STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. YOR-24-478

DAVID NEWSON,
Plaintiff / Appellant

v.

TOWN OF KITTERY, *et al.*
Defendant / Appellee

ON APPEAL FROM THE
YORK SUPERIOR COURT

Docket No. YORSC-AP-24-13

BRIEF OF PLAINTIFF / APPELLANT DAVID NEWSON

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INTRODUCTION

This appeal arises from an order denying Plaintiff / Appellant David Newson's ("Mr. Newson") Rule 80B appeal of the Defendant / Appellee Town of Kittery Planning Board's (the "Board") decision to grant IDC 5, LLC's (the "Applicant") application for a zoning boundary line extension and a site plan to operate a marijuana retail store at 181-185 State Road in Kittery, Maine (the "Application"). Mr. Newson respectfully requests that this Court reverse the Board's decision because it constitutes an error of law.

On March 28, 2024, the Board voted to deny the Applicant's request for a zoning boundary line extension, which was a precedential condition for approval of the site plan component of the Application. On April 11, 2024, the Board, in contravention of its own Bylaws and without due notice or consideration of Mr. Newson's written public comment, improperly reversed its prior denial. The Board's improper reversal of its March 28 denial and its failure to notify Mr. Newson or to consider Mr. Newson's written public comment violated its own Bylaws, denied Mr. Newson procedural due process, and constitutes an abuse of discretion and reversable error.

STATEMENT OF FACTS

A. The Property and Zoning Application.

On December 14, 2023, the Board accepted as complete the Applicant's site

plan to replace an existing restaurant and single-family dwelling with a 2,000 square foot marijuana retail store and associated parking spaces on the properties of 181-185 State Road, Tax Map 22, Lots 4-1 and 4-2 in the Town of Kittery (the "Property"). (A. 67.)

The Property is located on a highly trafficked rotary intersection between Route 236 and State Road. (Record 304-05.) Mr. Newson's property, located at 187 State Road, abuts the Property along State Road. (Appendix 141.) The Application, and increase in traffic at the Property, will directly impact Mr. Newson's parcel at 187 State Road. (A. 136-37.)

The Business Local ("B-L") and Old Post Road Commercial ("C-3") zoning districts divide a portion of the Property. (A. 89.) The B-L and C-3 zones have different landscaping requirements. (A. 90.) Accordingly, as part of its final site plan application, the Board obligated the Applicant to seek and obtain a zoning boundary line extension to allow the Property to be held, for landscaping purposes, to the standards of the C-3 zone. (A. 90.)

On January 11, 2024, the Application passed preliminary review by the Board. (A. 83.) Final hearing on both the zoning boundary line extension and the final site plan were scheduled for March 28, 2024. (A. 86.)

B. <u>The March 28, 2024 Planning Board Meeting</u>.

In advance of the March 28, 2024 meeting, Mr. Newson retained Barton &

Loguidice, a traffic engineering firm, to undertake a peer review of the traffic study contained in the Application. (A. 136.) On March 27, 2024, Mr. Newson timely submitted written public comment and a request for the Board to continue consideration of the Application for thirty days to allow Barton & Loguidice to complete its peer review and submit its findings to the Board for consideration (the "March 27 Letter"). (A. 136-37.) The March 27 Letter was included with the Board's meeting materials for the March 28 meeting. (A. 136-37.) Town Planning staff, however, improperly questioned the Letter's relevance via an email to the Board before the hearing. (A. 134.)

Five of seven Board members were present at the March 28 meeting. (A. 130.) Those present included Members Doyle, Kalmar, Wells, Vice-Chair Bensley, and Chair Dunkelberger. (A. 130.) Absent from the March 28 meeting were Members Bellantone and White. (A. 130.)

Pursuant to Town Code Section 16.2.2(B)(2), "[a]ll [non-procedural] decisions must be made by a minimum of four like votes," including the Applicant's request for a boundary line extension and the site plan. (A. 28.) At the March 28 meeting, the Board held a vote on the Applicant's request for an extension of the boundary line, but only three Board members voted in the affirmative. (A. 101.) Accordingly, the motion failed. (A. 101.) Those voting in favor of the motion were Chair Dunkelberger and Members Doyle and Kalmar. (A. 101.) Vice-Chair Bensley

abstained and Member Wells voted against the zoning boundary line extension, with a final vote of 3-1-1. (A. 101.)

