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

---

**Docket No. Han-25-34**

---

**TOWN OF TREMONT**

**v.**

**ROBERT COUSINS AND JUDY COUSINS**

---

**ON APPEAL**
**FROM ELLSWORTH DISTRICT COURT, HANCOCK COUNTY**

---

# BRIEF OF APPELLANTS ROBERT COUSINS AND JUDY COUSINS

---

Andrew K. Lizotte, ME Bar # 005693
Dover-Foxcroft, ME 04426
(617) 899-1318
aklizott@gmail.com

Counsel for Appellants
Robert Cousins and Judy Cousins

Filed October 24, 2025

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### MAINE STATE CASES

**MAINE STATE STATUTES**

**MAINE STATE CONSTITUTION**



**MAINE RULES OF APPELLATE PROCEDURE**



**OTHER AUTHORITIES**

# I. STATEMENT OF FACTS

This appeal arises from a land use complaint filed by the Town of Tremont (the "Town") against Robert and Judy Cousins (the "Cousinses"), alleging that the Cousinses' property located at 45 Harbor Drive in Tremont (the "Property") constituted an illegal, unpermitted nuisance and "junkyard." *See* 30-A M.R.S.A. §§ 3752(4), 3753, 3754-A, 3758-A; M.R. CIV. P. 80K. Following a single-day bench trial held via Zoom in Ellsworth District Court, Judgment entered (Stewart, J.) in favor of the Town on its Counts I (the "junkyard" claim) and II (the nuisance claim). *See* App. at 7, 10-18.[1] The trial court imposed $231,100 in monetary civil penalties ($100 multiplied by 2,311 days of "junkyard" violations), in addition to ordering abatement and a permanent injunction. *Id.* at 16-18.

## A. The Town Files a Land Use Complaint Alleging the Cousinses Operate a Junkyard on Their Property

The Town's land use complaint brought pursuant to Maine Rule of Civil Procedure 80K ("80K Complaint") was docketed in the District Court in Ellsworth on May 15, 2019. App. at 2; *see also id.* at 55-132 (80K Complaint and exhibits). As relevant to this appeal,[2] the Town alleged that

[1] All citations herein are to the Appendix ("App."), filed with Appellant's Brief. M. R. APP. P. 8(a)-(b).

[2] The Town further alleged violations of its local ordinances arising from the construction of a driveway without proper permitting and the existence of a tow-behind vehicle camper and a bus as a campsite residence. App. at 60, 64-66 (Counts III through V). The trial court found that the

the Cousinses were "currently operating an illegal junkyard," in violation of 30-A M.R.S.A. § 3751 *et seq*. and 17 M.R.S.A. §§ 2701, 2802. *Id.* at 60. The Town sought "an Order enjoining [the] unlicensed and unpermitted operation of [the] junkyard" as well as "penalties and fees as authorized by 30-A M.R.S.A. § 4452." *Id.* at 60-61. The underlying August 9, 2018, notice of violations appended to the 80K Complaint warned:

> Unless these violations are corrected . . . I will refer this matter to the municipal officers for possible commencement of legal action in the Maine District Court or the Maine Superior Court. If the Town is the prevailing party in enforcement litigation, you may be liable for the Town's attorney fees and costs plus civil penalties. Fines of up to $2,500 per violation per day may be imposed.

*Id.* at 81. In later correspondence sent to the Cousinses, however, the Town stated that "due to the location and size of [their] lot, [the Cousinses] would not be able to meet the requirements for a permit." *Id.* at 78.

The 80K Complaint nonetheless alleged that "[a] permit [was] required to operate a junkyard . . . in the residential-business zoning district" where the Cousinses' Property was located. App. at 62; *see generally* 30-A M.R.S.A. § 3753. The Cousinses did not have such a permit. App. at 62. The Town issued a notice of violation in August 2018, as

---

Town had failed to meet its burden in proving these road opening and campsite violations, so Judgment in favor of the Cousinses entered on Counts III through V. *Id.* at 14-16, 18.

referenced, and in January 2019. *Id.*; *see also id.* at 77-81 (violation notices).

In Count I of the 80K Complaint, the Town cited 30-A M.R.S.A. § 3753, providing "that no person may establish, operate or maintain a junkyard . . . without first obtaining a non-transferable permit from the municipal officers," and again alleged that no permit had been obtained. App. at 62-63. Certain "worn out or discarded items, trash, junk, and miscellaneous debris, and at least three unregistered vehicles" on the Property allegedly constituted the Cousinses' "maintenance and operation of a junkyard . . . without a permit as required by 30-A M.R.S.A. § 3753 [] in violation of [the] statute." *Id.* at 63. Section 3758-A was cited by the Town, providing that "violations of this subchapter are subject to the penalty provision of § 4452," with "[e]ach day that the violation continues constitut[ing] a separate offense." *Id.* The Town asserted the Cousinses "should be penalized separately for each day the violations have existed on the Property," by reference to the minimum $100 per day penalty applicable under 30-A M.R.S.A. § 4452(3). *Id.*; *see also id.* at 66.

In Count II of the 80K Complaint, the Town cited 17 M.R.S.A. §§ 2701 and 2802 for its position that "[m]aintenance of the junkyard . . . on the Property constitute[d] a public nuisance." App. at 63. The Town

contended that the "refusal to abate the nuisance entitle[d] [it] to the remedies set forth in 30-A M.R.S.A. § 3758-A(4), including an order to enter the Property to take corrective action to abate the nuisance and recover costs, fees, and expenses from the Defendants." *Id.* at 63-64. Unlike Count I, no nuisance-based civil penalties were sought pursuant to 30-A M.R.S.A. § 3758-A(3) and 30-A M.R.S.A. § 4452(3). *Id.*; *see also id.* at 66.

