STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Docket No. Han-25-34

TOWN OF TREMONT,

Respondent/Appellee,

vs.

ROBERT COUSINS and JUDY COUSINS

Petitioners/Appellants.

On appeal from the Ellsworth Superior Court
Docket No. ELLDC-CV-19-70

BRIEF OF APPELLEE TOWN OF TREMONT

Mary E. Costigan, Bar No. 9281
Lisa Prosienski, Bar No. 11146
Attorneys for Appellee, Town of Tremont
BERNSTEIN SHUR
100 Middle Street; P.O. Box 9729
Portland, Maine 04104-5029
(207) 774-1200
mcostigan@bernsteinshur.com
lprosienski@bernsteinshur.com

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Introduction

Respondent/Appellee Town of Tremont (the "Town") submits this Brief in opposition to Petitioner/Appellant Robert and Judy Cousins' (the "Petitioners") appeal of the Superior Court's December 11, 2024 judgment in favor of the Town.

That judgment found that Petitioners' allowed an unpermitted junkyard to exist on their property for years and that the property constituted a nuisance. Embedded in Petitioners' appeal and of interest to this Court is also an appeal of the Superior Court's November 13, 2019 Order to Specify the Conduct of Trial which denied Petitioners' request for a jury trial because the Maine Constitution does not provide a right to a jury trial for equitable claims.

The Town is obligated to enforce the laws. In an effort to avoid taking care of and cleaning up their property, Petitioners have pulled the town through more than five years and thousands of dollars of litigation. In an effort to distract from the basic facts of the case and the years of precedent, Petitioners now make new arguments about the applicability of the law on appeal and seek to create a right to a jury trial for a simple land use enforcement case.

The Town met its burden of proof in regard to the junkyard, and the Superior Court, based on this Court's precedent, correctly rejected the request for a trial by jury after reviewing the nature of the complaint and the relief sought. In sum, the

lower courts acted correctly and in the interest of justice. This appeal should be denied.

Statement of Facts and Procedural History

Robert and Judy Cousins (the "Petitioners") own but no longer reside at a 45 Harbor Drive in Tremont, Maine (the "Property"). The Property sits in the "V" shape of the intersection of Flat Iron Road and Harbor Drive, a highly visible location from which Harbor Drive continues down the peninsula.

In June of 2017, the Town of Tremont (the "Town") Code Enforcement Officer first noticed and documented an accumulation of worn out or discarded items at the Property. (A. 80.) In August of 2018, the Town issued a Notice of Violation which documented land use violations under 30-A M.R.S.A § 3752 *et seq.* and 17 M.R.S.A §§ 2701, 2802, ordered corrective actions, and warned Petitioners of the consequences if they did not take corrective action. (A. 80.) In January of 2019, the Town again communicated with Petitioners via mail to reiterate the land use violations, explain the law, request that Petitioners contact and work with the Town, and alert the Petitioners of the Town's intention to "file an action in court to obtain a judgment . . . that will require compliance and require payment of a significant fine." (A. 77-78.) That letter also stated the minimum and maximum fines under the law. (A. 78.)

Pursuant to Maine Rule of Civil Procedure 80K, the Town filed its Land Use Citation and Complaint against Petitioners in March of 2019. (A. 59.) The Town sought to enjoin the unlicensed and unpermitted use of the Property and to recover civil penalties and fees as authorized by 30-A M.R.S.A § 4452, (A. 60, 66, 67.)

On May 20, 2019, the parties appeared for a pre-trial conference in Ellsworth District Court. (A. 134.) The Town Manager was present and hopeful that the joint appearance in court would initiate conversation between the parties. (A. 134.) Petitioners, on the other hand, requested a full day to present their case and indicated they would be requesting a jury trial on the facts. (A. 135, 134.) On May 21, 2019 the case was assigned to Superior Court and, as the docket record reflects, the parties exchanged a series of motions regarding the conduct of the trial between spring of 2019 and 2021. (A. 3, 4.)

In response to the Petitioners' Motion for a Trial on the Facts by Jury and the Town's Response, on November 13, 2019, the Superior Court denied the Petitioners' request for a jury trial citing this Court's precedent and stating, "it is apparent that the gravamen of the Town's compliant is a claim for injunctive relief." (A. 192.) The case was set to proceed as a bench trial in the Superior Court. *Id.*

Following the court's order, Petitioners filed three more motions to challenge the conduct of their pending trial: a motion to reconsider in November of

2019, a Special Motion to Dismiss in January of 2020, and a motion for an evidentiary hearing in January of 2021. (A. 193, 205, 275.) Each request was denied or deemed moot. (A. 4, 5.)

