SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Docket No. Han-25-34

TOWN OF TREMONT,
Respondent-Appellee

v.

ROBERT COUSINS AND JUDY COUSINS,
Petitioners-Appellants.

ON APPEAL
FROM ELLSWORTH DISTRICT COURT, HANCOCK COUNTY

REPLY BRIEF OF APPELLANTS ROBERT COUSINS AND JUDY COUSINS

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Filed January 2, 2026

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I. ARGUMENT

The Cousinses, incorporating and reasserting by reference their prior arguments, hereby file the instant reply brief confined to the arguments raised in the Town's brief ("Appellee's Brief" or "Appellee's Br."), stating as follows. M. R. App. P. 7(c).[1]

A. The Cousinses' Challenge to the "Junkyard" Statute was Preserved and the Trial Court Misapplied that Law

1. The Cousinses raised and did not waive their arguments

Contrary to the Town's arguments, the Cousinses repeatedly raised and adequately preserved the issue of the proper interpretation of the "Junkyard" statute, 30-A M.R.S.A. § 3751 *et seq*., for this Court's review. *Contra* Appellee's Br. at 12-15. "An issue is raised and preserved if there was a 'sufficient basis in the record to [alert] the court and any opposing party to the existence of that issue.'" *St. Francis de Sales Fed. Credit Union v. Sun Ins. Co. of N.Y.*, 2002 ME 127, ¶ 22 (quoting *Chasse v. Mazerolle*, 580 A.2d 155, 156 (Me. 1990)); *see also Verizon New England, Inc. v. Pub. Util. Comm'n*, 2005 ME 16, ¶ 15 (finding that a "looming" issue was adequately raised and preserved for appeal—even where not part of the

[1] All capitalized terms used herein refer back to those from the Cousinses' opening brief ("Appellants' Brief" or "Appellants' Br.") filed on October 24, 2025.

official record—when referenced in a letter and at a case conference). Here, the pressing issue of statutory interpretation was front-and-center throughout the proceedings. It was not raised for the first time by this appeal. *See generally Marois v. Paper Converting Machine Co.,* 539 A.2d 621, 625-26 (Me. 1988); *Teel v. Colson*, 396 A.2d 529, 534 (Me. 1979); *Reville v. Reville*, 289 A.2d 695, 697 (Me. 1972).

On November 27, 2019, the Cousinses sought reconsideration of the trial court's Order denying their request for a jury trial. *See* App. at 193-200. In that submission, the Cousinses expressly raised the issue: "[a]s *per [the] definition of the statutes there are no grounds for a junkyard/automobile graveyard violation* (Count I) as well as the nuisance violation (Count 11)." *Id.* at 198 (emphasis added). During the bench trial held on December 6, 2024, the importance of the definitional issue became more pronounced. The trial court confirmed with the Town's counsel "the definition of a junkyard," and that the Town was proceeding on the basis of that law. *Id.* at 41 (Trial Tr. 88:14-23). To this, Robert Cousins objected, "[n]umber one, we're not a junkyard. We're a construction site." *Id.* at 41 (Trial Tr. 89:4-5). The trial court responded by stating, "I've told you what the definitions are of a junkyard." *Id.* at 42

(Trial Tr. 90:4-5). Robert Cousins reiterated, "It wasn't [a] junkyard. It was a construction site." *Id.* at 43 (Trial Tr. 95:13-14). The trial court stated,

> THE COURT: Okay. You told me that two times, though, Mr. Cousins. Let's go into more – whatever you have factually that you want to share with us.

Id. (Trial Tr. 96:9-11). Before ruling in the Town's favor, the trial court summarized:

> First of all, is – has the property become what meets the definition of a junkyard. I read the definition to you folks earlier. The Court will be making that assessment, not just on the testimony, but in large parts, looking at the photographs that have been submitted.

Id. (Trial Tr. 96:9-11).

