

STATE OF MAINE
MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. PIS-25-577

TOWN OF SANGERVILLE, Appellee

v.

PHILIP KINNEY, Appellant

ON APPEAL
FROM THE DOVER-FOXCROFT DISTRICT COURT
Docket No. CV-2025-00080

BRIEF OF APPELLANT PHILIP KINNEY

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PROCEDURAL HISTORY

Invoking the provisions of 4 M.R.S.A. § 180 and Rule 80J, M.R.Civ.P., the Town of Sangerville applied to the Dover-Foxcroft District Court for a warrant to enter upon the property of Philip Kinney to conduct a survey with an eye toward taking an easement over Mr. Kinney's property, purportedly to access town owned land located to the east of the Kinney property. Mr. Kinney, though counsel, appeared and objected to the request; in addition, he moved to dismiss the application on grounds that the facts as alleged, namely that the town already held an easement over the proposed route, rendered the matter not justiciable, since Courts are not in the business of granting rights already possessed by the litigant. The Court denied that motion from the bench at the start of the hearing, which the Court had set on an expedited basis. After that hearing, the Court issued an opinion granting the relief sought by the town. Mr. Kinney then filed a timely appeal.

FACTS

Mr. Kinney, a Maine native now living in Florida, with family ties to the Dover-Foxcroft area, acquired several parcels of former paper company land in Sangerville. He acquired two of them Map 5. Lot 42 and Map 5, Lot 22 directly from Weyerhaeuser, and the third lot, Map 6, Lot 1, he acquired from an intermediate purchaser who had acquired from Weyerhaeuser. All told, he owned

about 208 acres. (T.T. 52/1 – 52/19). Access to this land was over an admittedly town road called the South Sangerville Grange Road, which ran from Silver Mills Road to the Bailey Cemetery. A town generated document, an inventory of public roads lists the South Sangerville Grange Road as being .71 miles long, and from the Silver Mills Road to the southerly boundary of the Kinney property is exactly .71 mile. (Def. Ex. #5, T.T. 44/51). (Note: this was excluded by the Court but was allowed as an offer of proof). A path, which until Mr. Kinney improved it, was overgrown, continued beyond the end of the public way, across the Kinney property. This has been referred to as the South Sangerville Grange Road extension, although no direct evidence has been presented that it was once in fact a public way.

Mr. Kinney's original plan for the property was to use it for hunting, with a rustic camper on site. Over time, his plans evolved and he decided he would like to build a home for his future retirement, combined with another of his passions, flying. He decided to build a landing strip, taxiway and hangar. Before undertaking any of that, he went to the town to inquire about the status of the South Sangerville Grange Road north of the Bailey cemetery. (T.T. 56/6). The town manager at the time and one of the Select Board members reviewed town records, gave him documents and assured him that the town had no interest in any portion of South Sangerville Grange Road, as it once may have existed, north of the Bailey

Cemetery. That was one of several steps he undertook to gain assurance that he owned the area and that the town and others had no interest in it.

Because Mr. Kinney was a hunter himself, he initially had no problem with allowing his neighbor, a Mr. Nuite, to allow hunters to come across a portion of the Kinney property to get to the Nuite property to hunt. Thus, there were hunters who came and went with permission for the first year or two of Kinney's ownership. However, around 2023, two things happened: Mr. Kinney was proceeding with his project, involving significant improvements; and he learned that the hunters--or at least some of them--had disrespected the property, leaving trash and even night hunting. He therefore informed Mr. Nuite that he would no longer give permission for hunting, although Mr. Nuite could continue to pass over the Kinney property to access Nuite property to the north, which was used for haying. Mr. Kinney put up a gate at the end of the public way and the south end of his property.

The next thing that happened is that he received a communication from the then Sangerville town manager telling him that a bunch of angry hunters had shown up at the Select Board meeting wanting to know what the town was going to do about the gate. (T.T. 69/9). From the beginning, the town has maintained it has rights in South Sangerville Grange Road north of the Bailey Cemetery and across what is now Mr. Kinney's taxiway and part of his runway.

Eventually, the town settled upon the path which was presented to the District Court and is on appeal before this Court; 4 M.R.S.A. § 180 and Rule 80J. It filed an application under oath and then presented the testimony of the affiant--the current town manager--at the hearing. At the hearing, the Trial Judge ruled that since this was a preliminary hearing to determine if a surveyor would be allowed on the property, and not a hearing on the actual taking, the Court would not hear or consider evidence tending to show that the town was acting improperly in seeking to gain access to the property. (T.T. 41/7 – 41/21). Specific rulings will be discussed *infra*.