Accordingly, because the Board did not approve the extension of the boundary line, it obviated both the opportunity and need to vote on the site plan portion of the Application. (*See* A. 101.) Because the Board did not reach the site plan portion of the Application, it also did not review or consider Mr. Newson's March 27 Letter. (*See* A. 101.) After failing to approve the boundary line extension, the Board voted to "continue review" of the Application until its next meeting. (A. 101.)

C. The April 11, 2024 Planning Board Meeting.

Even though the Board members who voted against and to abstain from the boundary line extension did not move to reconsider the vote, the Board rescheduled the Application as an agenda item for its next meeting on April 11, 2024. (A. 106.) Also, even though it was included in the March 28 meeting materials, the Board failed to include Mr. Newson's March 27 Letter in the April 11 meeting materials. (*See generally* A. 106-33.) Accordingly, the Board did not have an opportunity to consider Mr. Newson's written public comment, and has never had occasion to consider the March 27 Letter. (*See* A. 131.)

All seven members of the Board attended the April 11 meeting. (A. 130.) Section 17 of the Board's Bylaws govern the procedure for reconsideration of prior votes. (A. 51-52.) Section 17 provides, "[w]hen a vote is passed, it is in order for

any member who voted on the prevailing side to move reconsideration thereof at the same meeting, or at the next succeeding meeting." (A. 51.)

During the April 11 meeting, without first moving to reconsider or schedule a new public hearing, Member White, who was not in attendance during March 28 meeting, moved to approve the boundary line issue and the site plan in the same motion. (A. 131.) Member Wells again voted against the measure, and Vice-Chair Bensley, who previously abstained, also voted against the measure. (A. 131.) But Members White and Bellantone, who were not present for the March 28 meeting, voted in favor of the motion. (A. 131.) The final vote was 5-2. (A. 131.) The Board proceeded to vote on each standard of the site plan portion of the Application. (A. 131.) Mr. Newson timely appealed to the Superior Court pursuant to Rule 80B of the Maine Rules of Civil Procedure. (A. 18.) The Superior Court (York County, *Mulhern, J.*) affirmed the Board's decision and this appeal timely followed. (A. 5.)

STATEMENT OF ISSUES

1. Whether the Town of Kittery Planning Board's reversal of its March 28, 2024 denial of the Application, without adhering to the procedural requirements of its own Bylaws, constitutes an abuse of discretion and error of law.

2. Whether the Board's failure to notify Mr. Newson that it would reconsider the Application at its April 11, 2024 meeting and the Board's failure to consider Mr. Newson's written public comment deprived Mr. Newson of his procedural due process rights.

ARGUMENT

The Kittery Planning Board has adopted a provision in its Bylaws that governs the procedure the Board must follow to reconsider a prior vote. By its plain language, this provision applies to any vote the Board undertakes, regardless of whether the measure being voted on succeeded or failed and regardless of whether the vote was procedural or substantive. This plain language reading of the provision is buttressed by policy concerns regarding the finality of decision-making and the prevention of successive re-votes on the same issue without procedural safeguards. The Bylaws should have applied to the Board's re-vote of the Application during the Board's April 11, 2024 meeting. The Board, however, did not adhere to the Bylaws. This constitutes an abuse of discretion and reversible error of law.

Additionally, the Board's failure to notify Mr. Newson that it intended to re-vote the Application on April 11, and its failure to consider Mr. Newson's written public comment on April 11, violated Mr. Newson's procedural due process rights to be heard in opposition to the Application, constituting additional reversible abuses of discretion and errors of law. Accordingly, Mr. Newson respectfully requests that this Court reverse the April 11, 2024 decision of the Town of Kittery Planning Board.

I. Standard of Review.

When the Superior Court acts in an intermediate appellate capacity to

adjudicate an appeal from a municipal board decision, this Court reviews the operative decision of the municipality directly. *Hill v. Town of Wells*, 2021 ME 38, ¶ 8, 254 A.3d 1161.

