August 8, 2024 remanded the NOV to the CEO for further factfinding in the face of “frank factual disputes about some of the notices of violation[,]” while also noting that “not every allegation of a violation rests on factual uncertainty.” A. 8-9. Under this order (the “Remand Order”), the Superior Court retained jurisdiction over the matter. A. 9.

On remand, the CEO issued Additional Findings of Fact on January 1, 2025 (the “Additional Findings”). A. 26-53. The Additional Findings included three public record exhibits that were part of the CEO’s file concerning the Property but were not included in the Record submitted by the Shaw Trust to the Superior Court. *See Exhibits A, B, and C* to Amended Findings. A. 34-53. Among other things, these public records were relevant to and informed the CEO’s analysis of whether the Property was a single lot or two separate lots separated by a public road, whether the Property legally could maintain two residential dwelling units on it; and other issues that bear on the Nine Violations. The Additional Findings issued by the CEO preceded an agreed-to “view” of the Property by the parties. A. 25. The view of the

Violation; (6) Stone Walkway Violation; (7) Unpermitted Patio/Fill Violations; (8) Revegetation Plan Violation; and (9) No Permit By Rule Violation together comprise the “Nine Violations.”

Property took place on March 31, 2025 and did not materially alter the findings and conclusions of the CEO in relation to the NOV or Additional Findings. A. 195-196.

STANDARD OF REVIEW

The Law Court reviews a municipal decision “for error of law, abuse of discretion or findings not supported by substantial evidence in the record.” *Aydelott v. City of Portland*, 2010 ME 25, ¶ 10, 990 A.2d 1024 (quotation marks omitted); *Bryant v. Town of Wiscasset*, 2017 ME 234, ¶ 11, 176 A.3d 176. A party seeking to overturn a municipal decision bears the burden of persuasion on appeal. *Aydelott*, 2010 ME 25, ¶ 10, 990 A.2d 1024.

The interpretation of a zoning ordinance presents a question of law that the Law Court reviews de novo. *Gensheimer v. Town of Phippsburg*, 2007 ME 85, ¶ 8, 926 A.2d 1168, 1170. Such interpretation is guided by an “ordinance’s specific object and its general structure.” *Lewis v. Town of Rockport* 1998 ME 144, ¶ 11, 712 A.2d 1047, 1049.

Review for abuse of discretion involves three questions: “(1) are factual findings, if any, supported by the record according to the clear error standard; (2) did the court understand the law applicable to its exercise of discretion; and (3) given all the facts and applying the appropriate law, was the court's weighing of the applicable facts and choices within the bounds of reasonableness.” *McLeod v. Macul*, 2016 ME 76, ¶ 6, 139 A.3d 920 (quotation marks omitted).

Finally, review of whether findings supported by “substantial evidence” is deferential and limited. *Wolfram v. Town of N. Haven*, 2017 ME 114, ¶ 7, 163 A.3d 835. “Substantial evidence” means “evidence that a reasonable mind would accept as sufficient to support a conclusion.” *Sproul v. Town of Boothbay Harbor*, 2000 ME 30, ¶ 8, 746 A.2d 368, 372. The Law Court has stated that it must affirm findings of fact “if they are supported by substantial evidence in the record, even if the record contains inconsistent evidence or evidence contrary to the result reached by the agency.”⁴ *Friends of Lincoln Lakes v. Bd. of Env't Prot.*, 2010 ME 18, ¶ 13, 989 A.2d 1128, 1133–34.

⁴ The “substantial evidence” standard does not involve any weighing of the merits of evidence. *Friends of Lincoln Lakes v. Bd. of Env't Prot.*, 2010 ME 18, ¶ 14, 989 A.2d 1128, 1133–34. Rather, “it requires ... [the Law Court] to determine whether there is any competent evidence in the record to support a finding.” *Id.* (further stating that administrative agency findings of fact will be vacated only “if there is no competent evidence in the record to support a decision.”) (citations omitted).