Both in its application and the testimony of its only witness, the current town manager, the town claimed that it needed to access the town lot for both recreational purposes and to harvest the timber on the lot. He testified that “his understanding” was that the only reasonable access to the lot was via the former South Sangerville Grange Road (i.e. across the Kinney property) because other access points were over wetlands (T.T. 20/9-21/10). On cross-examination, he admitted that he had never personally walked the land (T.T. 35/8), and that the town had taken no steps to determine if access via another route was feasible (T.T. 36/6). He was not aware of any citizen who has ever used this property for hiking, snowshoeing or snowmobiling (T.T. 37/1), several people had told him they hunted on the property (T.T. 22/10), and this was at least part of the discussion when the

town meeting purported to vote to pursue eminent domain in March of 2025 (T.T. 18/10, 22/14). He concluded his direct testimony (over objection) by stating that it was his opinion that the townspeople want access to this land, they feel “entitled” to access, and feel they have a right to use this access. (T.T. 29-12). The contract the town signed with the surveyor who is waiting in the wings was to only survey the South Sangerville Grange Road, and not any other of the possible routes (T.T. 35/17). He couldn’t explain why that was so (T.T. 48/9). Although the town’s application asserted that the town already had easement rights in the South Sangerville Grange Road (App. 12, par. 7), he personally had not researched the town’s right to access via the South Sangerville Grange Road (T.T. 39/16). In fact, although he had signed the application under oath, he professed to have little memory of what it actually said, noting that it been prepared in its entirety by the town’s attorney (T.T. 45/13, 46/5).

Mr. Kinney then testified about his acquisition of the land in several purchases in 2019-20 (T.T. 51/25 – 52/13)., and that he owned around 208 acres. His initial plan was to use it for a hunting camp, and indeed, in that time frame, he gave several hunters permission to hunt on his land. Over time his plans evolved and by the end of 2022, he had decided to develop a retirement compound, which incorporated his passion of aviation. (T.T. 54/9). The project encompassed a house, a hanger, a taxiway and a 1900-foot runway. Access to the property would be from

what he understood to be the end of the South Sangerville Grange Road, near the Bailey Cemetery, a .71-mile-long public way.

Before undertaking this project, Mr. Kinney contacted the town and was reassured by the then town manager and a Selectboard member that the town did not hold or claim to hold any rights in South Sangerville Grange Road (or whatever the grown-over path may have once been) beyond the Bailey Cemetery. (T.T. 56/6). Relying not just on those assurances, but also other information, Mr. Kinney proceeded with his project, investing about \$1.5 million in the improvements described above. As the project proceeded, Mr. Kinney became aware that some person or persons were crossing his property and night hunting and that person or others were littering and leaving trash. (T.T. 67/15). As a result, Mr. Kinney decided to limit access to this property and put up a gate at his property line.

That is where the trouble began. Not long after, he received a communication from the then town manager informing him that a bunch of “angry hunters” has shown up at a Selectboard meeting and wanted to know what the town was going to do about the gate. (T.T. 69/9). Ultimately, after several other moves, the town inserted an article in the 2025 town meeting warrant, and after hearing from the hunters, (see T.T. 22/14), the town adopted the Article and in preparation for a taking, hired a land surveyor to come onto Mr. Kinney’s land and

look just at this potential access, to the exclusion of all others, as the subject of a taking by eminent domain.

Unlike the town's witness, Mr. Kinney had been on and over the land. (T.T. 65/10). He observed that the route the town proposes also goes through wetland. There are at least three other potential access routes, being from the north, the east and skirting along his southerly boundary, and to the northeast around the edge of his property. He testified that the town's proposed route for a public easement was incompatible with his aviation use because both as a matter of law and of common sense and safety, airplanes, vehicle and equipment and persons, on foot or in recreational vehicles, cannot coexist in the same space.

The Trial Court issued an opinion and order (App 7-9). The Trial Court rejected Appellant's assertion that even the preliminary entry by a surveyor onto his property was a taking (App. 8fn5). The Court went on to conclude that the town had a "compelling need...for the welfare of its residents" because of the need to have access to its lands "for the purposes for which it holds the lands, which are public purposes." Those needs were recreational opportunities and timber harvesting.

