

STATE OF MAINE

**SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
Docket No. KNO-25-534**

**H. PRESCOTT SMITH, ANDREW S. LOVE
and BRUCE C. ROBERTSON**

Appellees/Plaintiffs

v.

PHILIP L. SMITH, II, STEPHEN G. SMITH, ET AL.

Appellants/Defendants

On Appeal from the Knox County Superior Court

**BRIEF OF APPELLEES H. PRESCOTT SMITH,
ANDREW S. LOVE and BRUCE C. ROBERTSON**

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INTRODUCTION

The Referee's Decision adopted as the Superior Court's final judgment (the "Decision") was correct in construing the deeded roadway access easement area encumbering the property of Appellant Philip L. Smith, II to have been established over the roadways shown on the 1957 survey known as the "Coffin Plan," because that plan was expressly incorporated in the senior deed from Appellant Philip Smith's predecessor-in-title that voluntarily encumbered those lands in perpetuity. Further, the Referee's decision correctly located the disputed roadway easement to extend over a 15-foot-wide swath of Appellants' property based upon ample competent evidence presented at trial, including evidence of accurate scaling. As such, the Referee's construction of the roadway easement based upon the Coffin Plan, and its findings for the easement's location should be affirmed.

Next, the Referee's Decision correctly interpreted the timber trespass statute, 14 M.R.S. § 7552(2)(A) to prohibit unconsented-to acts causing "damage" to another's trees where the statute outlines four distinct prohibitions, including "cut[ing] down," or "destroy[ing]," or "damage[ing]" or "carry[ing] away" another's tree. And competent evidence supported the Referee's factual findings that Appellants' cutting of three large branches from Appellee Prescott Smith's ornamental spruce tree constituted recoverable damage to the tree was untethered to Appellants' lawful easement use. The Referee's determination

that Appellants are liable for violation of Section 7552 should therefore be affirmed.

On cross-appeal, Appellees raise two issues on which the Referee erred. First, the Referee erred when it interpreted the parties' roadway access easement to also encumber a circular driveway area that was omitted from the Coffin Plan. Because the Coffin Plan established the entire bounds of the roadway easement encumbrance, areas of the roadway not shown on that plan were not encumbered. In turn, the Referee's determination that the circular drive area is encumbered by the roadway access easement should be reversed.

Second, the Referee erred in finding that the grantor of a separate 1958 easement providing access to the parties' jointly owned ocean dock was conveyed with intent to include utility easement rights to run utility lines to the dock via the access ways. No competent evidence supports the Referee's findings that utility usage was intended or reasonably foreseen at the time of the grant, and evidence the Referee relied upon was strictly limited to acts that occurred years after the 1958 easement grant by subsequent owners who were not party to the original easement grant.

APPELLEES' SUPPLEMENTAL STATEMENT OF FACTS

The issues raised on appeal predominately relate to two distinct issues: (a) the location and scope of a roadway access easement serving residential real estate parcels that the principal parties own; and (b) conduct of Appellants and their contractors associated with construction activity that occurred in 2021.

A. The Roadway Access Easement

The principal parties own certain residential real estate parcels that were established in 1958 as part of a family development by the parties' common predecessor-in-title, Munasca, Inc. Decision at A.17. Appellee Prescott Smith owns the central parcel commonly known as the "Goose Cottage" parcel. Appellant Philip L. Smith owns the northeasterly lot commonly known as the "Hart House" parcel. Appellee Andrew S. Love owns the northerly lot commonly known as the "Willows" parcel. Appellee Bruce C. Robertson owns the northwesterly lot commonly known as the "Boathouse" parcel. Appellant Stephen G. Smith owns the westerly lot commonly known as the "Vacant Lot" parcel (which is not at issue in any of the matters raised on appeal). The configuration of these properties and present-day ownership is shown on Appellees' boundary survey, in evidence as Joint Exhibit 3, at A.91:

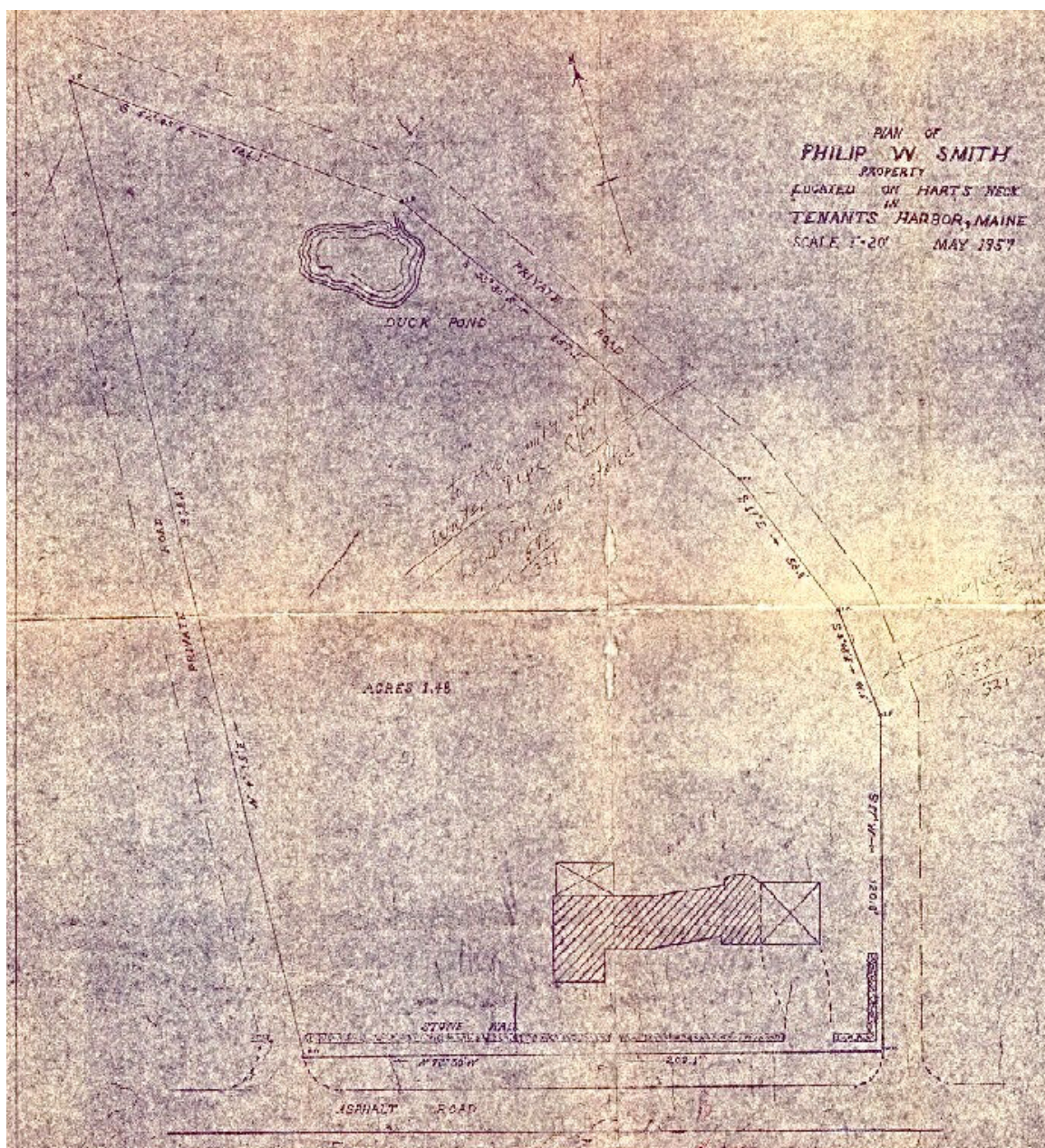
The roadway access easement was created on December 27, 1958, when the parties' common predecessor, Munasca, Inc., subdivided its larger property into the five aforementioned parcels, starting with the creation of the centrally located Goose Cottage parcel, by deed granted to Appellee Prescott Smith's predecessor-in-title, Philip W. Smith (the "Goose Cottage Deed"). *See* J.Ex. 19 at A.95; Decision at A.18. Munasca, at that time, retained the surrounding lands that would later become the Hart House, Willows and Boathouse parcels. *Id.*

The Goose Cottage Deed described the Goose Cottage parcel by metes and bounds monumented by reference to two certain private roadways. *See* A.95-96. The deed language described the Goose Cottage parcel to follow along the easterly sideline of "a private roadway that leads to the shore" and continue alongside "said roadway" until reaching "its intersection with the southerly side of another private road leading southeasterly from the above named road," then follow that "said roadway" until reaching the public way and returning to the parcel's point of beginning. *Id.* The deed then defined the aforementioned monuments as those depicted on a particular survey plan, stating: "All according to a survey made by Edward W. Coffin in 1957." J.Ex. 19 at A.96 (the "Coffin Plan").

Immediately upon describing the Goose Cottage parcel's bounds by the roadways shown on the Coffin Plan, the Goose Cottage Deed established the roadway access easement for the Goose Cottage parcel's benefit, conveying "a

right of way in common with the grantor, its successors and assigns *over the above-mentioned roadways*, the grantee to pay his proportionate part of the cost of repairs and maintenance of said roadways to be computed by dividing the costs among the owners served by said roadways.” A.96 (emphasis added).

The Coffin Plan, depicting the Goose Cottage parcel and the two surrounding roadways, is Joint Exhibit 1, at A.90. See Decision at A.18.



The Coffin Plan depicts two private roadways surrounding the Goose Cottage parcel, each identified as a “Private Road.” A.90. Although the Coffin Plan does not state the numeric distance between the Goose Cottage parcel’s boundary and the roadways’ outer sideline, the Coffin Plan was drawn to scale. *Id.* The scale is stated in the plan’s upper right-hand corner as: Scale 1”=20’. *Id.* However, the Coffin Plan does not depict the circular drive that presently exists over the Willows and Boathouse parcels. *See* A.91.