The 80K Complaint made no reference to the Property having any connection to a viable business, being used to engage in business, having any sort of business purpose, or being used in a manner providing any economic benefit to the Cousinses. App. at 60-67.

### B. The Cousinses Unsuccessfully Request a Jury Trial

The District Court held a preliminary hearing on the 80K Complaint on May 20, 2019, which the Cousinses traveled from their home in Alaska to attend. App. at 134.[3] The Cousinses—proceeding *pro se*, as they did for the entirety of the proceedings below—denied the Town's allegations, and requested "a jury trial on the facts." *Id.* For the remainder of 2019, the Cousinses reasserted their request for a trial by jury. Following their verbal request at the preliminary hearing, they filed and litigated a request for a jury trial with the Superior Court, which the Town opposed. App. at 137-

[3] Because of their travels, the Cousinses requested that a trial be scheduled within two weeks, a request the Court denied. *Id.* at 135.

189. On November 13, 2019, the Honorable Robert Murray of the Superior Court issued an Order on Plaintiff's Motion to Specify Conduct of Trial, denying the Cousinses' request for a jury trial by reference to *Avery v. Whatley*, 670 A.2d 922, 924-925 (Me. 1996) and *Town of Falmouth v. Long*, 578 A.2d 1168, 1171-1172 (Me. 1990). *Id.* at 190-92. "[R]eview of the Town['s] complaint and the briefs submitted by the parties," Justice Murray wrote," made it "apparent that the gravamen of the Town's complaint [was] a claim for injunctive relief," such that the Town's requests for civil penalties were "best understood as ancillary claims [which did] not trigger the right to a jury trial." *Id.* at 192.

The Cousinses sought reconsideration of the Order denying their request for a jury trial (App. at 193-200), which the Town opposed (*id.* at 201-204). Their reconsideration motion was denied on January 29, 2020.[4] The Cousinses renewed their jury trial request by filing a motion for an evidentiary hearing on January 11, 2021. *Id.* at 290-307. That request, according to the docket record, was found to be moot on January 25, 2021. *Id.* at 5.

[4] In January and February 2020, the parties relatedly litigated a Special Motion to Dismiss filed by the Cousinses. *See* App. at 205-267 (Special Motion to Dismiss), 270-274 (Town's Opposition).

### C. A Bench Trial Results in Judgment Entering for the Town on its Junkyard (Count I) and Nuisance (Count II) Claims

More than three years passed without any discernable progress in the matter. *See* App. at 5 (January 25, 2021 docket entry; next docket entry April 9, 2024). In April 2024, the Honorable Harold Stewart of the Superior Court was assigned to preside over the bench trial on the 80K Complaint. *Id.* at 5-6. The bench trial proceeded via Zoom on December 6, 2024. *Id.* at 6, 20, 49.

#### 1. The bench trial is held on December 6, 2024

In its case in chief, the Town called a single witness, its code enforcement officer (the "Town CEO"). App. at 22. The Town CEO confirmed that the Property did not have a junkyard permit, and that he issued a notice of violations to the Cousinses. *Id.* at 22, 24. The Town, through the testimony of the Town CEO, admitted into evidence various photographs showing the Property strewn with abandoned and discarded goods and materials. *Id.* at 25-33. On cross-examination, by way of explanation, the Town CEO testified that "[t]here was a building there [on the Property] called Nemo's Restaurant (phonetic) and it burned." *Id.* at 34. The Town CEO explained that, subsequently, the Cousinses "got a permit to pour a slab and rebuild the former restaurant," however, when "a former code officer inspected the slab, they issued a stop work order because it encroached on the setback from the road." *Id.* All of the "equipment had been

exposed to the elements for a minimum of two years at this point in 2019," and was "the same material that [was] there[] in 2024." *Id.* at 35.

After the Town rested, Mr. Cousins testified. He asserted that:

> Number one, we're not a junkyard. We're a construction site. If it – if these things deteriorated over the last ten years, it was because of the stop work order. I couldn't do anything. Stop work. She [the former Town CEO] told me I would be arrested if I did anything. So what could I do? I had to leave it – and oh – and She [the current Town CEO] required us to remove 11,000 bricks that we took six months getting there – not six months, but in three months getting there. We hand trucked them from the site and dropped them off where they're going. This is a construction site. And it – if it's junked out, if it's deteriorated materials, it was on them, not us. We were building when they stopped us. We were being constructive. . . .

App. at 41. The trial court informed Mr. Cousins that it was "going to accept that factually," that the Cousinses "were no longer allowed to proceed with the construction at this point in time." *Id.* at 42; *see also id.* at 43-44. Mr. Cousins reiterated that "as far as this case is concerned, we requested a jury trial, which I believe we have a right to." *Id.* at 43. He concluded by testifying, "[i]t wasn't junkyard," but rather, "a construction site." *Id.* Ms. Cousins testified similarly. *Id.* at 44-51.[5]

Prior to ruling, the trial court summarized the issues as involving the question, "is this a junkyard or is it not a junkyard." App. at 46. The trial court

[5] The Cousinses maintain that no basis existed for the "stop work order," and further, that they did explore resolution of the alleged issues on the Property by way of a consent agreement with the Town. *See* App. at 45. The parties' negotiations of the consent decree, however, did not produce a settlement, due to their persistent disagreements.

indicated it would "be making that assessment, not just on the testimony, but in large parts, looking at the photographs that have been submitted." *Id.* at 48.

### 2. The trial court issues its Order and Findings of Fact in the Town's favor on December 11, 2024

On December 11, 2024, the trial court issued an Order and Findings of Fact, entering Judgment[6] in favor of the Town on Count I (the "Junkyard" claim) and Count II (the Nuisance claim). *See* App. at 7, 10-18.