The interpretation of an ordinance is a question of law that this Court reviews de novo, with no deference to the local board's interpretation. *Tominsky v. Town of Ogunquit*, 2023 ME 30, ¶ 22, 294 A.3d 142; *Portland Reg'l Chamber of Com. v. City of Portland*, 2021 ME 34, ¶ 23, 253 A.3d 586. This Court interprets municipal ordinances in the same manner as statutes. *See Olson v. Town of Yarmouth*, 2018 ME 27, ¶ 16, 179 A.3d 920. Thus, this Court construes the terms of an ordinance "reasonably, considering its purposes and structure and to avoid absurd or illogical results," *id.* at ¶ 11 (quotations and citation omitted), and gives any undefined terms "their common and generally accepted meaning unless the context clearly indicates otherwise." *Lakeside at Pleasant Mountain Condo. Ass'n v. Town of Bridgton*, 2009 ME 64, ¶ 12, 974 A.2d 893. As with construing statutes, the Court's task is to "discern the intent of the legislative bodies that enact them." *Rockland Plaza Realty Corp. v. City of Rockland*, 2001 ME 81, ¶ 18, 772 A.2d 256.

II. The Board's Reversal of Its March 28, 2024 Vote Violated Its Bylaws and Constitutes an Abuse of Discretion and Reversable Error of Law.

Municipal boards and agencies are entitled to adopt procedural rules, and those rules should be treated with deference upon judicial review. *S. Portland Assocs. v. City of S. Portland*, 550 A.2d 363, 365 (Me. 1988). When a board's failure

to adhere to its own rules results in procedural unfairness, its decision must be vacated. *Lane Constr. Corp. v. Town of Washington*, 2008 ME 45, ¶ 32, 942 A.2d 1202.

In evaluating the propriety of a board's actions, courts first examine whether procedural rules exist and whether the board has adhered to them. *See Jackson v. Town of Kennebunk*, 530 A.2d 717, 718 (Me. 1987) (in ruling on the plaintiffs' appeal, first noting that "[t]he Board had no standing rules on the subject"); *Town of Wiscasset v. Bd. of Env't Prot.*, 471 A.2d 1045, 1048 (Me. 1984) ("the question then becomes solely whether anything in the preexisting rules of the Board or otherwise in controlling law prohibited or was inconsistent with the Board's proceeding" and noting that the board had no standing rules); *Jadd, LLC v. The Inhabitants of the Town of Old Orchard Beach*, No. AP-09-024, 2010 WL 3218038, at *1 (Me. Super. Ct. Apr. 14, 2010) ("[t]he parties agree that the town has no written procedure concerning requests for reconsideration of administrative decisions").

Here, the Board has adopted Section 17 of its Bylaws, which governs the reconsideration of votes. (A. 51-52.) Section 17 should have applied to the Board's actions on April 11. The Board did not, however, adhere to Section 17 when it reconsidered the Application. (*See* A. 131.)

A. Section 17 of the Bylaws Governs the Board's Reconsideration of its March 28 Vote.

Planning boards have the inherent authority to reconsider votes and to adopt

procedural rules governing the same. *Jackson*, 530 A.2d at 717-18. Here, the Board adopted Section 17 of the Bylaws which governs reconsiderations of prior votes. Section 17 provides in its entirety:

> When a vote is passed, it is in order for any member who voted on the prevailing side to move reconsideration thereof at the same meeting, or at the next succeeding meeting. When a motion of reconsideration is made and seconded, the subsequent vote is final.

(A. 51-52.) The Board's March 28 vote on the motion to approve a boundary line extension was a "vote" within the plain meaning of Section 17. The March 28 motion failed, and thus, the "prevailing side" was comprised of those who opposed the motion. Accordingly, to reconsider the motion, the Board was required to approve a motion to reconsider pursuant to Section 17, and only a member who voted against the motion could move for such reconsideration.

The plain language of Section 17 of the Bylaws establishes that it applies to any "vote," regardless of the vote's outcome or type. *See Desfosses v. City of Saco*, 2015 ME 151, ¶ 8, 128 A.3d 648 ("We first evaluate the plain language of the [town's] ordinance provisions in light of the entire [ordinance] scheme . . . [and i]f the meaning of the statute or ordinance is clear, we need not look beyond the words themselves to interpret the provision according to that plain meaning" (quotations and citations omitted)). *See also Stiff v. Town of Belgrade*, 2024 ME 68, ¶ 12, 322 A.3d 1167 (this Court "give[s] any undefined terms in an ordinance their common and generally accepted meaning unless the context clearly indicates otherwise"

(quotations and citations omitted)); *Olson*, 2018 ME 27, ¶ 16, 179 A.3d 920 (this Court "first determine[s] if the language of the ordinance is plain and unambiguous").