Two days after Munasca had granted the Goose Cottage Deed and established the roadway easement over its remaining lands, Munasca on December 29, 1958 subdivided those remaining lands through subsequent grants. Decision at A.18-19. Those grants included the deed establishing the “Boathouse” parcel now owned by Appellee Bruce Robertson (J.Ex. 21 at A.101-03), the deed establishing the “Willows” parcel now owned by Appellee Andrew Love, and finally, the deed establishing the Hart House parcel now owned by Appellant Philip L. Smith, II (J.Ex. 20 at A. 98-100). The Boathouse, Willows and Hart House parcels are referenced collectively herein as the “Encumbered Parcel Deeds,” while the parcels are referenced collectively as the “Encumbered Parcels.” The Encumbered Parcel deeds do not expressly reference the Coffin Plan, but they rely upon the same roadways that had been referenced and defined in the Goose Cottage deed to serve as monuments consistently

establishing the metes and bounds of the abutting Boathouse, Willows and Hart House parcels.

At trial, Appellees' professional land surveyor, James Dorsky, testified that Appellees' boundary survey (A.91) accurately located the roadway easement area depicted on the Coffin Plan. *See* Decision at A.27 (citing Tr. at 33). The Dorsky Plan relied upon the Coffin Plan's depiction that the roadway easement's sidelines span between an inner sideline located along the Goose Cottage parcel's boundary line, and an outer sideline depicted on the Coffin Plan as a dashed line. Decision at A.30 (citing Tr. at 109-110).

To confirm the width and location of the roadway easement area, the Dorsky Plan relied upon professionally scaled measurements of the Coffin Plan's depicted roadways at the Coffin Plan's defined scale of 1 inch to every 20 feet. Decision at A.27 (citing testimony at Tr. 33); A.90. Dorsky further testified that the roadways depicted on the Coffin Plan scaled to span 15 feet wide, measured from the Goose Cottage boundary out over the abutting parcels. *Id.* Appellants' surveyor, Mark Ingraham, did not conduct an independent boundary survey and did not opine on the width of the roadway easement depicted on the Coffin Plan. *See* Decision at A.30.

B. Conduct of Appellants in 2021 Construction

Separately at issue in the appeal is Appellants conduct associated with construction activity that occurred in 2021 that resulted in damage caused to an

ornamental spruce tree located on Appellee Prescott Smith's property, the Goose Cottage parcel.

In the course of the construction work, Appellant Stephen Smith by and through the Appellant contractors entered Appellee Prescott Smith's property and cut three branches from the ornamental spruce tree at the tree's trunk. *See* Decision at A.43-44. The tree trunk is located entirely within Appellee's Goose Cottage property, and outside the roadway easement's bounds. *Id.*

Appellees' arborist expert testified that the branch cutting constituted unrepairable damage to the ornamental tree. Decision at A.45 (citing Tr. at 255). The expert further testified that the tree is "not in great health" and "stressed" due to Appellees' cutting, when compared with adjacent trees that appear healthy. *Id.* (citing Tr. at 255, 275). Appellees' expert arborist's testimony was un rebutted: Appellees called no forester or arborist expert of their own. *See* Decision at A.45.

Appellants' branch-cutting was untethered to any lawful usage of the nearby roadway easement. The Referee determined that Appellant Stephen Smith had caused Appellants' construction crews to cut the corner and trespass onto Appellee Prescott Smith's Goose Cottage property with oversized construction equipment by intentionally removing survey monuments that were placed to delineate the boundary between roadway easement's sideline and Appellee Prescott Smith's property. Decision at A.44, 46.

**STATEMENT OF THE ISSUES
PRESENTED ON CROSS-APPEAL**

1. Did the Referee err when it interpreted the parties' roadway access easement to encumber the circular driveway area when that area was omitted from Coffin Plan incorporated into the senior deed to establish the encumbered easement area?

2. Did the Referee err in finding that the grantor of the 1958 dock access easement intended to grant utility easement rights over the access ways when evidence of intent was strictly limited to acts occurring years after the easement grant by owners not party to the original easement?

ARGUMENT

I. The Coffin Plan defines the bounds of the deeded roadway easement burdening the Hart House parcel, and the Referee correctly located the easement on the face of the earth.

Contrary to Appellants' contentions, the question Appellants present on appeal requires both the de novo construction of the applicable deeds to incorporate the roads shown on the Coffin Plan as the deeded easement area, as well as the Referee's determination that the roadway easement is located over a 15-foot-wide area of the Hart House property and other Encumbered Parcels. *See* Blue Br. at 20.

These distinct issues require different standards of review, because "what boundaries a deed refers to is a question of law, while the location of those boundaries on the face of the earth is a question of fact." *Theriault v. Murray*, 588 A.2d 720, 721 (Me. 1991). *See also Mabee v. Nordic Aquafarms Inc.*, 2023 ME 15, ¶ 26, 290 A.3d 79, 89.