Against this backdrop, there is ample "evidence in the record that the trial court judge [and] Town was given notice and opportunity to address the applicability of the statute." *Contra* Appellee's Br. at 14. The Cousinses challenged the definitional applicability of the statute as early as November 2019. They continued to press those objections throughout the bench trial, repeatedly. Indeed, the trial court seemingly appreciated that the Cousinses were challenging the applicability of the statute to them as a matter of law, acknowledging this by instructing the couple to move on to "whatever you have factually that you want to share with us." This is not, as the Town submits, a case where a litigant repeatedly acquiesced to a statute's applicability. *See* Appellee's Br. at 14-15; *Homeward Residential, Inc. v.*

Gregor, 2017 ME 128, ¶ 10 (where litigant "did not argue, at any point during the proceedings before the trial court, that [a statute] should be interpreted differently," and even argued that the trial court had discretion to apply the statute). Consequently, the Cousinses sufficiently raised, preserved, and did not waive their arguments.

2. The Town continues to elide the economic regulatory scheme and requirements of 30-A M.R.S.A. § 3751 *et seq*.

The Cousinses have addressed "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). The Town, by contrast, interprets the "Junkyard" provision in isolation. It seeks to disassociate the definition under 30-A M.R.S.A. § 3752(4) from the larger statutory whole. It fails to so much as reference the Cousinses' numerous arguments showing the essential economic nature of "Junkyards" inherent throughout 30-A M.R.S.A. § 3751 *et seq*. These shortcomings include as follows:

- Chapter 183 of Title 30-A covers "Economic Regulation."
- The "operation" of "facilities" is one of the law's cited purposes. 30-A M.R.S.A. § 3751.
- A permit is required to "establish, operate or maintain" a junkyard. 30-A M.R.S.A. § 3753.
- The issuance of a permit requires that the "junkyard meet[] the operating standards set forth in [30-A M.R.S.A. § 3754-A(5)]." 30-A M.R.S.A. § 3754-A(10).

- Such operating standards require junkyard owners to demonstrate "that the facility or facilities for which they seek permits are, or are part of, a viable business entity. . ." 30-A M.R.S.A. § 3754-A(5)(D).
- The operating standards further require "the facility or facilities [to be] actively engaged in the business of salvaging, recycling, dismantling, processing, repairing or rebuilding junk or vehicles for the purpose of sale or trade." 30-A M.R.S.A. § 3754-A(5)(D).

None of the above points grounded in the statutory language are acknowledged in Appellee's Brief. *See* Appellants' Br. at 16-22.[2] The Property had no connection to a viable business, had no business purpose or operations, and provided no economic benefit to the Cousinses. *See* Appellee's Br. at 10 (characterizing the Cousinses as "operating or maintaining [] an accumulation of debris" rather than engaging in any business or economic activities). The Town accepts this.

Contrary to the Town's arguments, this Court has not squarely addressed the definitional issues raised by the Cousinses about the economic versus non-economic coverage of the statute. *Contra* Appellee's

[2] The Cousinses relatedly reassert that the "use" necessary to trigger applicability of § 3752(4) was wholly absent from the Town's proof at the bench trial. The Town was required to establish that the Property was "used" by the Cousinses to "store, dismantle or otherwise handle" the materials enumerated in § 3752(4). No evidence on the issue of dismantling or handling was admitted. The Town thus pursued a storage-based theory of liability. Yet as previously argued, *see* Appellants' Br. at 17-18, the Property was not being "used" to "store" any items or goods. The Property was abandoned. Indeed, the trial record established that the Cousinses had not inhabited the Property for many years. They lived over 3,000 miles away, having relocated to Alaska. Moreover, under the canons of statutory construction of *noscitur a sociis* and *ejusdem generis*, the term "store" must be interpreted with the associated terms of "dismantle" and "handle." *See generally In re Scates*, 94 Me. 579, 580 (1901). "Dismantling" and "handling" connotes ongoing operations rather than passive inactivity, further reinforcing that "storage" had to have been in furtherance of some manner of operations.