In the context of Bylaws Section 17, the plain meaning of the noun 'vote' means an "expression of opinion or will in response to a propos[al]," or the "act or process of voting." *Vote*, *Merriam-Webster Dictionary*, https://www.merriam-webster.com/dictionary/vote. Nothing in Bylaws Section 17 limits the scope of the term "vote," other than the phrase "is passed." The ordinary usage of the term "passed" encompasses a variety of meanings, ranging from an outcome being reached to an event occurring or taking place. *See Pass*, *Merriam-Webster Dictionary*, https://www.merriam-webster.com/dictionary/pass. The surrounding language in Section 17 makes clear that the term "passed" is intended convey a broad meaning: that a vote occurred or that an outcome was reached.

Section 17 states that only a member of "the prevailing side" may move for reconsideration; the provision does not specify that only a member who voted 'for' a measure that 'succeeded' may move to reconsider. Rather, by stating "prevailing side," the text makes clear that the reconsideration provision applies equally to a vote on a measure that failed as to a vote on a measure that succeeded. *See Lakeside at Pleasant Mountain Condo. Ass'n*, 2009 ME 64, ¶ 12, 974 A.2d 893 (provisions must be construed in "context"). Where a measure fails to succeed, its opponents

necessarily have "prevail[ed]." *See Prevail*, *Black's Law Dictionary* (12th ed. 2024) (prevail means "[t]o obtain the relief sought . . ."). Thus, in the context of Bylaws Section 17, the word "passed" indicates only that a vote has occurred, regardless of the outcome.

Further demonstrating the broad scope of Section 17, neither the Town Code nor the Bylaws state that Section 17's reconsideration procedures apply only to a vote on a specific type of issue, such as a substantive, non-procedural matter under Town Code Section 16.2.2(B)(2), which requires affirmative votes of four or more members.[1] Rather, because Section 17 uses the term "vote," instead of "decision" (as used in Section 16.2.2(B)(2)), "motion," "motion to approve," or similar, specific language, this demonstrates its broad applicability. Thus, Section 17 applies equally to a procedural decision that does not require four like votes, as it does to a substantive decision garnering four like votes. For similar reasons, Section 17 also applies to a vote on a substantive matter that failed to receive four like votes. Accordingly, as Section 17's plain language reads, the procedures of Section 17 apply to all votes of the Board, whether or not a measure garnered the "four like votes" necessary to constitute a substantive "decision" of the Board under Town Code Section 16.2.2(B)(2).

[1] Conversely, Town Code Section 16.2.2(B)(2)'s mandate of four votes has narrower application to only substantive, non-procedural decisions and ensures that such decisions are made by a majority of the entire Board, rather than just a majority of a quorum.

A substantive "decision" under Town Code Section 16.2.2(B)(2) is merely one possible outcome of a "vote." The term "vote" in Bylaws Section 17 is broader than the term "decision" in Town Code Section 16.2.2(B)(2). "[W]hen a legislature [or town board] uses different words within the same statute [or ordinance], it intends for the words to carry different meanings." *Fair Elections Portland, Inc. v. City of Portland*, 2021 ME 32, ¶ 29, 252 A.3d 504. *See* 2A Norman J. Singer & Shambie Singer, Statutes & Statutory Construction § 46:6 at 261 (7th ed. 2014) ("Different words used in the same, or a similar, statute are assigned different meanings whenever possible"). Accordingly, if the Board had intended "vote" and "decision" to hold the same meaning, "it would have said so" and would have "used the same term." *Doherty v. Merck & Co*., 2017 ME 19, ¶ 19, 154 A.3d 1202. *See Arsenault v. Sec'y of State*, 2006 ME 111, ¶ 17, 905 A.2d 285 ("If the Legislature had intended [a requirement], it knew how to say so directly as it did in [a comparable section]"). The "contrast" between the terms "suggests an intentional distinction." *Aydelott v. City of Portland*, 2010 ME 25, ¶ 12, 990 A.2d 1024. Thus, applying ordinary principles of a statutory construction, the term "vote" necessarily should be interpreted differently and more broadly than the term "decision."

Moreover, the consequences of interpreting Section 17 as applying only to specific outcomes or types of votes would render an unreasonable and illogical result, which this Court avoids. *See, e.g., Olson*, 2018 ME 27, ¶ 11, 179 A.3d 920.