As with any question of fact, the factfinder's "determination of the location of property boundaries on the face of the earth is reviewed for clear error." *Almeder v. Town of Kennebunkport*, 2019 ME 151, ¶ 26, 217 A.3d 1111, 1121. This standard of review similarly applies where the location of easement area boundaries is at issue. *See Zemero Corp. v. Hall*, 2003 ME 111, ¶ 8, 831 A.2d 413, 415. Accordingly, the factfinder's "determination of the location of

property boundaries must be affirmed unless “no competent evidence supports it.” *Grondin v. Hanscom*, 2014 ME 148, ¶ 8, 106 A.3d 1150, 1154.

A. The Coffin Plan governs the roadway access easement’s boundaries because it was expressly incorporated into the senior deed that established the encumbrance.

The deeded roadway burdening the Hart House property is bounded as shown on the Coffin Plan (A.90), because the Hart House property’s prior owner had granted an appurtenant easement over the Hart House land through deed language that described the monuments and private roads referenced in the deed to be “all according to” the Coffin Plan survey.

When a deed of conveyance expressly refers to a survey plan, “that plan becomes a part of the deed, with the same force and effect as if copied into the deed, and is subject to no other explanation by extraneous evidence tha[n] if all the particulars of the description had been actually inserted in the body of the deed.” *Bradstreet v. Bradstreet*, 158 Me. 140, 146 (1962).

Moreover, the Coffin Plan controls the location of the roadway easement encumbering the Hart House parcel regardless of whether the Coffin Plan was mentioned again in subsequent Hart House conveyances. That is because the Coffin Plan was referenced and fully incorporated into an earlier Goose Cottage Deed, which had used the plan to describe the roadway easement over the now-Hart House parcel that was granted to serve the abutting Goose Cottage parcel now owned by Appellee Prescott Smith. *See* J.Ex. 19 at A.95; Decision at A.31.

Again, the Goose Cottage Deed was the senior deed that in 1958 established the roadways shown on the Coffin Plan and conveyed shared easement rights over those roadways when the parties' common predecessor-in-title, Munasca, Inc., subdivided its land and conveyed the Goose Cottage parcel to Appellant Prescott Smith's predecessor, Philip W. Smith. *See* A.95-97; Decision at A.18.

The Goose Cottage deed described the newly created parcel by metes and bounds that were monumented by reference to two certain private roadways. *See e.g.*, J.Ex. 19 at A.95-96. The deed language described the Goose Cottage parcel to follow along the easterly sideline of "a private roadway that leads to the shore" and continue alongside "said roadway" until reaching "its intersection with the southerly side of another private road leading southeasterly from the above named road," then follow that "said roadway" until reaching the public way and returning to the parcel's point of beginning. J.Ex. 19 at A.95-96. The deed's then puts these otherwise generic roadway monument references in context with the plan reference: "All according to a survey made by Edward W. Coffin in 1957." J.Ex. 19 at A.96.¹

¹ There is no dispute in this appeal or in the underlying action that "the survey made by Edward W. Coffin in 1957" is the Coffin Plan in evidence. *See* A. 90; Decision at A. 26. The Coffin Plan is a scaled survey plan depicting the Goose Cottage parcel bounded by two roadways that are each identified as "Private Road," and the public way, identified as the "Asphalt Road." *See* A.90. Appellants do not cite the fact that the Coffin Plan is not recorded as a basis for their appeal. Even then, a plan is incorporated into a deed by reference regardless of whether it was recorded. *See Chelsey v. Holmes*, 40 Me. 536, 546 (1855).

Contrary to Appellants' argument, the Goose Cottage Deed *does* refer to the Coffin Plan in its subsequent grant of roadway access easement rights benefitting the Goose Cottage parcel. The paragraph of the Goose Cottage Deed immediately following the deed's description of the parcel defined by the roadways shown on the Coffin Plan, the Goose Cottage Deed then granted the parcel easement rights "over the above mentioned roadways." A.96. No roadway other than those shown "according to the Coffin Plan" is mentioned above the paragraph conveying the Goose Cottage parcel's roadway easement rights, and no alternative interpretation can be reasonably drawn. *Id.*

Days after Munasca granted the Goose Cottage Deed and established the roadway easement over its remaining lands, Munasca then subdivided those remaining lands to become the Encumbered Parcels, comprising the "Boathouse" parcel now owned by Appellee Bruce Robertson, the "Willows" parcel now owned by Appellee Andrew Love, and finally, the Hart House parcel now owned by Appellant Philip L. Smith, II.

Munasca's grants following the Goose Cottage Deed did not reference the Coffin Plan because they did not need to do so. When the Encumbered Parcel Deeds were granted, the locations of the "private roadways" referenced in those deeds were established in place by the earlier Goose Cottage Deed. Munasca's retained property located beneath the roadway areas shown on the Coffin Plan was thereafter encumbered to serve the Goose Cottage parcel and any others

that Munasca opted to invite. Then, Munasca extended the roadway access easement to benefit each of the Encumbered Parcels. *See e.g.*, A.99, 102.