ISSUES PRESENTED

- I. **Whether the Superior Court Erred When It Remanded To The CEO For Additional Or Expanded Findings And Conclusions.**
- II. **Whether The Shaw Parties Are Entitled To Relief Based On Equitable Estoppel.**
- III. **Whether The NOV And Additional Findings Reflect Any Legal Error, Abuse of Discretion, Or Are Unsupported by Substantial Evidence.**

LEGAL ARGUMENT

- I. **The Superior Court Did Not Err When It Remanded To The CEO For Additional Or Expanded Findings And Conclusions.**

The Shaw Trust's first argument takes issue with the juxtaposition between the Superior Court's Remand Order dated August 8, 2024 (A. 8-9), and the Court's Order on 80B Appeal dated September 29, 2025 (the "Rule 80B Order"). A. 10-11. The Shaw Trust notes that the Remand Order requested "further fact finding" in the face of "frank factual disputes about some of the notices of violation." A. 9. The Shaw Trust criticizes the Superior Court for ultimately holding that the CEO's findings were supported by substantial evidence after remand, while also failing to provide exhaustive legal analysis concerning the Nine Violations. Blue Br. at 14-15.

Because the Law Court directly reviews the decision of the municipal decision-maker rather than the Superior Court,⁵ the Shaw Trust's criticisms of the

⁵ When the Superior Court acts as an appellate court, the Law Court reviews directly the operative decision of the municipality. *Stewart v. Town of Sedgwick*, 2000 ME

Rule 80B Order are misplaced. Apart from this, the Superior Court’s decision to remand for more detailed factual findings is among many permissible options open to the court, despite the “deferential and limited” review that exists under M.R. Civ. P. 80B. *Wells v. Portland Yacht Club*, 2001 ME 20, ¶ 10, 771 A.2d 371, 375 (“[I]f an agency’s findings of fact are insufficient to apprise us of the basis of the agency’s decision and whether it is supported by substantial evidence, we should usually remand to the agency for further findings of fact.”). The Superior Court did not err in relation to the Remand Order or the Rule 80B Order.

Separately, the Shaw Trust is mistaken that additional information was not considered or expressly called out more fully in conjunction with remand to the CEO. The original NOV dated May 21, 2023 describes the Nine Violations, including the legal and factual basis for them. A. 22-23. The CEO’s Additional Findings dated January 21, 2025 contained a more extensive discussion of the Nine Violations, including the legal and factual basis for them. A. 26-53.

They also included important public documents (Exhibits A, B, and C to the Additional Findings, A. 34-53) that were part of the CEO’s file, but were not included in the Shaw Trust’s initial Rule 80B Record on appeal to the Superior Court prior to remand. A. 26. These records included: Exhibit A - documents reflecting

157, ¶ 4, 757 A.2d 773, 775, citing *Herrick v. Town of Mechanic Falls*, 673 A.2d 1348, 1349 (Me.1996).

the October 20, 1983 approval for the Sunny Ridge Shores subdivision (the “Subdivision”); Exhibit B – Plan for Sunny Ridge Shores depicting “Lot 2”; and Exhibit C – Minutes from the Town’s Planning Board dated October 20, 1983 approving the Subdivision. A. 34-53.

These records make clear that: Lot 2, the subject parcel, is a single 1.28 acre lot with a “25’ right of way” running through it, A. 50; the Subdivision proposed and approved in 1983 was for a “single family dwelling[,]” for “3 bedroom single family dwellings[;] 1 dwelling per lot”, A. 38, and “private right of way, A. 39-40. There is no record of any dedication of a public or private road in relation to the approved Subdivision. A. 38-53. Consistent with the scope of the approval for the Subdivision, the septic system for the Property was designed and approved for three bedrooms in the Shoreland zone. A. 38. The approved site plan for the Subdivision indicates the presence of wetlands, including at the eastern border of the Property. A. 50 (bog symbols adjacent to Great Pond).

The scope (and limitations) of these legally operative approvals cannot be ignored. The same is true for the scope and limitations inherent in the permits granted in 2002 and 2021. Considering the content of the Nine Violations measured against the scope of permits and the standards of the Town’s SZO, it is not difficult to conclude, as the CEO concluded, that the Shaw Trust undertook extensive

renovations that exceeded what was permissible. The Nine Violations will be discussed in greater detail in Part III of this Brief.

II. The Shaw Trust Is Not Entitled To Relief Based On Equitable Estoppel.

The Shaw Trust argues that the Town should be equitably estopped from invoking the SZO or permits in relation to the NOV based on the following: 1) the Shaw Trust asserts that it never received or was aware of the limitation on the 2002 bunkhouse permit that the “bunkhouse will not have kitchen facilities.” A. 156-160, 169; 2) the Shaw Trust asserts that the prior CEO measured that the bunkhouse was 225’ from the Great Pond and stood at 19’ 6” in height, and wrote that the Property was “conforming” as to lot and structure in 2021. A. 162-164; and 3) the Shaw Trust asserts that the prior CEO did not express concern upon inspecting the Property in 2021, and had “full, first-hand knowledge of the existence of the kitchen and bathroom in the bunkhouse.” Blue Br at p. 21.