The trial court observed that the Property had previously been the site of a restaurant, which had burned down a number of years before notices of violation alleging land use violations issued. *Id.* at 11. The Cousinses began rebuilding the structure after the fire, however, stopped construction after the Town issued a "stop work order." *Id.*

Nevertheless, the Town issued—and the Cousinses received—a notice of violations pursuant to 30-A M.R.S.A. § 3752(4), for a "Junkyard." App. at 11, 12. The trial court noted that "[p]er 30-A, M.R.S.A. § 3753, a permit is required to establish, operate, or maintain a junkyard." *Id.* at 12. "Located upon the Property," as highlighted by the trial court

> are stacks of used bricks, piles of old and discolored lumber, old lawn furniture, numerous pieces of scrap metal, an old freezer, remains of wooden fencing, discolored buoys of various sizes; a large metal cylinder marked "For sale," an old unregistered snowmobile, a metal canopy frame, garbage cans, used

[6] The Order and Findings of Fact were ordered at the direction of the trial court to be incorporated by reference as the Judgment in the case. *See* App. at 7; M.R. CIV. P. 79(a).

> commercial cooking equipment, numerous rubber tires, stacks of old metal lobster traps, two old unregistered trailers, two old boats, and a tow behind trailer. . . Vegetation is growing over most of the items. . . . [a] maroon construction truck and black bus remain on the property to date.

*Id.* at 12-13. This "current condition of the Property constitute[d] a junkyard pursuant to 30-A M.R.S.A. § 3752(4)," according to the trial court, because "the items located on the Property render[ed] the Property a junkyard as defined by the statute." *Id.* at 13. Because the Cousinses did "not possess a permit from the municipal officers to operate a junkyard at the Property," the trial court found "the Property [to be] in violation of 30-A M.R.S.A. § 3753." *Id.* at 14. Similarly, the trial court found that the "current condition of the Property also constitute[d] a nuisance pursuant to 17 M.R.S.A. § 2701 and § 2802." *Id.*; *see also id.* at 16 ("the Cousins have allowed a junkyard as defined by 30-A, M.R.S.A. § 3752(4) to exist on the Property since the issuance of the Notice of Violation, and [] no permit has been issued for such activity. . . in violation of 30-A, M.R.S.A § 3753").

The trial court found—erroneously[7]—that 2,311 days had passed between the December 2024 bench trial and August 2018 notice of violations. App. at 16. Applying the rule that "each day that a violation . . .

[7] The Cousinses maintain that they were first served with the notice of violation on September 27, 2018 (rather than August 9, 2018). *See* App. at 24, 37-38, 42, 44, 153, 160. By their calculation, 2,262 violation days would have accrued (September 27, 2018 through December 6, 2024) rather than the 2,311 found by the trial court (August 9, 2018 through December 6, 2024).

occurs constitutes a separate offense," the trial court determined that the Cousinses had "committed 2,311 separate violations of the junkyard statute and the Town Zoning Ordinance."[8] *Id.* The trial court ordered that "the minimum penalty, $100, be assessed for each violation." *Id.* at 17. This resulted in a "monetary civil penalty of $231,100.00 ($100 for each violation day)" being assessed against the Cousinses. *Id.* at 18. The trial court further ordered the Cousinses to abate all items "on the Property which constitute[d] an unpermitted junkyard," and "permanently enjoined [them] against operating or maintaining an unpermitted junkyard or automobile graveyard[9] on the Property." *Id.* at 17.

* * * * *

As with the Town's 80K Complaint, no evidence was referenced or considered during the bench trial or in the trial court's Order and Findings of Fact concerning the Property having any connection to a viable business, being used to engage in business or having a business purpose, or providing an economic benefit to the Cousinses. App. at 10-54; *see also id.* at 60-67.

[8] The trial court's reference to the Town Zoning Ordinance was apparent error. Counts I and II of the 80K Complaint make no reference to any Town Zoning Ordinance. App. at 62-63. The only "Ordinance Violations" pursued by the Town were Counts III, IV, and V. Compare *id.* at 64-66 (80K Complaint), *with id.* at 14-16, 18 (granting Judgment to the Cousinses on Counts III, IV, and V).

[9] The trial court's reference to an automobile graveyard was obviously made in error, as well, given that the "Town confirmed at trial it was not pursuing an automobile graveyard violation." *Id.* at 13 n.1.

This appeal followed. App. at 8 (Notice of Appeal filed, after grant of extension, on January 22, 2025).

## II. STATEMENT OF ISSUES

The first issue presented on this appeal concerns the proper interpretation and application of the "Junkyard" economic regulation, 30-A M.R.S.A. §§ 3751 through 3758-A. The second issue concerns whether article I, section 20 of the Maine Constitution guaranteed to the Cousinses the right to a jury trial.

## III. SUMMARY OF ARGUMENT

The statutory scheme of 30-A M.R.S.A. § 3751 *et seq*. is one of economic regulation. The statute concerns businesses actively engaged in some manner of operations. Qualifying "Junkyards" may not be established, operated or maintained without a permit, for example, and are further subject to operating requirements. By contrast, the Property at issue here—an aborted construction site—provided no basis for the underlying 30-A M.R.S.A. §§ 3758-A and 4452 enforcement and civil penalty action to proceed. The trial court therefore erred in granting Judgment to the Town.

The trial court additionally erred by sitting as the finder of fact. It instead should have granted a jury trial, as the Cousinses repeatedly requested. The $231,100 awarded to the Town was no mere incidental

remedy or secondary measure. The Cousinses thus should have received a jury trial under the Maine Constitution and the precedent of this Court. To the extent the Court's decisions might be read to preclude a jury trial, the Cousinses respectfully submit that compelling and sound justifications exist for the policy of *stare decisis* to yield under the circumstances of this case.