A bench trial was held via Zoom in December of 2024, at which the Town presented its case and met its burden of proof on Counts I and II, the junkyard and nuisance claims. (A. 19.) The court found that Petitioners had allowed an unpermitted junkyard as defined by 30-A M.R.S.A § 3752(4) to exist on the Property, because "[l]ocated on the Property since the issuance of the Notice of Violation are stacks of used bricks, piles of old and discolored lumber, old lawn furniture, numerous pieces of scrap metal, an old freezer, remains of wood fencing, discolored buoys of various sizes, a large metal cylinder marked "For sale," and an old unregistered snowmobile." (A. 12.) Accordingly, the court ordered abatement within thirty days, permanently enjoined Petitioners against operating or maintaining such an accumulation of debris in the future, authorized the Town to take corrective action pursuant to state law if the Property is not abated, and awarded the Town reasonable attorneys' fees and costs pursuant to 30-A M.R.S.A § 4452(3)(D) and a civil penalty of $100 for each day of violation of 30-A M.R.S.A § 3751 *et seq*. (A. 17, 18.)

Now, eight years since the Town's CEO first noticed the accumulation of unused and discarded waste, vehicles, and debris on the Property, this appeal arises

from the Town's 2019 land use complaint, filed to force abatement in the interest of public health and safety, and the court's decision in favor of the Town.

Summary of the Argument

Appellee Town of Tremont respectfully requests that this Court affirm (1) the Order finding that the Property constituted a junkyard under 30-A M.R.S.A § 3752 *et seq* and (2) the Order to Specify Conduct of Trial finding that the Town's complaint was a claim for injunctive relief to cease an ongoing violation and therefore not eligible for a trial by jury. Because the court property found the Property meets the statutory definition of a junkyard and that the 80K enforcement action was a claim for equitable relief, the appeal must be denied and this Court should affirm the lower courts' decisions.

Standard of Review

Petitioners bear the burden of persuasion on appeal, and when the record does not include material necessary to consider an issue raised on appeal, the issue may be treated as unpreserved. *State v. King*, 2015 ME 41, ¶ 4, 114 A.3d 664, 665.

Matters of statutory interpretation are reviewed de novo. *Ford Motor Co. v. Darling's*, 2014 ME 7, ¶ 15, 86 A.3d 35. A trial court's factual findings are reviewed for clear error and are not disturbed "unless there is no competent

evidence in the record to support it." *Town of Levant v. Taylor*, 2011 ME 64, ¶ 8, 19 A.3d 831, 833.

Matters of constitutional interpretation are also reviewed de novo. *Ford Motor Co,*, 2014 ME 7, ¶ 15, 86 A.3d 35. The court's denial of a motion for a jury trial when the plaintiff is seeking equitable relief and mandatory statutory fines is a discretionary decision that requires an appraisal of the basic nature of the issue presented to determine whether a claim is legal or equitable. *See Cyr v. Cote*, 396 A.2d 1013, 1019 (Me. 1979). A court has abused its discretion when it "exceed[s] the bounds of the reasonable choices available to it." *Capelety v. Estes*, 2023 ME 50, ¶ 18, 300 A.3d 817, 824 (quoting *Sager v. Town of Bowdoinham*, 2004 ME 40, ¶ 11, 845 A.2d 567).

Argument

A. The Trial Court Properly Applied the Junkyard Statute.

Petitioners make several new arguments regarding the applicability of the junkyard statute to the Property, including the argument that their yard cannot be considered a junkyard because they are not in the business of operating a junkyard. These arguments fail both on their face and because Petitioners did not preserve the arguments for appeal.

1. Petitioners Waived All Arguments Regarding the Applicability of the Junkyard Statute to their Property.

In order to preserve an issue for appeal, the party seeking review must present the issue to the original tribunal in a timely fashion or the issue is deemed waived. *Homeward Residential, Inc. v. Gregor*, 2017 ME 128, ¶ 9, 165 A.3d 357; *Brown v. Town of Starks*, 2015 ME 47, ¶ 6, 114 A.3d 1003. This rule ensures that the decision-maker and parties are given notice and opportunity to address and, if necessary, correct an error and avoid being vacated or remanded for further proceedings after an appeal. *Brown*, 2015 ME 47, ¶ 6, 114 A.3d 1003. An issue is properly raised and preserved when there is evidence in the record to alert the court and the opposing party to the issue, and an issue raised for the first time on appeal is not properly preserved. *Id*.; *Homeward Residential, Inc.*, 2017 ME 128, ¶ 9, 165 A.3d 357.