This sequence of conveyances illustrates that Munasca plainly intended the roadway defined and encumbered in the Goose Cottage Deed to be the same roadway that Munasca had referenced and described in the Encumbered Parcel Deeds that immediately followed. To conclude differently would yield absurd results, because it would require a finding that Munasca intended to establish one roadway area serving the Goose Cottage Parcel based upon the Coffin Plan, but some *different* roadway area to serve (and further encumber) the Encumbered Parcels.

In fact, Munasca intended all of these parcels to utilize the same roadway area that was encumbered by reference to the Coffin Plan in the Goose Cottage Deed. This intent is evinced by Munasca's inclusion of a covenant with each roadway easement grant that required each benefited parcel to contribute toward the expense of maintaining the shared roadway area, with costs divided "among the owners served by said roadway." *See e.g.*, A.96, 99, 102. To illustrate, it is obvious that Munasca did not contemplate requiring the Hart House owner to contribute toward the maintenance of a separate roadway area that uniquely benefits the Goose Cottage parcel. Rather, the grantor intended that the encumbered road area described in the Goose Cottage deed and located

according to the Coffin Plan to be the same road area referenced in and conveyed by the Encumbered Parcel Deeds to serve those surrounding parcels.

Finally, Munasca's choice of language in the Goose Cottage Deed and the Encumbered Parcel Deeds demonstrates that the parcels' roadway access easement was not limited to the locations of then-existing roadways at the time of the grant. This fact is apparent because Goose Cottage Deed and the Encumbered Parcel Deeds described the roadway access easement being conveyed to entail "the above mentioned roadways," A.96, 102.² By contrast, the separate access easement granted to provide dock access in each of the deeds exercised via "existing ways from and to the Town Road." A.96, 99, 102. This distinction within the same deed demonstrated that Munasca, as the grantor, knew how to describe an easement area based upon then-existing ways, but it consciously opted to instead describe the roadway access easement as the "above mentioned" roads that were established in the Goose Cottage Deed "according to" the Coffin Plan. These roadway locations were already fixed in place by Munasca's grant in the Goose Cottage Deed. Subsequent references to the same roadway monuments that established the bounds of the Goose Cottage Parcel to similarly establish the bounds of the abutting Encumbered Parcels demonstrates that the grantor's intent for the roadway locations established in

² The Hart House parcel's roadway access easement phrasing is slightly different, but consistently references "the private road mentioned in" the deed's earlier legal description of the Hart House parcel. *See* A.98-99.

the Goose Cottage Deed to carry forward and similarly define the Encumbered Parcels' referenced roadway monuments.

Accordingly, the Goose Cottage deed and the Encumbered Parcel Deeds are properly construed to incorporate the roadway locations shown on the Coffin Plan to establish the bounds for the roadway easement area that has encumbered the now-Hart House Parcel and other Encumbered Parcels since the grant of the Goose Cottage Deed in 1958.

B. Competent evidence supports the Referee's finding that the roadway easement is 15 feet wide and located as shown on Appellees' boundary survey.

Competent record evidence supports the Referee's finding that the roadway easement area's outer boundary is located over a 15-foot-wide swath of the Hart House parcel, as shown on Appellees' boundary survey. J.Ex. 1 at A.90.

As cited above, the determination of property boundary locations on the face of the earth is a question of fact reviewed for clear error. *Grondin v. Hanscom*, 2014 ME 148, ¶ 8. The factfinder's determination of boundary locations will be reversed on appeal "only if no competent evidence supports it." *Id.* "Competent evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Premier Cap., Inc. v. Doucette*, 2002 ME 83, ¶ 11, 797 A.2d 32, 35 (internal alterations and internal citations omitted).

Deference is given to the factfinder's evaluation of testimony from professional land surveyors regarding the determination of boundary locations. *See Dupuis v. Soucy*, 2011 ME 2, ¶ 18, 11 A.3d 318, 323 (“The weight to be given to a surveyor’s opinion is the prerogative of the factfinder.”); *Amero v. Amero*, 2016 ME 150, ¶ 6, 149 A.3d 535, 537 (The Law Court “defer[s] to the trial court’s determination of witnesses’ credibility and its resolution of conflicts in testimony.”). Factual findings will not be overturned “simply because an alternative finding also finds support in the evidence.” *Id.*

Here, upon the Referee’s correct conclusion that the Coffin Plan establishes the deeded roadway easement’s bounds, the Referee proceeded to determine the roadway easement’s location because the Coffin Plan does not facially state a numeric measurement of the depicted roadways’ width. *See* Decision at A.31.

The Referee ultimately determined that the roadway easement shown on the Coffin Plan is located over the 15-foot-wide swath of land starting at the Goose Cottage parcel’s boundary line and extending out over the abutting lots, including the Hart House parcel. *See* Decision at A.27, 31. The Referee’s determination of the roadway location is the same as that shown on Appellee’s boundary survey. *See* Decision at A.27; J.Ex. 3 at A.91.