The Shaw Trust asserts that it was induced to invest hundreds of thousands of dollars based on the “findings” and “determinations” of the prior CEO. Blue Br. at 22, 16. These arguments should be rejected because they ignore the actual scope and content of the 2002 Permit and 2021 Permit, are based on speculation about what the prior CEO knew, intended or said. The Shaw Trust essentially seeks permission to violate the SZO based on estoppel principles, despite the need for written, legal approvals for the extensive work that it undertook.

As an initial bar, equitable estoppel is unavailable to the Shaw Trust because it “can be asserted against a municipality only as a defense and cannot be used as a weapon of assault.” *Tarason v. Town of South Berwick*, 2005 ME 30, ¶16, 868 A.2d 230, 234; *Waterville Homes, Inc. v. Maine Department of Transportation*, 589 A.2d 455, 4-57 (Me. 1991) (equitable estoppel is an affirmative defense that can be used as a shield but not as a sword). Because the Town has not commenced a Rule 80K enforcement action against the Shaw Trust, invocation of equitable estoppel is precluded.

In addition, under Maine law, informal comments, advice, approvals or determinations that do not carry the force of law cannot be used to estop or prevent a municipality from enforcing its own ordinance against property owners and properties in violation of such regulations. The Law Court has held that equitable estoppel is unreasonable as a matter of law where an owner seeks to rely upon oral statements where a written permit and approval are required. *See Shackford & Gooch, Inc. v. Town of Kennebunk*, 486 A.2d 102, 106 (Me. 1984) (“The improper verbal representations of the building inspector do not estop the Zoning Board of Appeals from enforcing violations of the provisions of the zoning ordinance.”); *F.S. Plummer Co. Inc. v. Town of Cape Elizabeth*, 612 A.2d 856, 861 (Me. 1992) (holding reliance on “oral unauthorized representations of a municipal official, where a written building permit is required for a project, is unreasonable as a matter

of law[.]”); *Kittery Retail Ventures, LLC v. Town of Kittery*, 2004 ME 65, ¶ 36, 856 A.2d 1183, 1194 (“[E]ven if the statements made by the town planner did induce KRV to act in detrimental reliance, thereby satisfying the first two elements, the reliance was not reasonable. ...The town planner was not authorized to insulate KRV’s project from amendments to the zoning ordinance.”).⁶

Addressing the bunkhouse prohibition on kitchen facilities under the 2002 Permit, the Shaw Trust and predecessors in interest are deemed to know the law, as well as the outcome of their own permit request that allowed them to build the bunk house in the first instance.⁷ Approval of the 2002 Permit, upon which predecessors

⁶ In *Salisbury v Town of Bar Harbor*, 2002 ME 13, ¶17 n.5, 788 A.2d 598, 603, the Law Court wrote:

As a matter of law, Salisbury's alleged reliance on oral statements made by the CEO was not reasonable. We addressed this issue in *Shackford & Gooch, Inc. v. Town of Kennebunk*, 486 A.2d 102, 103 (Me.1984), where the building inspector granted a permit to build stairs and, at the same time, provided verbal authorization to build a deck on the roof of Bartley's Dockside Restaurant. The building inspector advised Dockside that a building permit for the deck was unnecessary. *Id.* “We do not consider Dockside's reliance on the inspector's spoken permission to build a deck to be reasonable reliance. Moreover, the unauthorized act of a municipal officer cannot be grounds for estopping the municipality.” *Id.* at 106. Thus, to the extent Salisbury relied on the CEO's approval of his expansion, that reliance was not reasonable and, hence, Salisbury's claim of equitable estoppel could not succeed.

⁷ Under Maine law, “[a]ll citizens, including permit applicants and local code enforcement officers, are charged with knowledge of the law, including local

in interest took action to build the bunkhouse, was reflected in official action at a Planning Board Meeting of October 3, 2002 that was not attended by the applicants.