Because Section 17 applies to any "vote" of the Board, the provision promotes finality in the Board's decision-making by preventing the Board from undertaking endless successive re-votes on an issue until a desired outcome is achieved. Otherwise, votes on substantive decisions that fail by margins of 3-3, 3-2, or 3-1 would never be final or subject to basic procedural protections. Rather, the Board could endlessly revote failed questions before it. This would allow an applicant or movant never-ending bites at the apple and prevent finality on any issue until the application or motion is approved, all without having to provide notice or explanation to interested parties, both of which the case law requires.

Any such interpretation would so undermine the procedural due process protections that Section 17 is intended to afford that it is not credible. *See Dickau v. Vermont Mut. Ins. Co.*, 2014 ME 158, ¶¶ 20-22, 107 A.3d 621 ("courts are guided by a host of principles intended to assist in determining the meaning and intent of a provision even within the confines of a plain language analysis . . . [and] giv[e] due weight to design, structure, and purpose as well as to aggregate language" (quotations and citations omitted)); *Doe v. Reg'l Sch. Unit 26*, 2014 ME 11, ¶ 15, 86 A.3d 600 ("When one construction would lead to a result that is inimical to the public interest, and a different construction would avoid that result, the latter construction is to be favored unless the terms of the statute absolutely forbid it").

Here, the vote at issue was the Board's March 28 motion to approve a

boundary line extension of the C-3 zone. Although Town Code Section 16.2.2(B)(2) applied and required four votes in the affirmative for the motion to succeed, a vote nevertheless occurred, and an outcome was reached—the motion failed. Because Section 17 applies by its plain language to any vote of the Board, it applies to the Board's March 28 vote, regardless of Section 16.2.2(B)(2)'s requirement of four affirmative votes for passages. For purposes of reconsideration under Section 17, the "prevailing side" of the March 28 vote was those who voted to deny the motion, and the only member on the prevailing side was Member Wells (with Vice-Chair Bensley abstaining). (A. 101.)

B. <u>The Board Did Not Adhere to Section 17</u>.

Pursuant to Section 17, at the April 11 meeting, the only member who could have moved to reconsider the March 28 vote was Member Wells. That is not, however, what occurred. In fact, no motion to reconsider was made by any member of the Board. (*See* A. 131.) Notably, the Applicant did not even request reconsideration. (*See* A. 131.) Rather, Member White, who was not at the March 28 meeting, much less on the "prevailing side" of the March 28 vote, moved to approve the boundary line extension and the site plan simultaneously. (A. 131.) The Board voted 5-2 to approve the extension and site plan, with Vice-Chair Bensley and Member Wells voting against. (A. 131.)

Procedural rules exist to prevent arbitrary and capricious decision making.

Here, Section 17 exists to prevent exactly what unfortunately occurred—an outright reversal of a prior decision without adhering to procedural safeguards. Accordingly, because the Board's process on April 11 did not comport with Section 17, it was fatally defective, and resulted in the kind of fundamental procedural unfairness which necessitates reversal. *See Lane Constr. Corp.,* 2008 ME 45, ¶ 32, 942 A.2d 1202 ("[t]his Court will vacate 'an agency's action if it results in procedural unfairness'" (citation omitted)).

III. The Board Violated Basic Procedural Due Process Protections by Failing To Notify Mr. Newson that It Would Reconsider the Application and by Failing To Consider Mr. Newson's Public Comment.

In addition to the Board's fundamental procedural errors under its own Bylaws, the Board denied Mr. Newson's right, as an abutter, to be heard in opposition to the Application when it did not notice him that it was reopening consideration of the Application, did not explain its basis for doing so, and did not include his March 27 Letter in the April 11 meeting materials. *See Duffy v. Town of Berwick*, 2013 ME 105, ¶ 18, 82 A.3d 148 ("members of the public who oppose a project" are entitled to be heard); *Lane Constr. Corp.*, 2008 ME 45, ¶¶ 28–29, 942 A.2d 1202 (same).

In *Town of Wiscasset v. Board of Environmental Protection*, the Board of Environmental Protection approved a request for reconsideration and made findings of fact documenting its basis for the reconsideration. 471 A.2d at 1046. It then set

a new public hearing on the pending application, gave explicit notice to the applicant explaining that the applicant retained the burden of proof, and conducted a full hearing on the renewed application. *Id*. at 1047-48. On appeal, the Law Court held that the applicant had no basis to object to the board's actions because the board had fully informed the applicant of the procedure it intended to employ. *Id*. at 1049.