Competent record evidence supporting the Referee’s determination of the roadway access easement location included testimony of Appellees’

professional land surveyor, James Dorsky. Dorsky testified that the Coffin Plan depicted the roadway sidelines to span between an inner sideline located along the Goose Cottage parcel's boundary line, and an outer sideline depicted on the Coffin Plan as a dashed line. *See* Decision at A.30.

Dorsky further testified that the width of the Coffin Plan's roadways is correctly determined through professionally scaled measurements of the depicted roadways, because the Coffin Plan was drawn at a defined scale of 1 inch to every 20 feet. *See* Decision at A.27 (citing testimony at Tr. 33); J.Ex. 1(A.90). Dorsky testified that his scaling of the roadway span the Coffin Plan depicts confirmed that both private roads depicted span 15-feet in width, measured from the Goose Cottage boundary out over the abutting parcels. *Id.*

The Referee acted within his discretion and prerogative to give greater weight to the testimony of surveyor Dorsky than to the testimony of Appellants' surveyor, Mark Ingraham in determining the roadway easement location as shown on Dorsky's plan. *See Dupuis v. Soucy*, 2011 ME 2, ¶ 18. Even then, surveyor Ingraham had not conducted a boundary survey of his own, and did not challenge surveyor Dorsky's conclusion that the roadways depicted on the Coffin Plan scaled to 15-feet-wide. *See* Decision at A.28 (citing testimony at Tr. 452, 465-66).

Further still, the Referee's reliance upon the surveyor's scaling of the Coffin Plan to determine the roadway easement's located width is well grounded

in law. Where distances of features shown on a plan are not expressly stated in the plan, they are properly determined through scaling of the plan. *See Heaton v. Hodges*, 14 Me. 66 (1836) (“The survey actually made, if it can be ascertained, is to govern the location. But if that could not be shown ... they were to be settled by the length of line given on the plan, according to its scale, exactly measured.”); 12 Am. Jur. 2d Boundaries § 60 (“[T]he length of line given on a plan, measured accurately according to the scale upon which the plan is drawn, may be resorted to in determining the true location of the boundaries of the lots.”).

As applied, the Referee’s determination that the roadway easement depicted on the Coffin Plan is 15-feet-wide based upon professional scaling of the Coffin Plan should be affirmed, even if the Court were to find that determination of the roadway easement’s width shown on the Coffin Plan should be reviewed *de novo* as a question of law.

Appellees do not appeal the Referee’s determination that the 15-foot-wide roadway easement location was never reduced by abandonment or extinguishment. As such, the determination of the roadway easement’s location is governed strictly as the Coffin Plan depicts. Accordingly, the Referee’s determination of the roadway easement location should be affirmed because it is well-supported by competent record evidence.

II. Appellants liability under 14 M.R.S. § 7552 should be affirmed where competent evidence shows Appellants caused prohibited tree damage.

Legal questions of statutory interpretation are reviewed *de novo*. *Peters v. O'Leary*, 2011 ME 106, ¶ 13, 30 A.3d 825, 828. But where the statutory question raised on appeal presents a mixed question of law and fact, the Law Court “review[s] a trial court’s factual findings for clear error, and its application of the law to those facts *de novo*.” *Id.* ¶ 15.

A. Section 7552 imposes liability for unconsented-to tree damage, even if the tree was not cut down or removed.

The Referee’s interpretation of 14 M.R.S. § 7552 should be affirmed, imposing liability under subsection 2(A) where damage is caused to another person’s tree without permission, regardless of whether the damage incurred ultimately kills the tree.

The plain language of Section 7552(2)(A) is not limited to the prohibition of acts resulting in the tree’s death or destruction. Rather, the statute’s subsection prohibits a variety of acts affecting trees located on another person’s land. Specifically, a person may not “[c]ut down,” or “destroy,” or “damage,” or “carry away” any number of items—including trees—from the land of another. § 7552(2)(A). The statute’s structure identifies these four prohibited acts in the alternative from one another, thereby imposing liability for conduct resulting in any one of the four events. For example, liability attaches under this subsection if a person “cuts down” his neighbor’s tree, regardless of whether he

also “carr[ies] away” the felled tree. Similarly, liability attaches where a person “damage[s] his neighbor’s tree, regardless of whether that damage ultimately “destroy[s]” the tree.

Appellants suggest that Section 7552(2)(A) liability occurs only where another person’s tree is cut down or otherwise killed. *See* Blue Br. at 25. This proposed construction fails because it renders the statute’s included prohibition against causing “damage” to be needless surplusage. Maine law rejects this selective form of statutory interpretation. Instead, “[a]ll words in a statute are to be given meaning, and none are to be treated as surplusage if they can be reasonably construed.” *Cobb v. Bd. of Counseling Pros. Licensure*, 2006 ME 48, ¶ 11, 896 A.2d 271, 275.