Br. at 16-17. This Court's most recent "Junkyard" cases involved an "LLC operat[ing] an automobile graveyard and a junkyard without a permit," *see Town of Lebanon v. E. Lebanon Auto Sales LLC*, 2011 ME 78, ¶ 10, and an appeal where the "parties stipulated that [the defendant] recycle[d] scrap metal," an agreement which placed that particular defendant "within the definition of 'junkyard' under the statute," *see E. Perry Iron & Metal Co. v. City of Portland*, 2008 ME 10, ¶ 8. Both cases are inapposite.

Nor do the two cases cited by the Town bear on the issue of economic versus non-economic use. *See* Appellee's Br. at 17. In *Town of Mount Desert v. Smith*, the appellant's "primary argument on appeal" was that "his land [did] not contain any items that can be objectively described as discarded, scrap, worn out or junked." 2000 ME 88, ¶ 6. Similarly, in *Town of Pownal v. Emerson*, the appellant argued that "the subjective intent of the landowner determines whether material is discarded and junk." 639 A.2d 619, 620 (Me. 1994). Each case thus involved challenges to whether particular items on a premises matched those specifically enumerated under 30-A M.R.S.A. § 3752(4)(A)-(C). The question was whether junk was "junk."

The Cousinses, by contrast, accepted that some such materials were present on the Property. Unlike in *Town of Mount Desert* and *Town of*

Pownal, however, they challenged that the existence of "junk" *per se* transformed their Property into a "Junkyard," in the absence of evidence that the Property was "used" as a "Junkyard." They contested outright the application of the statute as a whole to their abandoned construction site.

Moreover, interpreting "use" to require a business or commercial use avoids an obviously problematic reading of the statute. Operational standards exist because a business actively engaged in some manner of operations is required. There must be "a viable business entity" that is "actively engaged" in business "for the purpose of sale or trade." 30-A M.R.S.A. § 3754-A(5)(D). If not, large swathes of the statutory scheme are rendered superfluous. This reasonable interpretation does not create "loopholes" or hamstring local municipalities from regulating properties. *See* Appellee's Br. at 18-19. Pursuant to 30-A M.R.S.A. § 4452(5), for example, the "enforcement of land use laws and ordinances or rules that are administered and enforced primarily at the local level" provides municipalities a variety of options, including through the enforcement of local land use ordinances. Ample remedies therefore remain.

In the final analysis, it is absurd to subject unpermitted owners of "Junkyards" to civil penalty and abatement proceedings under circumstances—like those present in this case—where a municipality has

admitted that "due to the location and size of [a] lot, [the landowners] would not be able to meet the requirements for a permit." App. at 78. The complete statutory scheme thus supports the Cousinses' reading of "use" to require a primary or substantial business or commercial use, one capable of licensure and permitting. The contrary interpretation advanced by the Town, in fact, reinforces the same concerns highlighted by Justice Dana in his *Town of Pownal* dissenting opinion. 639 A.2d 619, 622 (Me. 1994) (Dana, J., dissenting). "The statute offers the landowner no guidance whatsoever in predicting whether his or her unconventional method of personal property storage might also be a statutory violation." *Id.* By no stretch of the imagination would most properties with common items visible—a piece of worn-out furniture; scrap lumber; some old rope, rags, paper trash, or waste—become "Junkyards," absent the guardrails of a business or commercial purpose. That, however, is the approach advocated by the Town.

B. Denial of a Jury Trial was Reversible Error

A jury trial should have been granted on the "Junkyard" claim. The $231,100 in monetary civil penalties sought by the Town—and to be paid to the Town exclusively, *see* 30-A M.R.S.A. § 4452(4)—were neither "ancillary" nor "secondary" to the "primary pursuit" of injunctive relief.