The Court thus entered an order under authority of 4 M.R.S.A. § 180 to allow the survey by the town's designated surveyor, and it is that order from which Mr. Kinney appeals.

ISSUES PRESENTED

- I. DID THE TRIAL COURT ERR IN RULING THAT THE TOWN'S APPLICATION FOR A WARRANT FOR A SURVEY WAS TOO PRELIMINARY TO PERMIT THE APPELLANT TO CHALLENGE THE TOWN'S BAD FAITH AND ABUSE OF POWER.
- II. DID THE TOWN FAIL AS A MATTER OF LAW TO ESTABLISH COMPELLING NEED TO SURVEY THE ROUTE ACROSS APPELLANT'S AIR STRIP WHEN THE RECORD CLEARLY ESTABLISHED THAT THERE WERE TWO OR THREE OTHER POTENTIAL ACCESS ROUTES THAT THE TOWN HAS POINTEDLY REFUSED TO CONSIDER.
- III. DID THE TRIAL COURT ERR IN REFUSING TO DISMISS THE APPLICATION ON GROUNDS OF JUSTICIABILITY BECAUSE THE TOWN IS ASKING THE COURT TO GRANT IT. PERMISSION TO DO SOMETHING IT ALREADY CLAIMS THE RIGHT TO DO.
- IV. WHETHER THE TRIAL COURT'S ORDER IS CONSISTANT WITH RULE 80J(d) WHERE IT FAILS TO SPECIFY THE LAND TO BE SURVEYED IN A MANNER THAT WILL CONNECT WITH THE TOWN'S LOT.

SUMMARY OF ARGUMENT

Because Mr. Kinney's property rights were implicated even at this stage, especially where the town was focused on the one route that went through his taxiway, the Court erred in preventing Mr. Kinney from presenting evidence to show the bad faith and abuse of power by the town. In any event, the town failed as a matter of law in demonstrating compelling need; even if in theory the town has a compelling need to access its property, given the existence of three other potential access points, none of which had been evaluated, there was clearly no compelling

need to focus on this one route which would go over an improved airstrip. The Court also should have dismissed the application on grounds of justiciability, since courts are not in the business of granting litigants permission to do what they already claim the right to do. Finally, the Court's order did not contain the specificity required to limit the entry to a designated path and to not give free rein to the surveyor to wander around Mr. Kinney's property.

ARGUMENT

I. THE TRIAL COURT ERRED IN RULING THE WARRANT APPLICATION WAS TOO PRELIMINARY TO PERMIT APPELLANT TO CHALLENGE THE TOWN'S BAD FAITH AND ABUSE OF POWER.

Standard of Review Applicable to Issue # 1: While on its face, this issue relates to the conduct of the trial and the admission or exclusion of evidence, which are usually reviewed for abuse of discretion, the reality is that embedded in this issue are the Constitutional and statutory questions as to when and by what means under Maine law a landowner can challenge the good faith of a possible taking. Since those issues involve statutory and constitutional interpretation, they should be reviewed *de novo*. Goggin v. State Tax Assessor, 2018 ME 111, 191 A 3d 341.

Maine, like the other states and the federal government, has a constitutional provision regarding eminent domain. Maine Constitution Art. I, Section 21. While recognizing the necessity for such a power, it is clear from the context and the history, that the constitutional provision regarding eminent domain is a *limitation*

on government power, not a broad grant of authority. This point is driven home right from the beginning of the Maine Constitution, Art. I, Section I which grants persons “the natural, inherent and unalienable rights, among which are those of ...acquiring, possessing and **protecting** property.” [Emphasis added]. Moreover, Maine’s approach to eminent domain is more restrictive than the federal jurisprudence. While the federal takings clause permits the taking of private property as part of a scheme of redevelopment which will eventually vest title to the land in private hands, Maine expressly prohibits that type of taking. Compare Kelo v. City of New London, 545 US 469 (2005) [expanded concept of “public use” to include takings where the property taken is transferred to a private developer] with 1 M.R.S.A. § 816 [restricting right of condemnation under circumstances similar to those found in Kelo]. Of course, that section was passed in direct response to--and refutation of--Kelo, since it was made retroactive to June 23, 2005--the exact date that Kelo was decided. Furthermore, the provisions of 4 M.R.S.A. § 180(1) require a showing for “compelling need,” an element missing from the U.S. Constitution, Amendment 5.