In *Homeward Residential, Inc.*, the court addressed the preservation of an argument regarding statutory interpretation. The petitioner in that case did not properly preserve an issue of statutory interpretation regarding the court's authority to award fees when it had raised arguments regarding the *amount* of the fees, but not the *court's ability to award* fees, with the district court. *Homeward Residential, Inc.*, 2017 ME 128, ¶ 10, 165 A.3d 357.

Because the petitioner had not raised the question of statutory interpretation, whether the statute gave the court the authority to award fees, the issue of statutory interpretation was not preserved for review. *Id*.

Here, Petitioners' have raised an entirely new argument; the trial court misapplied the statutory definition of "junkyard." Petitioners' argument that the junkyard statute only applies when a property owner is operating a business and other related arguments regarding the applicability of the statute were not properly preserved because they were not raised at the trial court and never presented for the Town or the court to address. There is no evidence in the record that the trial court judge or Town was given notice and opportunity to address the applicability of the statute.

Instead, the trial record reflects that Petitioners argued they had attempted to resolve the violations documented in the Town's Notice of Violation by applying for a permit. (A. 33.) The record also reflects Petitioners' argument that certain vehicles on the property were registered. (A. 34.) Petitioners also argued that the material on the property was construction material, the property was a construction site and "whatever deteriorated in ten years wasn't [their] fault. (A. 34, 35, 43.) Based on the record, Petitioners clearly behaved similarly to the Petitioner in *Homeward Residential,* because they disputed whether the property constituted a junkyard, but did not argue that the statutory definition of junkyard does not apply

to their Property as a matter of law. As such, this entire applicability argument is newly raised upon appeal.

Because the question of whether the junkyard statute applies to the Property is not reflected in the trial court record, it was not presented to the original tribunal in a timely fashion and was therefore not preserved for appeal by the Petitioners. As such, Petitioners waived all arguments regarding the applicability of the junkyard statute to the Property.

2. The Trial Court Properly Interpreted Maine's Junkyard Statute.

In the event this Court finds that Petitioners' arguments regarding the applicability of the junkyard statute were preserved, the arguments still fail because the statute is clear and unambiguous and is consistently applied to properties nearly identical to Petitioners'.

Due to public health and safety and environmental risks, Maine law requires a permit to establish, operate, or maintain a junkyard. 30-A M.R.S.A §§ 3751, 3753. The statutory definition of junkyard is:

> 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 nonferrious material.

30-A M.R.S.A § 3752(4).

The statute has been utilized by municipalities for decades as an effective tool to remove unsafe and unsanitary junk, waste, and debris from properties.

The court's first step when interpreting a statute is to look to the statute's plain language so as to give effect to the intent of the Legislature, and an unambiguous statute is interpreted according to its plain meaning. *Arsenault v. Secretary of State*, 2006 ME 111, ¶ 11, 905 A.2d 285; *Town of China v. Althenn*, 2013 ME 107, ¶ 6, 82 A.3d 835. The court will avoid absurd, illogical, or inconstant results. *Desgrosseliers v. Auburn Sheet Metal*, 2021 ME 63, ¶ 8, 264 A.3d 1237. Only when a statute is ambiguous, does the court look to legislative history and other tools to determine legislative intent and statutes are ambiguous only when susceptible to different interpretations. *Scammon v. Shaw's Supermarkets, Inc*., 2017 ME 41 ¶ 14, 157 A.3d 223; *Town of China*, 2013 ME 107, ¶ 6, 82 A.3d 835.

This Court has repeatedly held that the junkyard statute is unambiguous in what it requires of property owners. *Town of China*, 2013 ME 107, ¶ 6, 82 A.3d 835, 838 ("We have previously held that the automobile graveyard and junkyard statute does not force people of general intelligence to guess at its meaning"); *Town of Pownal v. Emerson,* 639 A.2d 619, 621 (Me.1994) ("The statute is not unconstitutionally vague either as written or as applied."); *Town of Mount Desert v.*

Smith, 2000 ME 88, ¶ 6, 751 A.2d 445 (construing 30–A M.R.S.A § 3751 (1996) *et seq.* (affirming that the statute applies to property owner's land full of discarded, scrap, and worn out items).

On numerous occasions, Maine courts have found that residential yards full of miscellaneious debris and unusable equipment and material, like Petitioners' yard, are junkyards that meet the statutory definition and have upheld a municipality's ability to use the statute in order to get the yard cleaned to an acceptable state that aligns with the public's health and safety. *E.g. Town of Mount Desert,* 2000 ME 88, ¶ 6, 751 A.2d 445; *Town of Pownal,* 639 A.2d 619, 619 (Me.1994).