Town of Falmouth v. Long, 578 A.2d 1168, 1171-72 (Me. 1990). Instead, "the damages sought [were] not incidental to equitable relief but [were sought] in the alternative as full compensation for the injury alleged. . ." *Avery v. Whatley*, 670 A.2d 922, 924-25 (Me. 1996). The Town may characterize its claims however it likes, yet it is the money here which does the talking. It is uncontested that the monetary judgment entered against the Cousinses is roughly 7.5 times the value of their Property. *See* Appellants' Br. at 26, 31. The Town does not contest that the civil penalties were disproportionate in nature and degree to an injunction or abatement.[3] Despite "appreciating that the sheer size of the penalty is of concern to the Court," the Town nonetheless "asserts that a jury trial is not the solution." Appellee's Br. at 26. Yet the Town's suggestion "that a solution may be found in discretion regarding penalties" is no solution at all. *Id.* at n.2. As the Town acknowledges, "no judicial discretion to adjust penalties" exists as to the $100 per-day minimum. *Id.*

The Town further glosses over the importance of its Count I "Junkyard" claim being improperly tried to the bench together with Count II, its nuisance claim. With little elaboration and no citation to authority,

[3] The Cousinses further submit that abatement of the conditions on the Property was ancillary, given that the Town could have granted them a building permit to complete the aborted construction. Had the Town truly been interested in pursuing abatement, the most straightforward solution would have been to allow the Cousinses to finish what they had started.

the Town argues that no jury trial was required for the nuisance claim because the Town "did not act as an individual and seek damages for nuisance," and sought "what it understood to be statutorily mandated civil penalties." Appellee's Br. at 28; *see also id*. The Town's position regarding this tactical trial misstep is belied by both the record and the law.

The Town's nuisance claim required a jury trial, and should have brought the "Junkyard" claim along with it. The Town alleged "the Property constitute[d] a public nuisance within the meaning of 17 M.R.S.A §§ 2701, 2802." App. at 63. Section 2701 of Title 17 provides "a civil action for [] damages. . ." *Id*. For its nuisance claim, no civil penalties were sought. App. at 63-64. Rather, the Town claimed an entitlement "to the remedies set forth in 30-A M.R.S. § 3758-A(4)," which provides for a civil action "to recover the cost of abatement, including the expense of court costs and reasonable attorney's fees necessary to file and conduct the action." App. at 63; 30-A M.R.S. § 3758-A(4)(A). The Town was in fact awarded those fees and costs by the trial court. App. at 18. This "monetary relief awarded as compensation for losses," *see* Appellee's Br. at 25, was damages.

Thus, even assuming for the sake of argument that the "Junkyard" claim was equitable in nature, this was 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." *Avery v. Whatley*, 670 A.2d 922, 924 (Me. 1996). The "legal and equitable claims" further arose "from a common issue of fact. . ." *Id.* at 926. After all, the trial court summarily determined that because the Property was a "Junkyard" it was a nuisance, too. *See* App. at 14; Appellee's Br. at 22; *see also* 30-A M.R.S.A. § 3757 (the "establishment, maintenance or operation of any automobile graveyard or junkyard constitutes prima facie evidence that the yard is a nuisance as defined in Title 17, section 2802"). Given these dynamics, the trial court would—and should—have been bound by a jury's determination of the issues affecting the disposition of any arguably equitable claims asserted by the Town. *Avery*, 670 A.2d at 926. Even if *stare decisis* principles applied here, for the reasons previously addressed by the Cousinses, the scales would tip in favor of a jury trial. *Compare* Appellants' Br. 28-31 *with* Appellee's Br. at 28-32.

II. CONCLUSION

The Cousinses defended themselves against the 80K Complaint for "more than five years and [pulled the Town through] thousands of dollars of litigation" because this was never, as the Town claims, "a simple land use enforcement case." Appellee's Br. at 7. The Town improperly treated an inoperable and moldering construction site as a "Junkyard," then made

that Property subject to impossible permitting and operating standards, despite the absence of any business to permit or operations to standardize. The trial court, accepting the Town's flawed approach, erred in ruling that the condition of the Property *per se* constituted a junkyard, and, solely on that basis, a nuisance. Compounding those errors, the Cousinses were never afforded a jury of their peers to finally hear and resolve this dispute. The end result was the imposition of $231,100 in total civil penalties. So large is this sum, and so grossly disproportionate, the Town avoids expressly mentioning the final tally. *See* Appellee's Br.

Accordingly, 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 2nd day of January, 2026.

Respectfully Submitted,

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