## IV. ARGUMENT

### A. Standard of Review

Questions of constitutional interpretation are reviewed de novo, *see Bouchard v. Dep't of Pub. Safety*, 2015 ME 50, ¶ 8, as are legal questions concerning the interpretation of a statute, *see State v. Aboda*, 2010 ME 125, ¶ 10. "As with any other appeal, on issues on which the plaintiff had the burden of proof, the clear error standard of review requires that, to overturn a finding that a plaintiff has failed to prove one or more elements of a claim, the plaintiff must demonstrate that a contrary finding is compelled by the evidence." *St. Louis v. Wilkinson Law Offices, P.C.*, 2012 ME 116, ¶ 16; *see also Wright v. Michaud*, 2008 ME 170, ¶ 6 (factual findings are reviewed for clear error and will not be disturbed on appeal unless no competent evidence in the record supports it).

### B. The Trial Court Misapplied the Statutory Definition of "Junkyard"

The trial court erred in focusing solely on the condition and contents of the Property. It failed to consider whether the Cousinses were engaged in some manner of operations there. They were not. As a result, an abandoned construction site was improperly treated as a "Junkyard," and made subject to impossible permitting and operating standards, despite the absence of any business to permit or operations to standardize.

#### 1. The economic regulatory scheme of 30-A M.R.S.A. § 3751 *et seq*. imposes permitting and operating requirements on businesses

The provisions found in Chapter 183, *see* 30-A M.R.S.A. §§ 3751-3981, cover "Economic Regulation." Section 3752(4) of Title 30-A defines a "Junkyard" to mean "a yard, field or other outside area used to store, dismantle or otherwise handle:

> A. Discarded, worn-out or junked plumbing, heating supplies, electronic or industrial equipment, household appliances or furniture;
>
> B. Discarded, scrap and junked lumber; and
>
> C. Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material.

*Id.* "A person may not establish, operate or maintain a[] . . . junkyard without first obtaining a nontransferable permit from the municipal

officers of the municipality in which the . . . junkyard is to be located. . .” 30-A M.R.S.A. § 3753; *see also id.* § 3756(1) (establishing junkyard permit fee).

The statutory scheme imposes limitations on junkyard permits. For example, all “junkyards permitted pursuant to section 3753” must comply with certain “operating standards.” *See* 30-A M.R.S.A. § 3754-A(5); *see also id.* § 3754-A(10) (“municipal officers . . . may issue a permit to an automobile graveyard or junkyard if that automobile graveyard or junkyard meets the operating standards set forth in subsection 5”). Owners of junkyards “must demonstrate at the time of licensing that the facility or facilities for which they seek permits are, or are part of, a viable business entity and the facility or facilities are actively engaged in the business of salvaging, recycling, dismantling, processing, repairing or rebuilding junk or vehicles for the purpose of sale or trade.” *Id.* § 3754-A(5)(D).

Violations of 30-A M.R.S.A. §§ 3751-3760 are enforceable by municipal authorities. *See* 30-A M.R.S.A. § 3758-A(1)-(2). Such “[v]iolations . . . are subject to the penalty provisions of section 4452,” with “[e]ach day that the violation continues constitute[ing] a separate offense.” 30-A M.R.S.A. § 3758-A(3). Section 4452 of Title 30-A “applies to the enforcement of land use laws and ordinances or rules that are administered

and enforced primarily at the local level," which includes "[l]aws pertaining to junkyards. . . and local ordinances regarding junkyards. . ." *Id.* § 4452(5)(J). Civil "monetary penalties may be assessed on a per-day basis," with the minimum "for a specific violation [being] $100" and a "maximum penalty [of] $5,000." *Id.* §§ 4452(3), (3)(B). Such civil penalties "shall be paid to the municipality." *Id.* § 4452(4).

Trial courts are "required by statute to impose a minimum penalty of $100 per day for each violation." *City of Lewiston v. Verrinder*, 2022 ME 29, ¶ 21 (citing 30-A M.R.S.A. § 4452(3)(B)); *see also Town of Orono v. LaPointe*, 1997 ME 185, ¶ 12 (citing *Dep't. of Envtl. Protection v. Emerson,* 616 A.2d 1268, 1272 (Me. 1992), for rule that, read together, "section 3758 and 4452(3)(B) mandate a minimum penalty of $100 for each day that [a] junkyard is operated without a permit" because courts are "without discretion to consider each day of unlicensed operation as anything other than a separate offense"). The provision contemplates situations in which "the economic benefit resulting from the violation exceeds the applicable penalties," providing that "the maximum civil penalties may be increased" to "an amount equal to twice the economic benefit resulting from the violation." *Id.* § 4452(3)(H) (such economic benefits may include "the costs avoided or enhanced value accrued at the

time of the violation as a result of the [] noncompliance"). The statute does not, however, provide for consideration as to whether the "economic benefit" was non-existent or *de minimis* and to decrease the minimum civil penalty on that basis. *Id.*

In addition to providing for civil penalties, violations of 30-A M.R.S.A. §§ 3751-3760 also empower municipalities to seek abatement. In such instances,"[t]o recover any actual and direct expenses incurred by the municipality in the abatement of the nuisance, the municipality may. . . [f]ile a civil action against the owner to recover the cost of abatement, including the expense of court costs and reasonable attorney's fees necessary to file and conduct the action." 30-A M.R.S.A. § 3758-A(4)(A).