In *Town of Mount Desert*, a yard with "large amounts of personal property on it, including vehicles in various states of disrepair, metal drums, piping, lumber, scrap metal, TV antennas, styrofoam, old plumbing supplies, and old appliances" was deemed a junkyard. *Town of Mount Desert*, 2000 ME 88, ¶ 2, 751 A.2d 445, 446. Similarly, in *Town of Pownal,* a yard with "a large amount of loose boards, iron, barrels, truck bodies, tires and wheels, buckets, cloths, tarps, pipes, tanks, a skidder, a van, two trucks, a camper body, a planer on an open trailer, wheelbarrows, and many other objects that are unidentifiable" was affirmed a junkyard under the statute. *Town of Pownal*, 639 A.2d 619, 620 (Me. 1994).

The statute is clear. The plain language of 30-A M.R.S.A §3751 prohibits the open outdoor storage of certain unused and unusable appliances, construction material, and garbage without a permit. In the event a permit cannot be obtained due to noncompliance with local zoning regulations, the yard must be cleared of all junk and debris.

In addition to demonstrating the clarity of the statute, the above named cases indicate that there is no requirement that a property be in the business of a junkyard in order for the statute to apply. The properties in *Town of Mount Desert* and *Town of Pownal* are not businesses or individuals attempting to start a business. *Town of Mount Desert*, 2000 ME 88, ¶ 2, 751 A.2d 445; *Town of Pownal*, 639 A.2d 619, 619 (Me. 1994). Rather, they are properties used to store large quantities of discarded, worn out, or junked material and trash outside, just like Petitioners' property. To follow Petitioners' argument that the junkyard statute only applies to properties designed to operate as businesses would be illogical and absurd because it would defeat the purpose of the law and could quickly create loopholes in land use regulation and in other areas of municipal regulation.

Petitioners' narrow reading of the statute is also illogical because it would defeat the public safety and environmental purpose of Section 3751 by eliminating the regulation of properties storing potentially hazardous material when they are not operating as a business. *See* 30-A M.R.S.A § 3751. The statute states that

junkyards–defined in statute as outdoor storage areas of discarded, worn out, or junked material and trash–"pose potential risks to the environment, particularly to groundwater," and that, "[p]roper location and operation of these facilities are critical to ensure protection of groundwater and surface water quality, other natural resources and the health and welfare of Maine citizens." *Id*. It goes on: "[t]hese facilities may create nuisance conditions potentially affecting abutting landowners and others if not located and operated properly." *Id.* Petitioners' improper reading undermines the public safety purpose of the 30-A M.R.S.A § 3751 *et seq*. and significantly diminishes a municipality's ability to regulate nuisance properties.

An analogous example that demonstrates the absurdity of Petitioners' argument is the regulation of campgrounds under Title 22. Title 22 defines a "campground" and requires anyone who operates a campground to obtain a license from the Department of Health and Human Services. 22 M.R.S.A §§ 2491(1), 2492(1). When a property meets the definition of a campground, the Department is entitled to require a license, regardless of whether the property owner considers themselves to be a running a campground, because the purpose of the definition and license is to protect the public's health and safety by regulating the behavior. Regulations to protect the health and safety of the public are not jettisoned simply because a person who otherwise meet the definition of an "campground"

determines they do not fit the definition nor need a license to allow five or more camp sites on their property.

Because there is no confusion about what is required of 30-A M.R.S.A § 3751 *et seq*–a permit to use a property to store large quantities of discarded, worn out or junked material and trash outside–there is not a need to delve further into statutory interpretation and legislative history. The trial court correctly interpreted the statute and did not misapply the statutory definition of "junkyard" to the Petitioners' property.

3. Petitioners' Property Constitutes an Unpermitted Junkyard.

The trial court's application of the clear language of the statute led it to correctly find that the Petitioners' property constituted a junkyard and that they did not have a permit. (A. 16.) Based upon the testimony of the CEO and photographs of the Property, the Town successfully established that the Property met the statutory definition of a junkyard- an outside area used to store discarded, worn out or junked plumbing, heating supplies, electronic equipment, appliances or furniture, discarded lumber; and scrap metal rope, rags, batteries, paper trash, and debris. *Id.,*30-A M.R.S.A § 3752(4). The court identified a diverse list of discarded, worn out materials on the Property that tracks the statutory definition of a junkyard: "old 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 commercial cooking equipment, numerous rubber tires" and more with "[v]egation growing over most of the items." (A. 12.)