A. 169. The official action of the Planning Board was to approve the application for the 2002 permit, but “with the condition the bunk house will not have kitchen facilities thereby making it a dwelling unit.” A. 169. The application materials for the Subdivision also reflect that the Property sits on a single lot that is suitable for only one approved residential dwelling unit. A. 38. The conditions and limitations did not disappear during the permitting process.⁸

Next, the Shaw Trust seeks to transform a drawing submitted with its 2021 Permit Application into “findings” of the prior CEO, Blue Br. at 16, including that the bunkhouse is 225’ from the Great Pond and stood at 19’ 6” in height at the time of the application, and that the lot and structure were “conforming” in 2021. A. 162-164. However, the diagram relied upon by the Shaw Trust at best captures

ordinances.” *Brackett*, 2003 ME 109, ¶ 28, 831 A.2d 422, 430 (Alexander, *J.*, concurring) (citing *City of Auburn v. Mandarelli*, 320 A.2d 22, 30 (Me. 1974); *Mandarelli*, 320 A.2d at 30 (noting that property owners are “presumed to know” the law and that they have “a duty learn what is being done” in relation to enforcement); *Bisbee v. Mt. Battie Mfg. Co.*, 107 Me. 185, 77 A. 778, 781 (1910) (“It is true that every person is presumed to know the law, and to act in the light of such a knowledge”)).

⁸ The approval and the conditions are part of the same municipal action; a “package deal,” in common parlance. Accordingly, the Shaw Trust was charged with knowledge of all aspects of the approval, including its conditions, which were discussed and approved at a public meeting addressed to Plaintiff’s application.

incorrect measurements of unknown provenance that do not change the force or scope of the Nine Violations. A. 164. Among other things, the diagram fails to capture or consider how close the bunkhouse is to *the wetlands* and fails to capture or approve construction above 25' following approval of the 2021 Permit. In all other respects, the record is devoid of any proof of the alleged statements attributed to the prior CEO. Yet, even if such statements existed at a point in time, they would be viewed as “dicta” in relation to any new request or activity concerning the property. A subsequent CEO is not precluded from taking new measurements or making new assessments as the need arrives in real time.

Finally, this Court should reject the Shaw Trust’s argument that the prior CEO had “full knowledge” of the kitchen and bedroom facilities when he visited the Property in 2021 and did not voice any objections at that time. The Shaw Trust is not competent to speak to the prior CEO’s knowledge in 2021 or at any other time. The prior CEO certainly cannot be expected to predict future violations that occurred after the issuance of the 2021 Permit. Also, because a written permit was required for the actions taken in relation to the Nine Violations, oral statements, approvals, or assumed agreement or consent based on alleged silence cannot be used to estop a municipality from enforcing its own ordinances. *See Brackett v. Town of Rangeley*, 2003 ME 109, ¶ 29, 831 A.2d 422, 430 (Alexander, *J.*, *concurring*) (“[k]eeping illegal building activity from neighborly or public scrutiny,

even where it may occur with the complicity of a code enforcement officer, does not grant the illegal activity immunity from appeal or enforcement[.]”); *Shackford & Gooch, Inc.*, 486 A.2d at 106. In this manner, the Shaw Trust’s equitable estoppel arguments should be rejected.

III. The CEO Did Not Commit Legal Error Or Abuse of Discretion In Relation To The NOV And Additional Findings, Which Are Supported By Substantial Evidence.

Although Plaintiff argues that the CEO’s allegations do not amount to violations, Blue Brief at 23, the Nine Violations do not reflect any legal error or abuse of discretion and are supported by substantial evidence in the record. As such, the Shaw Trust’s appeal should be denied and judgment should enter in favor of the Town. Each of the Nine Violations will be addressed below.

A. (1) Larger Addition Violation. The Shaw Trust argues that an addition totaling 132 square feet, not 100 square feet, was approved under the 2021 Permit. Blue Br. at 23-24. It asserts that any amount exceeding the approval for 100 square feet was based on its omission of roofline overhang from its calculations for its application for the 2021 Permit. The Shaw Trust contends that the additional 32 square feet above the amount approved under the 2021 Permit is de minimis.

This Court should reject these arguments because there is no de minimis or similar exception that allows an applicant to vary the terms of a building permit at will and without approval from the regulating authority. The 2021 Permit speaks for

itself and it is limited to what Plaintiff asked for, *a 100 square-foot addition*. A. 162, 163, 164 (requesting a “100’ edition” [sic]; “100 ft edition to the right side”; “ADD 5 x 20 STAIRS TO BASE”). Under Maine law, footprint calculations include “cantilevered or similar overhanging extensions[.]” A. 28 (Additional Findings, citing 38 M.R.S. § 436-A, 4-A). The footprint includes roof overhang as a matter of law.