### 2. The applicable rules of statutory interpretation establish that "Junkyards" must be used for some business purpose

Interpreting the "Junkyard" laws requires, in the first instance, an examination of "the plain meaning of the statute within the context of the whole statutory scheme to give effect to the Legislature's intent." *D.S. v. Spurwink Servs., Inc.*, 2013 ME 31, ¶¶ 16-17 (quoting *Baker v. Farrand*, 2011 ME 91, ¶ 21); *see also Pierce v. City of Bangor*, 105 Me. 413, 74 A. 1039, 1040 (Me. 1909) ("[t]he object of construing a statute is to ascertain the intent of the Legislature. . . . by an examination of the phraseology of

the statute itself, and by ascertaining the circumstances and conditions surrounding, and the subject-matter, object, and purpose of the enactment of the statute").[10] Terms must be afforded their "plain, common, and ordinary meaning, such as people of common intelligence would usually ascribe." *Dickau v. Vt. Mut. Ins. Co.*, 2014 ME 158, ¶ 22, 107 A.3d 621, 628 (citations and quotations omitted); *see generally* 1 M.R.S.A. § 72(3) (words must be construed "according to the common meaning of [their] language"). "All 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 Prof'ls Licensure*, 2006 ME 48, ¶ 11 (internal citations omitted).

Ascertaining and effectuating the intent of the Legislature here shows that "Junkyards" cannot be read to encompass locations like the Cousinses' Property. As an initial matter, the trial court failed to consider whether the Property was "used" by the Cousinses to "store, dismantle or otherwise

[10] The Cousinses acknowledge that various "junkyard" cases have come before the Court. Those cases, however, have not squarely addressed the definitional issues raised on the instant appeal. *See Town of Lebanon v. E. Lebanon Auto Sales LLC*, 2011 ME 78, ¶ 10 (case involving a separately incorporated LLC which operated an automobile graveyard and a junkyard without a permit); *E. Perry Iron & Metal Co. v. City of Portland*, 2008 ME 10, ¶ 8 (where parties stipulated that the defendant recycled scrap metal, placing the business within the definition of a "junkyard"); *Town of Mount Desert v. Smith*, 2000 ME 88, ¶ 6 (focusing on nature of the items, rather than the use of the property, as well as unconstitutional vagueness); *Town of Pownal v. Emerson*, 639 A.2d 619, 621 (Me. 1994) (arguing that "subjective intent of the landowner determines whether material is discarded and junk"; "unconstitutionally vague"; and definition of what constituted a "serviceable" motor vehicle).

handle" the materials enumerated in § 3752(4). "Use" means "[t]o employ for the accomplishment of a purpose." BLACK'S LAW DICTIONARY, 12th ed. 2024. Here, however, the trial court failed to engage in any analysis of whether the Property was actually employed to accomplish the purpose of storing, dismantling or otherwise handling the materials. The evidence was entirely to the contrary. The materials had instead persisted on the Property for close to a decade in a deteriorating, purposeless limbo. They were not being handled. They were not being dismantled. And they were not being "stored." *See* BLACK'S LAW DICTIONARY, 12th ed. 2024 ("store *vb*. (13c) To keep (goods, etc.) in safekeeping for future delivery in an unchanged condition"). Rather, the materials were stacked in and around the Property, with "[v]egetation [] growing over most of the items" (App. at 12), in an aged and perpetually aging condition. The scene at the Property was therefore one of haphazard entropy, rather than the "storage" of items or goods.

In addition to the absence of "use" necessary to trigger applicability of § 3752(4), an equally fundamental problem arises from the Property's decidedly non-business character. As discussed above, the "Junkyard" laws regulate economic activities. To "establish, operate or maintain" a junkyard, one needs a permit. 30-A M.R.S.A. § 3753. Yet, the issuance of a permit

requires that the "junkyard meet[] the operating standards set forth in [§ 3754-A(5)]." *Id.* § 3754-A(10). These "operating standards" include, *inter alia*, that

> Junkyard . . . owners must demonstrate at the time of licensing that the facility or facilities for which they seek permits *are, or are part of, a viable business entity* and the facility or facilities are *actively engaged in the business* of salvaging, recycling, dismantling, processing, repairing or rebuilding junk or vehicles *for the purpose of sale or trade*.

*Id.* § 3754-A(5)(D) (emphasis added).

The context of the whole statutory scheme thus demonstrates that the "use" animating § 3752(4) must be primarily or substantially a business or commercial use, rather than a personal or a private one. Establishing operational standards for a junkyard presupposes the existence of a business actively engaged in some manner of operations. A permit can only be obtained by an applicant demonstrating the existence of "a viable business entity . . . actively engaged in [] business . . . for the purpose of sale or trade." *Id.* § 3754-A(5)(D). Likewise, without such a commercial nexus, there would exist no operations to standardize.

For similar reasons, interpreting "use" to require a business or commercial purpose avoids absurd, illogical, or inconsistent results,[11] and

[11] *Kennebec Cnty. v. Me. Pub. Emp. Ret. Sys.*, 2014 ME 26, ¶ 20 (citations and quotations omitted); *see also Harrington v. State*, 2014 ME 88, ¶ 5 (same).

prevents the statutory language from being rendered superfluous.[12] The Legislature requires junkyard owners to obtain permits. 30-A M.R.S.A. § 3752. To get a permit, the junkyard owner must demonstrate that his or her facility is or is part of a "viable business entity . . . actively engaged in the business." For the Cousinses and other private parties like them, however, demonstrating such a business connection is impossible. Indeed, prior to initiating the underlying litigation, the Town acknowledged that the Cousinses "would not be able to meet the requirements for a permit," *see* App. at 78, before turning around and alleging that "[a] permit [was] required to operate a junkyard . . . in the residential-business zoning district" where their Property was located, *see id.* at 62. Under such circumstances, it is absurd to subject unpermitted junkyard owners to civil penalty and abatement proceedings when—as here—the business-based prerequisite for obtaining a permit is unattainable.