While Petitioners argued that the Property is full of construction material, the testimony and photographs do not indicate viable construction material but instead old supplies and old lumber and debris; precisely the kinds of materials identified in the statute. (A. 12, 71, 74, 75, 76.)

Moreover, the initial purpose or end goal for the material on Petitioners' Property is not determinative of whether the accumulation of material constitutes a junkyard under the law. *Town of Pownal,* 639 A.2d 619, 621 (Me. 1994) ("a landowner who stores material that meets the objective definition of the statute cannot avoid liability because he plans eventually to use the material."); *See also Town of Mount Desert*, 2000 ME 88, ¶ 6, 751 A.2d 445 (the collection of material stored outdoors constituted a "junkyard," regardless of the landowner's claim that it was personal property that was not worn out or unusable). Under Petitioners' argument, abandoned construction sites would be permitted to sit, undisturbed for years, covered in construction materials, many of which would be deemed hazardous.

The trial court correctly understood and applied the unambiguous statute prohibiting the open outdoor storage of discarded, worn out appliances, equipment, lumber, metal and old or scrap debris without a permit. The Town successfully established a violation of 30-A M.R.S. 3752(4) with testimony and photographs. (A. 12, 71, 74, 75, 76.) Because there is competent evidence in the record to find that the Property meets the statutory definition of a "junkyard" the trial court's finding should not be disturbed. Additionally, because the Property constitutes a junkyard, the trial court also correctly found the Property to be a nuisance pursuant to 17 M.R.S. § 2701 and § 2802.

B. Petitioners are not Entitled to a Jury Trial

The constitutional right to a jury trial is among the most important rights Americans have. The Town does not take lightly the responsibility to argue against such a right in this case. However, the right to a jury is limited and is not absolute in Maine or anywhere else in the country. There is no right to a jury trial for equitable claims, which is a long-established and clear precedent. As such, there is no right to a jury trial in land use enforcement matters with coercive civil penalties and Petitioners are not entitled to a jury trial on the facts presented.

1. There Is No Right to A Jury Trial For Equitable Claims

The constitutional right to a trial by jury does not extend to equitable claims. Under Article I, Section 20 of the Maine Constitution, "[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." (Me. Const. art. I, § 20).

The important exception, "except in cases where it has heretofore been otherwise practiced" refers to equitable claims that seek relief other than money, such as injunctive, creative or unique action by the court to resolve a problem that cannot be remedied by money alone. *See Thermos Co. v. Spence*, 1999 Me 129, ¶ 18, 735 A.2d 484. As such, Maine's Constitution, like the federal Constitution, "'safeguards the right to a jury trial on all legal claims.' It does not, however, provide the right to a jury trial for equitable claims." *Avery v. Whatley*, 670 A.2d 922, 924 (Me. 1996) (internal citation omitted); *King v. King*, 507 A.2d 1057, 1059 (Me. 1986) ("The Maine Constitution provides a right to jury trial for legal but not equitable claims"); *Cyr v. Cote*, 396 A.2d 1013, 1016 (Me. 1979) ("As to equitable issues, viz., "cases where it has heretofore been otherwise practiced", no jury trial right exists by virtue of art. I, s 20"); *See also DesMarais v. Desjardins,* 664 A.2d 840, 844 (Me.1995) *In re Martin Baker Well Drilling, Inc.*, 36 Bankr. 154, 156 (Bankr. D. Me 1984). The law is clear: there is no right to a jury trial for equitable claims.

2. The Town's Land Use Enforcement Action is an Equitable Claim

Land use enforcement actions are equitable claims not subject to a jury trial because zoning and land use violations always seek relief other than money and require a unique action, often injunctive, to address the violation. For this reason, this Court "[has] consistently held that the determination of remedies for zoning violations is an exercise of the court's equitable powers." *Town of Falmouth v. Long,* 578 A.2d 1168, 1171 (Me. 1990).

Here the situation is the same. The Superior Court correctly identified the Town's claim as an equitable matter not subject to a jury trial, because the Town's 80K complaint sought a solution other than money damages: abatement and an injunction together with the statutory penalty. (A. 66.) Because the Town's claim is an equitable one, the Maine Constitution does not provide the right to a jury trial. *Avery,* 670 A.2d at 924; *Town of Falmouth,* 578 A.2d at 1171-72.