The Shaw Trust violated the 2021 Permit in a number of ways. The 2021 Permit allowed for “5 x 20 [for] stairs to base.” A. 162-164 (proposal and approving construction of concrete foundation, a 100 square foot addition). However, instead of constructing only stairs to the basement, Plaintiff also unilaterally constructed a 10’ x 10’ structure of stairs that go up, to the higher floors, A. 27-28, resulting in increased admitted roof line violations that will be addressed further below. A. 176 (admitting that “Lauren only added about 30 inches to the height of the existing building to accommodate stairs to the loft”). The record is devoid of any permit or approval for stairs to the attic or loft because there is none. A. 27-28. Because substantial evidence supports that Plaintiff has exceeded the scope of the 2021 permit, the Larger Addition Violation should be upheld. A. 162-164, 176, 170 (CEO Fact Sheet noting that “bunkhouse addition” is 132 square feet, beyond scope of 2021 Permit for 100’ addition for staircase access to lower level); A. 27-28 (Additional Findings, noting expansion of footprint and expansion of height).

B. (2) Roof Line Violation. As noted above, the 2021 Permit approved construction of stairs to the basement, not to higher floors, including the loft. A. 176 (admission of a roof line violation, described as “only” a “30-inch extension”). Abandoning previous arguments below that roof height should be calculated based on an alleged measurement of 225’ between the bunkhouse and Great Pond, A. 164, the Shaw Trust now argues that it was selectively relying upon past height measurements allegedly captured by the former CEO in relation to prior permit requests. Blue Br. 24. Specifically, the Shaw Trust argues that it was entitled to use a prior historical bunkhouse measurement of 19’ 6” in height, along with its own current estimation (and admission) of a 30-inch extension in the roofline. A. 176. Based on the combination of these figures, the Shaw Trust asserts that it would be under the 25’ roofline limit applicable to the Shoreland Zone.

The CEO found that the bunkhouse was 65’ from the high-water mark of the Great Pond. A. 29. The CEO also found that the hardscape patio was 36’ from the high water mark of the wetlands.⁹ A. 170, A. 29. The SZO provides for maximum roof line heights based on setbacks from great ponds and wetlands. Under the Town’s

⁹ On multiple occasions, the CEO measured the height of the admittedly expanded roof line, A. 176, and determined that it exceeded the maximum allowable height of 25’. A. 22, 28, 195. The parties on March 31, 2025 “took a view” of the Property as a courtesy to confirm whether the CEO’s conclusions were incorrect, but his determination of a roof line height exceeding 25’ was confirmed. A. 195, A. 28.

SZO, § 12(C)(1)(c)(i), A. 64-65, for structures located less than 100 feet from the normal high-water line of a great pond, “[t]he maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater.” A. 65. For structures located less than 75 feet from the normal high-water line of a water body, tributary stream or upland edge of a wetland, the maximum height of a structure “may not be made greater than 20 feet or the height of the existing structure, whichever is greater.” A. 65, SZO, § 12(C)(1)(c)(ii).

Because the Shaw Trust expanded the roof line beyond what is permitted, substantial evidence exists to support the CEO’s findings and determinations, which are not erroneous. To be clear, any expansion in the height of the roofline was not approved and was “unpermitted,” as noted in the NOV. A. 22-24 (NOV); A. 28-29 (Additional Findings). Unpermitted construction expanding the roof line beyond what is permissible in the Shoreland Zone. Accordingly, this Court should reject the Shaw Trust’s arguments.¹⁰

¹⁰ In all other respects, the Shaw Trust may not selectively rely upon asserted measurements by the former CEO to estop the Town from conducting true and accurate measurements in the present. Because both Plaintiff and the prior CEO are charged with knowledge of applicable legal requirements, even an alleged (but unsubstantiated) error by a CEO cannot provide insulation or immunity from existing legal requirements. *Woodman v. Woodman*, 3 Me. 350, 352 (1825) (“All persons are presumed to know the law; and they must govern themselves by legal principles in their contracts and transactions with each other[.]”); *Brackett*, 2003 ME 109, ¶ 28, 831 A.2d at 430 (Alexander, J., concurring) (even the “unauthorized approval of a local building inspector cannot be grounds for estopping a municipality

C. (3) Deck Enclosure/Wetland Encroachment Violation. The Shaw Trust violated the SZO by converting an 8' x 16' deck into to unpermitted living space, causing the Property to increase the non-conformity of the structure and placing the structure ten feet closer to the wetlands and Great Pond. A. 29, 22; A. 64. The record is devoid of any permission or permit that allows the Shaw Trust to build and encroach toward the wetlands after enclosing and expanding an existing unpermitted open deck into new living space. A. 176 (Plaintiff's acknowledgement of that footprint of structure expanded with construction of new stairway to loft).