In fact, Section 7552(2)(A) is properly construed to give independent meaning to each of the four identified prohibitions. For example, circumstances exist in which a tree may be “cut down” without being “destroy[ed],” such as an unpermitted removal of standing deadwood. On the other hand, a tree may be “destroyed” without ever being “cut down,” justifying the inclusion of the subsection’s second prohibition. And forest products, such as cut lumber, may be wrongfully “carr[ied] away” from the owner’s property without ever being “cut down,” or “destroy[ed]” or “damage[d].”

It follows that liability under Section 7552(2)(A) similarly attaches where prohibited acts causing “damage” to another person’s tree without permission

occur, even if the result stops short of a “cut down,” destruction or other killing of the tree.

B. Competent evidence supports the Referee’s findings that Appellants’ unconsented-to branch cutting resulted in recoverable tree damage.

Competent evidence supports the Referee’s factual findings that Appellants’ unconsented-to cutting of three large branches from the ornamental spruce tree located on Appellee Prescott Smith’s property caused “damage” to the tree recoverable under Section 7552(2)(A).³

As previously cited, “competent evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *Premier Cap., Inc*, 2002 ME 83, ¶ 11 (internal alterations and internal citations omitted). And the factfinder’s reasonably supported conclusions are not overturned “simply because an alternative finding also finds support in the evidence.” *Amero*, 2016 ME 150, ¶ 6.

Here, record evidence established that Appellant Stephen Smith by and through the Appellant contractors knowingly entered Appellee Prescott Smith’s property (the “Goose Cottage” property) and cut three branches from the ornamental spruce tree at the tree’s trunk. *See* J.Ex. 37 at A.106; J.Ex. 40 at

³ Appellants do not appeal the measure of damages that the Referee found under 14 M.R.S. § 7552(3)(B)(5). Rather, they appeal the Referee’s factual finding that Appellants’ branch-cutting constituted a prohibited “damage” recoverable under § 7552. Consequently, the question raised on appeal is limited to whether the Referee erred in finding that “damage” occurred and gave rise to liability under Section 7552(2)(A).

A.134; Tr. at 803-04; 824; Decision at A.43-44. The tree trunk is located entirely within Appellee's Goose Cottage property, and outside the roadway easement's located bounds. *See* J.Ex. 40 at A.134; J.Ex. 47 at A.135; Decision at A.44. Had Appellants' remained within the roadway easement area, the trunk-level damage to Appellee Prescott Smith's spruce tree could not have occurred. *Id.*

Further, competent evidence established the damage caused to the tree. Appellees' arborist expert testified that the branch cutting constituted unrepairable damage to the ornamental tree. *See* Tr. at 255; Decision at A.45. The expert further testified that the tree is "not in great health" and "stressed" due to Appellees' cutting, when compared with adjacent trees that appear healthy. *See* Tr. at 255, 275; Decision at 45. And Appellees' expert arborist's testimony was un rebutted. Appellees called no forester or arborist expert of their own. *See* Decision at A.45.

And, competent evidence supports the finding that Appellants' branch-cutting was untethered to Appellants' lawful usage of the nearby roadway easement. Testimony established that Appellant Stephen Smith had caused Appellants' construction crews to cut the corner and trespass onto Appellee Prescott Smith's Goose Cottage property with oversized construction equipment by intentionally removing survey monuments that were placed to delineate the boundary between roadway easement's sideline and Appellee Prescott Smith's property. *See* Tr. at 803-04; J.Ex. 47 at A.135; Decision at

A.44-46. And, evidence established that the limbs cut from the tree did not reasonably interfere with roadway usage because the limbs were high, ranging between 12 and 16 feet above the ground. *See* Tr. at 274 J.Ex. 37 at A.106.

Because competent record evidence exists to reasonably support the Referee's factfinding that Appellants' cutting of Appellee Prescott Smith's ornamental spruce tree constituted damage to the tree, and such damage is among Section 7552(2)(A)'s prohibitions, this Court should affirm the Referee's findings of fact and conclusions of law that held Appellants liable for violation of Section 7552.

III. The Referee erred in determining that the roadway easement encumbered portions of a way that were omitted from the Coffin Plan.

The referee erred in construing whether the Goose Cottage Deed's incorporation of the Coffin Plan additionally encumbered an adjacent circular driveway located on the Boathouse and Willows parcels that was omitted from the Coffin Plan's depiction of the roadways that the Goose Cottage Deed encumbered by its reference thereto.

The construction of a deed and its easement language are questions of law that the Court reviews *de novo*. *Windham Land Trust v. Jeffords*, 2009 ME 29, ¶ 24. If the deed is unambiguous, the Court "must construe the deed without considering extrinsic evidence. *Id.* ¶ 14.

As previously discussed, the Goose Cottage Deed's conveyance of roadway easement rights over roadways "according to" the Coffin Plan encumbered those roadways depicted on the Coffin Plan "with the same force and effect as if copied into the deed." *Bradstreet v. Bradstreet*, 158 Me. at 146. In turn, only the roadways depicted on the plan are deemed incorporated into the controlling deed. That means road locations omitted from the plan have the same legal effect as if the locations were omitted from the deed description.