That background is pertinent to the pending case because Mr. Kinney is a property owner with the constitutional right to protect his property. There is no temporal limit restricting when the right to protect may be exercised. The town did not just show up one day out of the blue, and say, “we think we’d like to survey

your property.” There is ample evidence that, for reasons which have nothing to do with public use or public exigency, the town wanted to take back the access which it claimed it lost and which the citizens “deserved” to have. There had already been a dust up over Mr. Kinney’s installation of a gate, a bunch of angry hunters wanting to know what the town was going to do about it, and a town meeting article raising money specifically to go after this particular access to the exclusion of others, see Part II, *infra*. From any reasonable perspective, the town is already locked and loaded and more committed to this route than any other way. Yet the Trial Court ruled that this was just a preliminary step short of an actual taking, and that the time to raise the issues the landowner sought to raise could be addressed at some indefinite point in the future, in some unspecified proceeding. That approach unfortunately gives the town the opportunity to let the horse out of the barn before the landowner is allowed to do anything.

First, the law is clear that a landowner has the right to challenge a taking on all available grounds, including public exigency. Second, nothing in any of the statutes, including 4 M.R.S.A. § 180, specifies or limits how and when those arguments can be raised. Some have apparently gone the declaratory judgment route. See Dyer v. Department of Transportation, 2008 ME 106, 951 A.2d 821. If the town gets the result it wants from the survey, the next step would be the actual taking pursuant to 23 M.R.S.A. § 3021 *et seq.* Those provisions do not provide for

landowner input, and if that were the proper point for a challenge, the horse would not only be out of the barn and off the farm, it would also be in another county.

On the other hand, forcing the parties to litigate this potentially important issue in a summary proceeding, with no discovery or motion practice, and little time for preparation, may not be the fairest or most orderly means to address the problem. Certainly, as the Trial Court observed, an amendment to Rule 80J may be called for, considering its confusing and restrictive language addressed to landfills.

In this case, in the absence of a rule or Court decision specifying a different procedure, the Appellant was prepared to present evidence that town's focus on his gate, his land, and denial of hunters of their "rights" constituted bad faith or an abuse of power. Dyer v. Department of Transportation, 2008 ME 106, 951 A.2d 821, 827. The Trial Court erred in not giving him that chance.

II. THE TRIAL COURT ERRED IN CONCLUDING THAT THE TOWN HAD ESTABLISHED "COMPELLING NEED" FOR A WARRANT TO SURVEY.

Standard Of Review Applicable to Issue # 2: This issue involves statutory interpretation of several parts of 4 M.R.S.A. §180, and as such, is subject to *de novo* review. Doane v. Department of Health and Human Services, 2017 ME 193, 170 A 3d 269.

An applicant under 4 M.R.S.A. §180 must establish “compelling need” defined in Section 180(1) as follows:

There is a compelling need for the issuance of the warrant, such as required compliance with state statute or regulations or protection of the public health, safety or welfare.

The Trial Court found there were compelling circumstances because of the need to have access to the town’s land for the public purposes of recreation and logging (App. 8-9). This was an error. Applying the plain meaning rule, e.g. Copp v. Liberty, 2008 ME 108, 952 A.2d 976, there is no hint whatsoever that conducting this survey would lead to any compliance with statute or regulation. Similarly, public health and safety are not anywhere near in the picture. That leaves the amorphous term “protection of ...welfare.” Given the town manager’s admission that the town, particularly a group of hunters thought that they had the right to this access, it sounds more like payback than any advancement of the public welfare. While the hunters may have thought they had rights, they did not--not the first time this mistaken belief has occurred.¹

¹ “A sizeable segment of the hunting community believe that private landowners lack the right to restrict hunting—especially when there is a history of that use going back many years. When philanthropist Roxanne Quinby accumulated large tracts of forest in Maine’s North Woods and then posted the land against hunting and motorized access, the Bangor Daily News published an article in which hunting camp owners called her ‘public enemy no. 1.’ Those who became accustomed to hunting the land had inaccurately come to believe that they had a right to continue that use.” Kenlan, *Maine’s Open Lands: Public Use of Private Land, The Right to Roam and the Right to Exclude*, 68 ME L.Rev. 185, 193 (2016).