Under SZO § 12(C)(2)(a), expansion of any non-conforming structure toward a water body, tributary stream, or upland edge of a wetland is prohibited. A. 64 (“Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase the nonconformity[.]”). As noted above, all expansions of existing principal and accessory structures shall be setback at least 100' from the normal high-water line of the great ponds and at least 75' from the normal high-water line of water body, tributary stream, or upland edge of a wetland. A. 83-84, SZO, § 15(B)(1).

from enforcing violations of its zoning ordinance.”) (citing *Shackford & Gooch, Inc.*, 486 A.2d at 106).

The CEO found that the bunkhouse was 65' from the high-water mark of the Great Pond. A. 29. The CEO found that the hardscape patio was 36' from the high water mark of the wetlands. A. 170, A. 29. The unpermitted conversion of a deck into living space caused the structure to be less conforming and closer to the Great Pond and wetlands and Great Pond. A. 29.

The Shaw Trust seeks to rely upon an alleged measurement by the CEO purporting to capture an asserted 225' distance between the bunkhouse and the Great Pond. Blue Br. at p. 25. However, this argument - founded upon estoppel and an incorrect measurement contained on a diagram attached to the Application for 2021 Permit - does not take into account the bunkhouse's proximity to the equally protected wetlands. The Town is not prohibited or estopped from enforcing its own ordinance and may take new measurements in 2023 as the need arises. The Town contests the Shaw Trust's assertion that the prior CEO made "findings" or "determinations" that bind the Town forever. As such, the Shaw Trust's argument that the Town is estopped from enforcing its own ordinances in the face of unpermitted work and violations is unavailing. *See supra* notes 6 & 7; *see also Lewis v. Maine Coast Artists*, 2001 ME 75, ¶ 26, 770 A.2d 644, 653 ("The underlying policy of zoning is to gradually eliminate nonconforming structures and uses."); *Shackford & Gooch, Inc.*, 486 A.2d at 105 (holding that any significant alteration of a nonconforming structure is an extension or expansion).

D. (4) Additional Bedroom/Internal Plumbing Permit Violations. The main dwelling unit of the Property was initially approved for 3 bedrooms, A. 97, A. 30, while Plaintiff sought the addition of one (1) bedroom through the 2002 construction of the bunkhouse. A.158 (“Bedrooms to be added under this application: 1”). Thus, the total number of approved bedrooms for the Property is no more than four bedrooms in total. This limitation exists with due regard to impact on septic systems, life safety, and other considerations. The 2021 application for the 2021 Permit notes that the Property has four (4) bedrooms and that the Shaw Trust did not seek to add any bedrooms based on the 2021 permit. A. 162 (“Bedrooms to be added under this application: 0”).

Relying upon standards for public housing, and not residential housing, the Shaw Trust argues that any bedrooms less than 70 square feet do not qualify as bedrooms unless they have fixed walls, doors, and exceed 70 square feet. However, the authority cited, Maine Housing’s Quality Standards and Procedures Manual for public housing, does not have the force of law or logic. The CEO personally observed five bedrooms and need not refrain from enforcement based on the absence or presence of a solid door as to each room. Indeed, the use of a closet and the new basement bedroom suite as bedrooms burdens a septic system in a fragile area that was designed and limited to fewer rooms, militating strongly in favor of enforcement. A. 30. No plumbing permit was sought in relation to the Shaw Trust’s

desired expanded use, while the Shaw Trust instead unilaterally embarked on unpermitted plumbing work, A. 30, to convert the bunk house into a separate additional, residential dwelling unit. A. 30; A. 138-141.

This Court should not credit the Shaw Trust's argument that prior CEO Fuller effectively "blessed" its violations by assertedly performing an inspection where he "saw the existing kitchen and bathroom in the bunkhouse." Blue Brief at 27. The prior CEO, who has passed, is not here to explain his thinking concerning the Property and potential future violations. The lack of any immediate enforcement action in 2021 does not reveal the quality of the prior CEO's knowledge of the Property or understanding of prior approvals in real time.