Here, the only roadways encumbered by the Goose Cottage Deed's incorporation of the Coffin Plan are the roadways actually depicted on that plan. The circular drive located on the Boathouse and Willows properties is *not* depicted. *Compare* J.Ex. 3 at A.91 *with* J.Ex. 1 at A.90. Accordingly, the Coffin Plan illustrates the Goose Cottage Deed grantor's intent to exclude the circular drive located on the Boathouse and Willows parcels from the easement, and encumber only those roadways that the Coffin Plan depicts. *Id.*

The Referee erred in reaching the conclusion that the Coffin Plan's depiction of open lines to suggest the roadway's continuation implied that the circle drive was meant to be included within the easement area. *See* Decision at A.33-34. This construction effectively interprets the easement over the undepicted circle drive as an implied quasi-easement, rather than an express deeded easement. Again, the omission of the circular drive from the Coffin Plan's depiction of the roadways is the legal equivalent of an omission of any

reference to the circular drive area in the deed description. As such, the circular drive was not encumbered by the roadway easement area encumbered in the Coffin Deed and not subject to usage benefiting the abutting parcels that share in the roadway easement.

IV. The Referee erred in determining that Appellants' dock easement includes rights to run utilities to the dock property.

The referee further erred in interpreting the scope of the parties' second easement relating to use and access for the parties' jointly owned ocean dock to also include utility rights to run utility lines in or along the dock's access way.

As above, the construction of a deed and its unambiguous easement language are questions of law that the Court reviews de novo. *Windham Land Trust*, 2009 ME 29, ¶ 24. When the intended easement usage is ambiguous and informed by extrinsic evidence of the parties' intent for use at the time of the grant, the factfinder's determination is reviewed for clear error. *Wardwell v. Duggins*, 2016 ME 55, ¶ 10, 136 A.3d 703, 706.

At law, utility easement rights are not presumed to be included within the scope of any access easement. *See Fine Line, Inc. v. Blake*, 677 A.2d 1061, 1064 (Me. 1996) ("Even a right of way 'for all purposes' does not automatically include the right to install utility lines.") Rather, "the conveyance of a general right of way *may* include the right to install utility lines if the circumstances surrounding the grant establishes that such use is within the scope of its intended purposes." *Guild v. Hinman*, 1997 ME 120, ¶ 6 (emphasis added).

However, where use of the land being accessed with the easement is not intended for residential purposes, no intention to include utility rights will be inferred. *Id.* ¶ 8.

Here, there is no dispute that the jointly owned dock does not serve residential purposes, so utility rights cannot be automatically inferred. As such, the Court must determine whether a need to run utilities to the dock “was reasonably foreseeable at the time of the grant.” *Wardwell*, 2016 ME 55, ¶ 12 (internal citations and quotations omitted).

Yet the Referee lacked competent evidence to support a finding of the grantor’s intention to include utility rights at the operative time, being “at the time of the grant.” *Id.* The Referee found that record evidence failed to establish that utilities were operated on the dock in 1958 when the easement was granted. *See* Decision at A.37. And no evidence was offered to suggest that future utility usage on the dock was contemplated by the parties at or near the time of the 1958 grant. Instead, the Referee erroneously drew inference about intentions for utilities at the time of the grant based upon evidence of usage that occurred decades later by owners who were not party to the original conveyance, to accommodate temporary utility lines that were placed outside the granted easement area.

Such evidence of an after-the-fact evolution in easement usage is insufficient to adequately support the conclusion that in 1958, at the time of the

grant, the extension of utility lines through the easement access way to serve the dock was reasonably foreseeable. Therefore, the Referee's findings that the dock easement grantor intended to accommodate utility usage should be set aside, with the action then remanded to the Referee for additional findings as to Appellees' claim for trespass (Count III) derived from Appellants' unlawful installation of utility equipment in the absence of easement rights to do so.

CONCLUSION

For the aforementioned reasons, Appellees H. Prescott Smith, Andrew S. Love and Bruce C. Robertson respectfully request that this Court:

1. Affirm the Referee's determination as to the bounds and location of the parties' roadway access easement.
2. Affirm the Referee's determination that Appellants are liable for damages in violation of 14 M.R.S. § 7552(2)(A).
3. Reverse the Referee's interpretation that the roadway access easement encumbered the circular drive not shown on the Coffin Plan;
and
4. Reverse the Referee's determination that the dock access easement is benefited by rights to run utilities, and remand the matter to the Referee for additional findings on Appellees' trespass claim (Count III).

Dated at Portland, Maine, this 13th day of April, 2026.

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CERTIFICATE OF SERVICE

I, James G. Monteleone, as attorney for Appellees H. Prescott Smith, Andrew S. Love and Bruce C. Robertson, hereby certify that I have on this date served electronic copies of the foregoing brief upon Appellants' counsel of record at the following addresses:

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