There is an additional reason why the application fails the compelling need test. Even assuming that there is a compelling need to have access to the town's lot, the record makes it crystal clear that there are other means of access to the land which the town has not explored. The town manager, the town's only witness, claimed that there were wetlands, but he had never been on the property, nor had the town consulted a logger or an engineer. Mr. Kinney who had been on the property a number of times, testified that not only did the route the town wants to follow contain wetlands, there are at least three ways to get to the property without going across his taxiway and landing strip. If the town had conducted a preliminary study and evaluation of all potential access routes and had come before the Court with some actual evidence that there was a preferred route, that would come a lot closer to showing compelling need for a particular route. All of that is notably absent, and what was presented falls short of establishing compelling need. The plain meaning of "compelling" involves an element of force or constraint. Webster's New World Dictionary (3d College Ed. 1998 at p. 284). Is the town really being forced to choose this route?

There is one more aspect to the compelling need issue. It is evident that the route sought by the town would pass more or less through the middle of Mr. Kinney's improvements, including the taxiway and landing strip he has built. In a best-case scenario for the town, they get to do that and are faced with a huge claim

for just compensation, since Mr. Kinney testified that a motor vehicle or personal passage right of way and an airplane facility, even a small one, cannot co-exist. Thus, the value of his aviation improvements, a hangar, a taxiway and a runway will have been rendered useless, and clearly part of a claim for just compensation. The concept of compelling need suggests that the actor has no other choice but is compelled to do things a certain way. Here, on this record, the town is not compelled but rather has chosen to follow a certain path. That path would destroy a landowner's dream, plus cost the town hundreds of thousands of dollars in just compensation. Does the town really have a compelling need to do that?

III. THE TRIAL COURT ERRED IN NOT DISMISSING THE APPLICATION ON GROUNDS OF JUSTICIABILITY SINCE THE APPLICANT INSISTS IT ALREADY HAS THE RIGHT TO DO WHAT IT IS ASKING THE COURT TO AUTHORIZE.

Standard of Review Applicable to Issue # III: This issue involves a challenge to the sufficiency of the complaint and is subject to *de novo* review. Savage v. Maine Pretrial Services, 2013 ME 9, 58 A 3d 1138.

The town's position is fundamentally inconsistent. It claims it needs relief from the Court under the statute to obtain a warrant to enter upon the continuation of the South Sangerville Grange Road to conduct a survey to determine the metes and bounds of a route to the Town's lot. In the same breath, it asserts in its sworn application that it already has the right to do that. Notably absent is any explanation of the source of that right, but if under oath is to have any meaning,

one must accept for these purposes that the town sincerely believes it has some rights. The problem arises that if that is so, the town does not need the Court's assistance to give it permission to do what it already has the right to do. That would be a waste of judicial resources and bring the Court into the realm of advisory opinions, and hypothetical claims. See Hathaway v. City of Portland, 2004 ME 47, 846 A 2d 1168, 1171. The present proceeding is not and should not be a substitute for a quiet title action; indeed, if the town already has the rights it claims, it may not have to pay just compensation for exercising them, a potentially significant amount of money. See Part II, *supra*.

The Court and the town seized on the idea that this could be a “defective title,” but a closer examination of that concept demonstrates its inapplicability here. Simply put, the town either has rights or it doesn't. That is not a title defect but a question of who has better title or, indeed, if the town has *any* title. That is better suited as the subject of a plenary action to declare or quiet title. Towns should not be afforded special privileges or pathways to obtain quiet title relief. Eminent domain is not and should not be a substitute for a quiet title action; should towns be able to claim they owe no just compensation after a taking because they owned it all along?

IV. THE COURT'S ORDER DOES NOT MEET THE REQUIREMENTS OF RULE 80J(d), ASSUMING IT APPLIES, AS IT DOES NOT GET THE TOWN TO WHERE IT SAYS IT WANTS TO GO.

Standard of Review Applicable to Issue # IV: This issue challenges the form of the trial court's order and whether it complies with constitutional and statutory requirements. It could also be read as challenging the trial court's factual findings that support the issuance and scope of the order. To the extent applicable, review of the court's factual findings would be reviewed for clear error. To the extent the issue is whether the constitution and or statute required more precise delineation of what would be permitted, that is a question of law subject to *de novo* review.