Both the past and present CEOs retained prosecutorial discretion concerning when, if, and how to proceed with a Notice of Violation, while the Board of Selectpersons maintain authority and discretion on whether to proceed with an enforcement action under M.R. Civ. P. 80K, which, to date, has not occurred. *See Raposa v. Town of York*, 2019 ME 29, ¶ 11 n. 4, 204 A.3d 129, 132 ("[T]he general rule that that the Board of Selectmen retains discretion in whether to bring an enforcement action for an ordinance violation continues to exist[.]"). This necessarily means that the Shaw Trust may not ascribe assumed positions or determinations, whether in the nature of approval or denial, based on unsupported claims regarding the prior CEO's state of mind or assumed views in relation to the

Property. *Shackford & Gooch, Inc.*, 486 A.2d at 106. The Shaw Trust actually has no idea whether the prior CEO actually observed, approved, disapproved, or was poised to recommend an enforcement action against the Shaw Trust concerning the violations presently at issue. Because substantial evidence exists for the Additional Bedroom/Internal Plumbing Permit Violations, this Court should affirm the determination of the CEO.

E. (5) Kitchen Bunkhouse/Additional Dwelling Unit Violation. The Shaw Trust does not dispute the existence of unpermitted kitchen facilities in the bunkhouse, but argues that a kitchen is permissible in the bunkhouse because the Property may be treated as two separate lots that can support two separate dwelling units. This argument is incorrect.

As an initial matter, the Shaw Trust is mistaken in relation to dimensional requirements for residential dwelling units. The minimal dimensions for a residential dwelling unit within the shoreland zone is 40,000 square feet. A. 83, SZO § 15A. The Property is 55,756 square feet (1.28 acres). A. 170, 102, 105. Because the Property cannot meet dimensional requirements for two dwelling units on the same lot, the Shaw Trust's argument fails as a matter of law. A. 30-31.

The Shaw Trust argues that the Property may be treated as two separate lots and therefore may support two separate residential dwelling units, including a bunk house with a kitchen and plumbing that have not been permitted or approved. It

asserts that the 25 foot easement or right of way granted to the Grantors who sold to William Peck and Lauren Shaw Peck qualifies as a publicly or privately owned road, such that the Property may be considered two separate lots. Blue Br. at 28-29. Based on dimensional requirements for residential dwelling units and the nature of the Property itself, this argument is foreclosed.

First, the deeds for the Property reflect only that an easement or right of way has been granted to the Grantors of the Property for ingress and egress to their property. A. 153-154. This is not a public or private road; it is a shared driveway. Further, as noted above, the Shaw Trust simply may not project assumed positions or views based on the alleged inspection made at the Property by the prior CEO in relation to the 2021 Permit. Visiting a property and failing to object to all potential violations in real time is not probative of whether other violations exist. The Shaw Trust cannot speak to the prior CEO's state of mind, his "full knowledge," observations, or views concerning the Property during his brief alleged visit in 2021. The alleged lack of any stated objection in the moment cannot be equated to a blanket blessing for future code violations. Required permits are not effectively granted or waived based on the lack of immediate comments or complaints by an agent of a regulating authority. *Shackford & Gooch, Inc.*, 486 A.2d at 106. In this manner, the Shaw Trust's argument that it may maintain two unpermitted residential dwelling units (and kitchen facilities in the bunkhouse) on a single lot should be rejected. A.

30-31; A. 50 (reflecting Lot 2, single 1.28 acre lot with 25' right of way); A. 38-40 (Subdivision approved in 1983 for single family dwelling on Lot 2 with private right of way).

F. (6) Stone Walkway Violation. The Shaw Trust asserts that no violation exists because the stone walkway was not intended as a structure, but only a means of accessing the bunkhouse. It asserts that SZO § 15(B)(5) is confined to “accessory structure stairways or similar structures ... to provide shoreland access[,]” woodenly reading “access” to mean only such structures that meet the “normal high water line or edge of a freshwater wetland.”