Petitioners' argue they are entitled to a jury trial because the size of the "damages" is "not incidental," such that the Town's complaint becomes a legal claim and creates the right to a trial by jury. (Pet'rs' Br. 24.) This argument fails. First, a jury trial right exists when the *damages* sought are not incidental to the equitable relief sought but are instead full compensation.[1] *Cyr*, 396 A.2d at 1019.

[1] Parties are also entitled to a jury trial when a civil action exclusively seeks monetary recovery. *City of Portland v. DePaolo*, 531 A.2d 669, 671 (Me. 1987). This is not at issue in this matter because the relief sought was not exclusively monetary.

"Damages" are monetary relief awarded as compensation for losses due to another's wrongful conduct. *Damages*, *Black's Law Dictionary* (12th ed. 2024). At issue here is a statutory civil penalty, not damages. A civil penalty is a monetary sanction imposed by a government or agency punish violations and deter future misconduct. *City of Lewiston v. Verrinder*, 2022 ME 29, ¶ 19, 275 A.3d 327. Unlike damages, civil penalties are not intended to compensate an injured party but serve to enforce compliance. *Id*. Because this case deals with civil penalties and not with damages, Petitioners' argument fails.

Additionally, even if the Town's claim were for damages and not a civil penalty, the Petitioners' argument would still fail because "when the primary recovery pursued is equitable, the inclusion of a request for money damages does not convert the proceeding into an action at law." *DesMarais*, 664 A.2d at 844 (internal citations omitted). The primary recovery pursued is and remains equitable, to abate the Property by cleaning up all the junk and to keep it clean in the years ahead.

Second, the ultimate size of the penalty is a result of Petitioners' own actions; the extended litigation since 2019, Petitioners' refusal to abate the Property, and Petitioners' abandonment of the Property. As this Court pointed out

in *Verrider*, "a person subject to civil penalties for violations of land use ordinances has the prerogative to immediately prevent the accumulation of the penalties by simply complying with the ordinances." *City of Lewiston*, 2022 ME 29, ¶ 19, 275 A.3d 327. Further, appreciating that the sheer size of the penalty is of concern to the Court, the Town respectfully asserts that a jury trial is not the solution.[2] Here, as in other similar matters with large fines, the substantial portion of penalties is tied to the property owner's ongoing violation and lack of action. *See Id.* Often a municipality's interest is to ensure the property is cleaned up and the 80K action comes after repeated attempts to do so, as is the case here.

Third, a fundamentally equitable claim does not become a legal one subject to a jury trial simply because there is a civil penalty. *Town of Falmouth,* 578 A.2d at 1171-72. Petitioners correctly point out that, "to determine whether a claim is legal or equitable, [courts] consider the basic nature of the issue presented and the remedy sought by the plaintiff." *Avery,* 670 A.2d at 924. Further, determination of "the often elusive question of whether a claim is legal or equitable" is based on the issue presented and relief sought. *Cyr*, 396 A.2d at 1016; *DesMarais*, 664 A.2d at 844.

[2] Under current law, there is a minimum per-day penalty for a junkyard violation under 30-A M.R.S.A § 3758 and 30-A M.R.S.A § 4452(3) and no judicial discretion to adjust penalties. *Town of Orono v. LaPointe*, 1997 ME 185, ¶ 12, 698 A.2d 1059, 106. Rather than a jury trial, the Town respectfully offers that a solution may be found in discretion regarding penalties

For example, the claim was equitable when "the gravamen of the Town's complaint was a request for injunctive relief" and the imposition of a civil penalty was secondary. *Town of Falmouth*, 578 A.2d at 1171 (holding that there is no right to a jury trial in a rule 80K action seeking injunctive relief). Likewise, the claim was equitable when the State sought injunctive relief authorized by environmental statute and included coercive civil penalties. *Dep't of Env't Prot. v. Emerson*, 616 A.2d 1268, 1271 (Me. 1992); *See also DiCentes v. Michaud*, 1998 ME 227, ¶ 7, 719 A.2d 509 ("right to a jury trial does not exist for claims sounding in equity.").

Here, looking at the nature of the issue, the relief sought, and the pleadings, the Town's claim against Petitioners is an equitable claim. Similar to the municipality's claim in *Long,* the Town's 2019 action is a land use enforcement citation and complaint brought under Rule 80K which sought, "an Order enjoining Defendants' unlicensed and unpermitted . . . junkyard" in the Town's residential-business zoning district. (A. 60, 62.)