Finally, the Legislature specifically broadcast the economic purpose of the law from the outset.[13] The provisions found in Chapter 183 of Title 30-A cover "Economic Regulation." Section 3751, highlighting the

[12] *Labbe v. Nissen Corp.*, 404 A.2d 564, 567 (Me. 1979) ("Nothing in a statute may be treated as surplusage if a reasonable construction supplying meaning and force is otherwise possible.") (citing cases).

[13] *See, e.g.*, *Cote v. Georgia-Pacific Corp.*, 596 A.2d 1004, 1005 (Me. 1991), where statute unambiguously set forth on its face the Legislature's intention.

"Purpose" of the laws, states that "junkyards . . . are properly subject to regulation and control," citing the "[p]roper location *and operation* of these facilities. . ." *Id.* (emphasis added). In this provision alone, the term "these facilities" appears three times. *Id.* A "facility" is "something . . . that is put up for a particular purpose." *See Merriam-Webster.com Dictionary*, MERRIAM-WEBSTER, *available at* https://www.merriam-webster.com/dictionary/facility (last visited Oct. 23, 2025).

That the motivation of these laws was the economic regulation of businesses actually operating as junkyards is reinforced by the Legislature's 2003 amendments to § 3752(4). Importantly, the 2003 amendments removed the provision which had previously existed as § 3752(4)(D), defining a "Junkyard" to include "[g]arbage dumps, waste dumps, and sanitary fills." *See* L.D. 1367, "An Act To Amend the Laws Regarding Junkyards, Automobile Graveyards and Automobile Recycling Businesses," 121ST LEGIS. 2003, *available at* https://lldc.mainelegislature.org/Open/LDs/121/121-LD-1367.pdf.[14] The amendments were effected "for the purpose of improving the ability of municipalities to appropriately license junkyards" and to "establish[] basic

[14] The definition of "Junkyard" also was amended to include the words underlined here: "a yard, field, or other outside area used to store, dismantle or otherwise handle" the materials listed in paragraphs (A)-(C) of § 3752(4).

operational standards for all junkyards. . .” The stated purpose of the statutory scheme in the context of “Junkyards” thus makes clear that passive “dumps” and “fills” do not qualify; there must, instead, be operations capable of being licensed and subjected to operational standards.

### 3. The trial court erred in finding that the Property constituted an unpermitted “Junkyard” and nuisance in violation of 30-A M.R.S.A. § 3751 *et seq*.

For the reasons articulated above, the trial court failed to correctly apply § 3752(4)’s “use” requirement, and further failed to consider the dispositive non-commercial nature of the Property. The trial court erred, instead, by holding that the condition of the Property itself *per se* constituted a junkyard. App. at 13-14, 17.

The trial court additionally erred in finding that the Property constituted a nuisance, based on its finding that the Property was an illegal junkyard. App. at 13-14. The relief sought by the Town included a request that the trial court “[d]etermine that the condition of the Property constitutes a nuisance pursuant to 17 M.R.S. § 2701 and § 2802.” *Id.* at 66. This request, however, was predicated on the Town’s allegations that the Cousinses’ “[m]aintenance of the junkyard and/or automobile graveyard on the Property constitutes a public nuisance within the meaning of 17 M.R.S.

§§ 2701, 2802." *Id.* at 63. Because the Town's nuisance theory was coterminous with its erroneous and unsupported position that the Property was operated by the Cousinses as a "Junkyard," as argued above, the trial court should not have found a junkyard-based nuisance.

Accordingly, the trial court erred in entering Judgment for the Town on Counts I and II. The trial court's ruling against the Cousinses should be reversed and Judgment on all Counts entered in favor of the Cousinses.

### C. The Cousinses Should Have Received a Jury Trial

The trial court, as detailed above, erred in finding the Cousinses liable as owners of a "Junkyard." However, the trial court should never have reached that question. The Cousinses were entitled to have a jury decide their case.

#### 1. The Maine Constitution and this Court's Precedent Required a Trial by Jury

Article I, section 20 of the Maine Constitution provides in pertinent part that "[i]n all civil suits, and in all controversies concerning property, the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced; the party claiming the right may be heard by himself or herself and with counsel, or either, at the election of the party." This "constitutional imperative" requires that "[i]f an action is civil

in nature, exclusively seeking a money recovery,[15] the parties are entitled to a jury trial. . .” *City of Portland v. DePaolo*, 531 A.2d 669, 671 (Me. 1987).

The civil jury trial requirement, admittedly, is not absolute. As this Court noted in *Town of Falmouth v. Long*, 578 A.2d 1168 (Me. 1990), the right exists “for legal but not equitable claims, and “[t]he mere inclusion of an ancillary request for a civil penalty does not convert an equitable proceeding into an action at law.” *Id.* at 1171-72. This Court in *Long* accordingly “review[ed] the nature of the proceedings to determine whether a jury trial [was] required,” and in doing so, noted “that the gravamen of the [] complaint was a request for injunctive relief and that the inclusion of a request for the imposition of a civil penalty was merely ancillary.” *Id.* at 1171. It held that the enforcement action was equitable and properly tried to the bench where the Town of Falmouth had “primarily pursue[d] injunctive relief and request[ed] the imposition of a civil penalty only as a secondary measure.” *Id.* at 1172. The civil penalty at issue in *Long*, notably, was just $2,500. *Id.* at 1172-73.