This Court should reject the Shaw Trust’s narrow construction of this provision, which is intended to reach structures that provide access to wetlands, including those that may not reach the shore of the Great Pond. Such structures are no less structural even though they do not hit the Great Pond’s water. More importantly, the stone walkway was not included within the scope of the 2021 Permit. The walkway is 4’ x 34’, or 136 square feet. A. 170. Under Section 15(B)(5) of the SZO, “accessory structure stairways or similar structures may be allowed with a permit from the Planning Board.” A. 86. A stone walkway is a structure because it is a hard surface. A. 85-86, SZO § 15(B)(5). Without a permit, the Shaw Trust cannot seek to establish to the Planning Board in its application that the “no reasonable access alternative exists on the property.” A. 86. Because the stone

walkway exceeded the scope of work under the 2021 Permit and was otherwise not permitted, the CEO's determination of a violation was proper, correct, and should be upheld.

G. (7) Unpermitted Patio/Fill Violations. The Shaw Trust asserts that the 100+ cubic yards of unpermitted fill to support the unpermitted patio within 36' of the high-water mark of wetlands in the Shoreland Zone were implicitly granted by the prior CEO under the 2021 Permit. Blue Br. 31-32. The Shaw Trust asserts that the prior CEO's visit to the Property in 2021 amounts to a blessing for 100+ cubic yards of fill. *Id.* This argument fails for the same reasons noted above concerning the Shaw Trust's ability to rely on conjecture, assumed agreement or approvals, or other conjecture projected on the prior CEO based on a prior visit to the Property.

The hard surface patio of 32' x 18', A. 170, is unpermitted. A. 23, 32. A permit was required under Section 15(B)(5) of the SZO, just as a permit was required for the stone walkway. Fill was deposited within 36' of the high-water mark of wetlands in the shoreland zone, which is prohibited under Section 12(C)(1). A. 64-65; Section 14, Table 1(29), A. 81; and Section 15(B)(5) of the SZO, A. 92-93; A. 170. The construction of the patio and placement of fill increased the nonconformity of the bunkhouse and the Property. The lack of a permit to build a patio within 36' of the high-water mark of wetlands and to deposit (and not remove) 100' of fill to support that unpermitted patio violates the SZO. A. 170. Accordingly, the CEO did not err

or abuse his discretion when he issued the NOV and Additional Findings, which is supported by substantial evidence. A. 23, 32.

H. (8) Revegetation Plan Violation.

The Shaw Trust performed work under the 2021 Permit that was approved for construction of a foundation and a 100' addition on specified terms. The Shaw Trust instead performed extensive work that extended well beyond the scope of the 2021 Permit that resulted in extensive disturbance and removal of vegetation. Under Section 12(o) of the SZO, a revegetation plan was required. A. 100-103. The unpermitted patio and unpermitted stone walkway are among the unpermitted structures that caused disturbance and removal of vegetation, necessitating a revegetation plan. A.33. Because the Shaw Trust did not prepare or submit a revegetation plan to the Town in relation to the work performed on the Property, the Shaw Trust is in violation of the SZO. A. 33.

I. (9) No Permit By Rule Violation.

Pursuant to Section 15(B)(5) of the SZO, “accessory structure stairways or similar structures may be allowed with a permit from the Planning Board,” unless permitted by the DEP pursuant to the Natural Resources Protection Act, 38 M.R.S. § 480-C. A. 86. To the extent that the Shaw Trust seeks to rely upon a DEP permit by rule exception, it has failed to submit any permit by rule, precluding the use of this provision. A. 33.

CONCLUSION

For the foregoing reasons, the Court should deny the appeal of Plaintiff Lauren Shaw Revocable Trust, affirm the Rule 80B Order of the Superior Court, and grant such other and further relief as the Court deems just.

Dated: April 8, 2026

Respectfully submitted,

/s/ Daniel J. Murphy

Daniel J. Murphy, Bar No. 9464

BERNSTEIN SHUR

100 Middle Street, P.O. Box 9729

Portland, ME 04104-5029

dmurphy@bernsteinshur.com

(207) 228-7120

Counsel for Appellee Town of Belgrade

CERTIFICATE OF SERVICE

Counsel for Appellee hereby certifies that this Brief, in the required quantity and manner, after Clerk approval, shall be filed with the Law Court (1 original and 9 copies to the Law Court, plus electronic copy) and served on counsel for the Appellant (2 copies, plus electronic copy) in accordance with the Maine Rules of Appellate Procedure.

Counsel for Appellant are:

Benjamin E. Ford, Esq.
Michael Skolnick, Esq.
Archipelago Law
1 Dana Street, Fourth Floor
Portland, Maine 04101

Dated: April 8, 2026

/s/ Daniel J. Murphy
Daniel J. Murphy