Petitioners' argument that the Town's pursuit of civil penalties was something other than secondary fails. The Town has a duty to inform a violator of the potential consequences of a Notice of Violation and cited the statutory minimum penalties. *See Town of Freeport v. Greenlaw*, 602 A.2d 1156, 1161 (Me. 1992). Giving this notice must not be construed to mean that the Town's primary purpose was a large civil fine or that it sought something like "damages" to remedy

the situation. The Town's action was designed to spur action to clean up the Property, a goal the Town still seeks today.

Because the basic nature of the issue presented is an order to clean up the Property and the relief sought is an injunction to stop further accumulation of material on the Property, the Town's claim is an equitable claim not eligible for a trial by jury.

Lastly, Petitioners incorrectly attempt to create a jury trial right through the nuisance violation. (Pet'rs' Br. 27.). However, this fails because the Town did not act as an individual and seek damages for the nuisance. Instead, the Town filed a Rule 80K enforcement action in the name of the Town and sought abatement, injunctive relief, and what it understood to be statutorily mandated civil penalties. *See* A. 60, 66.).

For these reasons, Petitioners are not entitled to a jury trial and the request for a trial by jury to decide the Town's 80K land use complaint was properly denied.

C. The Court Should Not Disturb Precedent to Create a Right to Jury Trial for Land Use Violations.

The court should once again maintain the precedent that civil land use violations are equitable claims not entitled to a trial by jury.

Stare decisis reflects the importance of legal continuity and stability by providing for "consistency and uniformity of decisions." *Bourgeois v. Great N. Nekoosa Corp.*, 1999 ME 10, ¶ 5, 722 A.2d 369, 371. *Stare decisis* is not an inflexible rule that requires rigid adherence to prior decisions; however, a settled point of law is not disturbed unless "the prevailing precedent lacks vitality and the capacity to serve the interests of justice." *Id.* (quoting *Myrick v. James,* 444 A.2d 987, 997–98 (Me.1982). When weighing whether to revise precedent, the court considers consistency, reliance, anomaly, workability, and policy. *Finch v. U.S. Bank, N.A.*, 2024 ME 2, ¶ ¶ 40-47, 307 A.3d 1049.

Each factor firmly recommends against disturbing precedent to create a right to a jury trial for equitable land use violations. There is nothing inconsistent and in need of correction in state law and local ordinances related to enforcement of land use provisions, nor are the court's decisions regarding jury trials for equitable relief inconsistent. Towns consistently use local procedures like Notices of Violations and Citations and the courts to enforce stand and local land use rules.

Local governments rely on Maine's statutory scheme for regulating land use. It is not perfect – it is often slow, as it arguably has been in this particular case – however, the enforcement of state and local land use violations relies on the ability

of municipalities to go to court in a relatively efficient manner[3] to request abatement and injunctive relief when a property owner will not comply with laws and ordinances. Cities and towns rely on the authority to point to civil penalties in addition to ordering abatement as a necessary piece of the enforcement puzzle, because penalties act as an incentive for property owners to remedy violations and comply with the law. *City of Lewiston*, 2022 ME 29, ¶ 19, 275 A.3d 327. Effective enforcement relies on such penalties remaining simple: each day a violation goes on, the penalty increases, and when the violation is abated, the penalty stops accruing. In contrast, introducing the uncertainty of jury trials to determine civil penalties mean that municipalities effectively would not have a reliable enforcement tool other than ordering abatement.

Reliance also extends to neighboring property owners who rely on the enforcement of land use laws to protect community health and safety. Similarly, good public policy requires that municipalities have an ability to enforce state and local land use and nuisance laws. Communities with limited enforcement inevitably end up with greater difficulty when they must enforce. Routine, effective, and efficient enforcement is important for municipalities whose duty it is

[3] Rule 80K is designed for effective and efficient enforcement of state and local law pertaining to law use and environmental violations, M.R. Civ. P. 80K advisory notes to 1984 amend., including allowing municipal officers to authorize a person who is not an attorney to represent the municipality in an 80K action. Should 80K enforcement actions be suitable for trial by jury, municipalities would have to hire attorneys or it may be necessary to update M.R. Civ. P. 80K.

to uphold the laws as well as for the broader community interested in the health and safety promoted by land use laws.

There is no evidence that Maine law regarding enforcement of land use violations is anomalous and in need of updating or that Maine is an outlier in treating land use enforcement matters with coercive civil penalties as issues of equity. In fact, Maine would likely be an anomaly should it create a right to a jury trial in equitable matters with coercive civil penalties.

The workability of enforcing state and local land use rules—from shoreland zoning, to building codes, to nuisance properties—would become dramatically worse should issues of equity with civil penalties and fees attached, be subject to jury trials. The sheer volume and cost of jury trial for equitable matters risks the efficiency of courts across Maine and, under current law, civil penalties would continue to accrue while waiting for trials, potentially resulting in a greater number of land use violations with significant civil penalties.