“[S]eeking damages,” however, which are “not [] incidental to equitable relief but [are sought] in the alternative and as full compensation

[15] This Court had occasion to consider a civil penalty land use complaint in *City of Biddeford v. Holland*, 2005 ME 121, however, there the City of Biddeford withdrew its motion for injunctive relief and continued to seek civil penalties exclusively. A constitutional right to a jury trial was found in *Holland* because only civil penalties were pursued. *Id.* ¶¶ 2, 10.

for the injury allegedly received" entitles a party to a jury trial. *Cyr v. Cote*, 396 A.2d 1013, 1019 (Me. 1979); *see also Avery v. Whatley*, 670 A.2d 922, 924-25 (Me. 1996) (citing *Cyr*, 396 A.2d at 1019). This Court in *Avery*, reiterating the *Long* rule, instructed that "[t]o determine whether a claim is legal or equitable," courts must "consider the basic nature of the issue presented and the remedy sought by the plaintiff." 670 A.2d at 924. Importantly, the Court also emphasized that "[t]he right to a jury trial may exist as to one or more issues in an action in which there are other issues not triable of right to a jury." *Id.* at 924 (quoting 1 FIELD, MCKUSICK & WROTH, *Maine Civil Practice* § 38.1 at 550-51 (2d ed. 1970)).

Here, the Town's pursuit of civil penalties was more than merely ancillary or secondary to its request for equitable relief. Even in the pre-litigation phase of the dispute, the Town threatened "enforcement litigation" where the Cousinses faced liability "for the Town's attorney fees and costs plus civil penalties. . . of up to $2,500 per violation [being] imposed. App. at 81. When it filed its 80K Complaint in March 2019, the Town prominently alleged violations "subject to the penalty provision of § 4452," with "[e]ach day that the violation continues constitut[ing] a separate offense." *Id.* at 63. It asserted the Cousinses "should be penalized separately for each day the violations have existed on the Property," by

reference to the minimum $100 per day penalty applicable under 30-A M.R.S.A. § 4452(3). *Id.*; *see also id.* at 66.

Moreover, the arguably equitable nature of the issues and remedy sought by the Town initially on its 80K Complaint in March 2019 was—by the time of trial in December 2024—eclipsed by the severe threat of $100 civil penalties multiplied over more than five years. The passage of time from March 2019 through December 2024 distorted the nature of the case as well as the remedy, elevating the monetary relief to a position of prominence, one entirely disproportionate to an injunction or abatement. By the time of trial, hundreds of thousands of dollars in civil penalties was the floor. For perspective, according to the Town's Tax Commitment Book for the most recent fiscal year,[16] the current tax assessed value of the Property is just $30,800. Similarly, "the total fine imposed for this civil violation (over $200,000, with possible additional fines continuing to accrue at the rate of $100 per day) is more than four times the maximum fine for a Class A crime, *see* 17-A M.R.S. § 1704(1) (2025). . ." *See* Order Permitting Replacement Brief at 1. n.1, Law Dkt. Han-25-34, Aug. 15, 2025.

[16] *See* Tremont Real Estate Tax Commitment Book FY 25 at 43, *available at* https://webgen1files1.revize.com/townoftremontma/FY25%20RE%20ALPHA%20TAX%20COMMITMENT%20BOOK.pdf (last visited Oct. 23, 2025). This Court may properly take judicial notice of such matters of public record without supplementing the record. *See, e.g.*, *D'Amato v. S.D. Warren Co.*, 2003 Me 116, ¶ 13 n.2.

These civil penalties must "be paid to the municipality" exclusively. 30-A M.R.S.A. § 4452(4). Just like damages, the civil penalties are collectable directly by the prevailing party.

Finally, even if Count I of the 80K Complaint was property tried to the bench, a jury trial should have been granted on Count II, concerning the Town's nuisance claim. As this Court instructed in *Avery v. Whatley*, 670 A.2d 922, 924 (Me. 1996), this was such a case where "[t]he right to a jury trial [] exist[ed] as to one or more issues in an action in which there are other issues not triable of right to a jury." *Id.* at 924 (quoting 1 FIELD, MCKUSICK & WROTH, *Maine Civil Practice* § 38.1 at 550-51 (2d ed. 1970)). Count II was asserted pursuant to 17 M.R.S.A. § 2701. App. at 63-64. Section 2701 of Title 17 provides an injured party "a civil action for his damages. . ." *Id.* Moreover, where—as here—the "legal and equitable claims arise from a common issue of fact," the trial court would have been bound by the jury's determination of the issues affecting the disposition of any arguably equitable claims asserted by the Town. *Avery*, 670 A.2d at 926. The Cousinses, however, never received these safeguards to their right to a jury trial.

### 2. To the extent *Long* and *Avery* control, the policy of *stare decisis* should not prevent those decisions from being overruled

As detailed above, this Court in *Town of Falmouth v. Long*, 578 A.2d 1168 (Me. 1990) and *Avery v. Whatley*, 670 A.2d 922 (Me. 1996) developed a rule for cases in which both civil penalties and equitable relief were sought. If a civil penalty is "ancillary" or "secondary" to the "primary pursuit" of injunctive relief (*Long*, 578 A.2d at 1171-72), no jury trial is to be had; "[i]f the damages sought are not incidental to equitable relief but [are sought] in the alternative as full compensation for the injury alleged," a jury trial must be granted (*Avery*, 670 A.2d at 924-25). Although it should not, this rule could apply here, were the Town's civil penalties Judgment to be framed as ancillary, secondary, and incidental to equitable relief and not sought in the alternative as full compensation for its injuries. If so, compelling and sound justifications would exist for the Court to depart from its policy of *stare decisis*. *See Weinle v. Est. of Tower*, 2025 ME 62, ¶ 24. The rule is "unworkable," overruling it "is unlikely to upset settled expectations of parties," and relatedly "will advance sound public policy and "maintain stability and consistency in the law. *Id.* (citing *Finch v. U.S. Bank, N.A.*, 2024 ME 2, ¶ 40).[17]