Similarly, in *Jackson v. Town of Kennebunk*, after the planning board's initial motion failed by a tie vote, the board reconsidered its disapproval and its procedure was held appropriate because it had no standing rules on the subject and all opponents were given an opportunity to comment on, and object to, the revised plan. 530 A.2d at 717-18. *See also Jadd, LLC*, 2010 WL 3218038, at *1 (holding that reconsideration was proper, in part, because all parties were able to attend and be heard during the relevant hearings).

Here, unlike in *Town of Wiscasset*, *Jackson*, and *Jadd, LLC*, the Board failed to provide notice to Mr. Newson that it was reopening its consideration of the Application. Presumably, no notice was sent because the March 28 denial should have ended consideration of the Application (absent the Bylaws' reconsideration process, which did not occur) and no further action or hearing on the Application

was appropriate on April 11.[2]

Moreover, also unlike the proper procedure followed in *Town of Wiscasset*, where the board made specific findings explaining why it reconsidered its prior vote, here, the Board never explained the basis for its reconsideration of the Application. (*See* A. 131.) Presumably, one reason Section 17 mandates a vote on the motion to reconsider is to compel the Board to explain its rationale for reconsidering a prior vote and to make a record of the same. Here, the lack of rationale, let alone a record of explanation, is further indication that the Board did not adhere to the necessary procedural safeguards. *Lane v. Town of Millinocket*, No. AP-01-35, 2002 WL 2014977, at *6 (Me. Super. Ct. May 20, 2002) (holding that "[t]he fact that the Board's decision after reconsideration failed to include its rationale for reversing its position supports the argument that the rule allows for arbitrary decision-making.")

Finally, even if, on April 11, the Board had properly reconsidered its prior denial, it still should have set and noticed a full public hearing on the renewed application, as the Environmental Protection Board did in *Town of Wiscasset*.

Compounding these procedural errors, Board did not include or consider Mr.

[2] Further, to the extent the Board's actions during the April 11 meeting constituted a reopening of the public hearing on the Application, the Board also failed to comply with Town Code Section 16.7.10(C)(2)(c)[1], which requires the Town Planner to "cause written notice of such public hearing to be sent by postage paid, first-class mail . . . to all owners of abutting property, as defined herein (within 150 feet of the property) . . . ." (A. 34.)

Newson's March 27 Letter during the April 11 meeting.[3] (*See generally* A. 106-33.) The March 27 Letter offered comment on the traffic component of the site plan portion of the Application. (A. 136-37.) The Board clearly was aware of the March 27 Letter because it was included with the March 28 meeting materials. (A. 136-37.) When the Board improperly moved to approve the Application on April 11, however, the March 27 Letter had not been included in that meeting's packet of material.[4] (*See generally* A. 136-37.)

For these reasons, the Board failed to provide basic procedural protections to Mr. Newson and other interested members of the public when it reconsidered its March 28 vote to deny the boundary line adjustment. This denial of Mr. Newson's right to notice and to submit public comment violates the basic tenet of the right to be heard during a public proceeding, and is further evidence of the kind of fundamental unfairness necessitating that the Board's April 11 decision be vacated.

[3] Town Planning staff, however, improperly questioned the Letter's relevance via an email to the Board before the March 28 meeting (A. 134), further compounding the procedural mistakes and unfairness in its consideration of the Application. *See White v. Town of Hollis*, 589 A.2d 46, 48 (Me. 1991) (holding, plaintiff was denied a fundamentally fair hearing, in part, because the Board received *ex parte* information about the project).

[4] The Board did, however, include a different objector's letter in the April 11 meeting packet. (A. 822.) Town Planning staff also improperly advised the Board of its view of this objection via email before the April 11 meeting. (A. 138.)

CONCLUSION

For all the foregoing reasons, Plaintiff / Appellant David Newson respectfully requests this Court reverse the April 11, 2024 decision of the Town of Kittery Planning Board.

Dated: January 15, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Zachary B. Brandwein, hereby certify that on this 15th day of January, 2024, I served two copies of the foregoing Plaintiff / Appellant David Newson's Brief on Defendant / Appellee Town of Kittery and Party-in-Interest IDC 5, LLC below by electronic mail and first class mail, postage-prepaid:

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