Disturbing precedent so that land use cases that seek primarily equitable relief are entitled to a trial by jury would cause substantial challenges in municipalities all across Maine. Such a change is not in the public interest, because it would reduce predictability of what is meant to be a routine enforcement process, likely reduce overall enforcement to the detriment of public health and potentially property values and likely create additional backlogs in the courts.

In sum, the factors weigh heavily in favor of *stare decisis*, even when the weighty question of a jury trial is at hand. Current precedent remains vital and serves the interest of justice because municipalities and property owners rely on consistent enforcement, current law is not anomalous and changing precedent would be very disruptive well beyond the benefits gained. The factors that make this case unique – the large fine, the long timeline – are notable because they are uncommon. This case is the anomaly and it should not represent an opportunity to disturb high-functioning precedent that municipalities rely upon.

D. The Court Should Not Disturb The Superior Court's Denial of a Jury Trial in this Particular Case.

For the sake of argument, even if this were are a case that combines equitable and legal claims (which it is not), the court's exercise of discretion in denying the request for a jury trial should not be overturned because the analysis of the pleadings, the relief sought, and the nature of the matter when the complaint requests injunctive relief and civil penalties is a matter of judgement and discretion. Accordingly, the issue is whether the Superior Court abused its discretion such that its decision should be overturned.

Overturning the Superior Court requires a determination that, in exercising its discretion regarding a jury trial for an equitable claim accompanied by a civil penalty, the Superior court did not understand the law regarding jury trials, the

Superior Court's application was not reasonable based on the facts presented and that the decision exceeded the bounds of reasonably available choices. Hillary J. Massey, *Civil Appellate Advocacy: Effective Use of the Standards of Review*, 27 Me. B.J. 154 (2012) (citing Hon. Andrew M. Mead, *Abuse of Discretion: Maine's Application of a Malleable Appellate Standard*, 57 Me. L. Rev. 519, 520 (2005)); *Pettinelli v. Yost,* 2007 ME 121, ¶ 11, 930 A.2d 1074, 1077. Specifically, abuse of discretion may be found when courts (1) consider a factor prohibited by law; (2) decline to consider a legally proper factor; or (3) act based on a mistaken view of the law. *Pettinelli v. Yost,* 2007 ME 121, ¶ 11, 930 A.2d 1074, 1078 (internal citations omitted). In *Pettinelli*, the lower court abused its discretion when it failed to stay within a structured statutory framework for modification of spousal support. *Id.*

Here, there are no such rogue factors in, or missing from, the Superior Court's analysis. There is no detour outside the existing legal framework. Nor is there a mistaken view of the law.

Additionally, this case is distinguishable from other cases where a jury trial right existed regarding civil penalties because it is primarily a matter of cleaning up the Property. *See City of Biddeford v. Holland*, 2005 ME 121, ¶ 2, 886 A.2d 1281, 1283 (jury trial granted when the City had withdrawn request for injunctive relief and sought only civil penalties); *City of Portland v. DePaolo,* 531 A.2d 669,

670-71 (Me.1987) (jury trial granted when only issue before the court was whether to levy a civil penalty). In these cases, the matter of the civil penalty was the primary topic, whereas in the present matter, the abatement of the Property is the primary topic.

In summary, while some cases that combine legal and equitable claims warrant a jury trial, this case does not. The Superior Court properly considered and rejected Petitioners' jury trial request, and this Court should not disturb the Superior Court's decision.

Conclusion

The trial court properly interpreted and applied the junkyard statute. Petitioners were not entitled to a jury trial for the Town's claim for abatement, injunctive relief and civil penalties because there is not a right to a jury trial for equitable claims. Even if the Town's claim were a mixed claim for equitable and legal relief, which it is not, the Superior Court's decision was well within the bounds of reasonable choices available to it. In this case, justice is best served by enforcement of state law, requiring Petitioners to clean up the Property, or allowing the Town to abate and recover costs for doing so, as allowed by the trial court.

Dated at Portland, Maine, this 15th day of December, 2025.

Respectfully submitted,

Mary E. Costigan, Bar No. 9281
Lisa Prosienski, Bar No. 11146

BERNSTEIN SHUR
100 Middle Street; P.O. Box 9729
Portland, Maine 04014-5029
207-774-1200
mcostigan@bernsteinshur.com
lprosienski@bernsteinshur.com

Attorneys for Appellee
Town of Tremont