Thorndike v. Lisio, 2017 ME 14, 154 A 3d 624

Throughout its presentation, the Town focused its attention on the extension of the South Sangerville Grange Road from where the admittedly public way ended near the Bailey Cemetery, northerly across the Kinney land. That pathway, now cleared by Mr. Kinney as part of his landing strip project, continues in a northerly direction through the Kinney property and eventually meets up with another path or roadway which was referred to during the hearing as the potential northerly access to the town's lot. Rule 80J, to the extent it is applicable, requires the warrant to "specify ...the land to be surveyed or tested..." Here the Order did not do so. Certainly, the Court could not have intended that the surveyor would have free run of the entire 208 acres, but on the other hand, the only area discussed is the road extension and that extension goes north not to the east where the town's

land is situated.² To quote an old Maine aphorism, “You can’t get there from here.” Moreover, another State constitutional provision is implicated. Maine Constitution Art. I, Section 5 requires that when a warrant to search any place is issued, a “special designation of the place to be searched” is required. It was clearly not the Court’s intent, nor within the Court’s authority, to authorize the surveyor to go wherever he or she wanted, but what was ordered doesn’t get the town where it says it wants to go, which is well to the east of the South Sangerville Grange Road extension. The map which was introduced (App. 41) contained a green line which appears to start in a northerly direction and take a hard right toward the town lot, and that may have been the town’s intention, but that intention didn’t make it into the Court’s order.

CONCLUSION

Property rights, and the defense thereof, are such important values in Maine that they appear in the very first Article of the Maine Constitution. While eminent domain is a necessary component of governmental authority, Maine has adopted a view of taking by eminent domain which is more restrictive than that of the federal government and other states. When Mr. Kinney gated his property, he set in motion a chain of events that has put the town on the path of taking his property. While the town asserts that this is for the noble purpose of protecting the public welfare of

² This issue was brought to the Court’s attention by Mr. Kinney’s counsel. See T.T. 7/9 – 7/17.

timber harvesting and “recreation” on the town’s lot located near Mr. Kinney’s property, the facts suggest that the gating angered a bunch of hunters who made enough noise to prompt the town to move toward eminent domain, not for any true public purpose, but to reclaim the “rights” the hunters thought they had, but which they did not.³ The town is prepared to expose itself to a just compensation claim in an amount in the hundreds of thousands of dollars to reinstate those “rights.” Given these circumstances, under the Constitutional provisions and the law in Maine, and consistent with the law of other jurisdictions⁴ which have been recognized that eminent domain power can be abused, Mr. Kinney has the right to protect his property by showing that abuse. The hearing held in this case, although in some respects early in the game, was not so early and so hypothetical that his right to defend himself and his property should have been put off to some indefinite future proceeding.

Based upon what the town actually presented, it fell far short of making a showing of compelling need. When there are three or four potential access routes to get to the town lot, and the town has never evaluated any of them but instead

³ In the 128th Legislature, a proposed Constitutional amendment was introduced to establish the right to hunt. See 128th Legislature LD 11 HP 12. That proposal died.

⁴ *Pleasant Ridge Associates, L.P. v. Town of Burlington*, 399 Mass. 771 (1987); Helman, *Misusing Eminent Domain; Pretextual Takings for a Public Use*, 93 Fordham L.Rev. 2229 (2025)..

focused on the one route that will by strange coincidence overturn Mr. Kinney's action of gating his property, no compelling need has been shown.

The town cannot have it both ways. It filed a pleading under oath and represented to the Court it had an interest in the South Sangerville Grange Road extension where it crossed Mr. Kinney's property. Yet it came before the Court and asked the Court to grant it permission to enter upon the property it claimed it already possessed those rights. A claim presented in that fashion is not justiciable.

Finally, the Trial Court, in rejecting Mr. Kinney's arguments and adopting the town's position, failed to follow the requirement that the warrant specify what can be searched--certainly, it could not be all 208 acres of Mr. Kinney's property. One can speculate that the Court meant to limit the town to a very narrow and precise route, but the order does not say that and it should have.

The appeal should therefore be sustained, and the matter remanded back to the District Court for dismissal of the application or further proceedings.

DATE: April 3, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Charles E. Gilbert III, Esq. hereby certify that on this 3rd day of April, 2026,
I served an electronic copy of the foregoing Brief of Appellant Philip Kinney by
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Paper copies will be served on Appellee at the above mailing addresses pursuant to
M.R. App. P. 7(c)(4).

Dated: April 3, 2026

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