[17] Concededly, this Court's *Long-Avery* rule does not appear to be an anomaly nationally. *See, e.g.*, *State v. Irving Oil Corp.*, 955 A.2d 1098, 1107-08 (Vt. 2008) (holding that Vermont's civil

The "workability of the precedent in question" is a "relevant consideration in the *stare decisis* calculus." *Finch v. U.S. Bank, N.A.*, 2024 ME 2, ¶ 44 (quoting *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 921 (2018)). Here, real workability problems exist. It is difficult, prior to trial, to determine whether a plaintiff's pursuit of civil penalties is truly ancillary, secondary, and incidental to equitable relief and not sought in the alternative as full compensation for injuries. After all, trial is the forum for determining what the full compensation for a plaintiff's injuries might be. Trial courts must therefore undertake a degree of guesswork to divine the proportional relationship between legal and equitable claims pursued in a given case, prior to receiving the benefit of hearing any evidence on those issues.

Courts also "must examine the state of affairs which has been determined by past events to consider the character of previously established rights, expectations and prospects which will be displaced." *Adams v. Buffalo Forge Co.*, 443 A.2d 932, 935 (Me. 1982). No great displacement is likely to occur here. Parties already know that a

---

penalties remedy in the environmental enforcement context "is essentially equitable" and supported "in decisions from other states reaching the same conclusion in similar"); *Town of Henniker v. Homo*, 612 A.2d 360, 361 (N.H. 1992) (unlicensed junkyard case holding that "the defendants did not have a right to a jury trial on any of their violations, since the maximum fine of $ 100 *per violation* does not exceed the $500 limit above which civil litigants, at the time the defendants were tried, were entitled to a jury trial").

constitutional right to a jury trial exists in cases seeking civil penalties exclusively. *City of Biddeford v. Holland*, 2005 ME 121, ¶ 10. Recognizing a jury trial right in cases involving both equitable remedies and monetary recoveries would be nothing new. *See Avery v. Whatley*, 670 A.2d 922, 924, 926 (Me. 1996) (where jury trial right existed as to some issues but not others, and "the trial court properly determined that it was bound by the jury's factual finding of undue influence in its consideration of the [a] claim for equitable relief).

Moreover, this Court has previously endorsed the view that "the doctrine of *stare decisis* is not an inflexible rule requiring this court to blindly follow precedents and adhere to prior decisions," such "that when it appears that public policy and social needs require a departure from prior decisions, it is our duty as a court of last resort to overrule those decisions and establish a rule consonant with our present day concepts of right and justice." *Myrick v. James*, 444 A.2d 987, 997-98 (Me. 1982) (quoting *Molitor v. Kaneland Comm'ty Unit Dist. No. 302*, 163 N.E.2d 89, 96 (Ill. 1959), *superseded by statute on other grounds as recognized by Erlich v. Ouellette, Labonte, Roberge & Allen, P.A.*, 637 F.3d 32, 37 & n.7 (1st Cir. 2011)). Public policy and social needs require such a departure here. The present rule could remove the availability of jury trials—as happened here—

even where the actual monetary judgment is multiples more than the underlying value of a defendant's property or the maximum fine for a Class A crime. Changing the rule will further cohere with "the broad constitutional guarantee of the right to a jury trial in all civil cases. . ." *City of Portland v. DePaolo*, 531 A.2d 669, 670 (Me. 1987). Doing so is especially important, as well, where it is difficult to view the civil penalties as anything other than a fine that is as punitive (rather than corrective) as it is excessive. *Cf. City of Lewiston v. Verrinder*, 2022 ME 29, ¶ 48 (Connors, J., dissenting) ("the enormity of the fine compared to the minor nature of the offense is not only relevant for due process purposes but also raises excessive fine concerns"). In the final analysis, promoting jury trials in cases such as this will ensure "stability" in the law and "enable[] the public to place reasonable reliance on judicial decisions affecting important matters." *McGarvey v. Whittredge*, 2011 ME 97, ¶ 63 (Levy, J., concurring).

Based on the foregoing, the *Long-Avery* rule concerning jury trials in the context of lawsuits seeking civil penalties may warrant reconsideration.

## V. CONCLUSION

The Judgment of the trial court should be reversed and Judgment entered in favor of the Cousinses on Counts I and II. In the alternative, the matter should be remanded to the trial court for a jury trial to proceed on Counts I and II.

Dated at Dover-Foxcroft, Maine, this 24th day of October, 2025.

Respectfully Submitted,

Andrew K. Lizotte, ME Bar # 005693
Dover-Foxcroft, ME 04426
(617) 899-1318
aklizott@gmail.com

Counsel for Appellants
Robert Cousins and Judy Cousins

## CERTIFICATE OF SERVICE

I, Andrew K. Lizotte, attorney of record for Appellants, hereby certify that I have on this 24th day of October, 2025, caused two copies of the foregoing Brief to be served upon Appellee's counsel of record in this action by U.S. Mail addressed as follows, in addition to the ten copies also filed contemporaneously with the Clerk of the Law Court:

Lisa Prosienski, Esq.
BERNSTEIN, SHUR, SAWYER & NELSON, P.A.
100 Middle Street
P.O. Box 9729
Portland, ME 04104

I further certify that one electronic copy of the foregoing Brief has also been emailed to the Clerk of the Law Court and to counsel for Appellee.

Dated at Dover-Foxcroft, Maine, this 24th day of October, 2025.

Respectfully Submitted,

Andrew K. Lizotte, ME Bar # 005693
Dover-Foxcroft, ME 04426
(617) 899-1318
aklizott@gmail.com

Counsel for Appellants
Robert Cousins and Judy Cousins