

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
Docket No. PIS-25-577

TOWN OF SANGERVILLE, APPELLEE

v.

PHILIP KINNEY, APPELLANT

ON APPEAL FROM THE DOVER-FOXCROFT DISTRICT COURT

BRIEF OF APPELLEE
TOWN OF SANGERVILLE

May 22, 2026

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	4
I. STATEMENT OF FACTS AND PROCEDURAL HISTORY	6
II. ISSUES PRESENTED	7
I. Did the District Court Err in Determining the Town Met Its Burden under M.R.Civ.P. 80J?	7
II. Did the District Court Correctly Bar Consideration of Premature Evidence?	7
III. Did the Town Present a Compelling Need?	8
IV. Does the Town’s Assertion of an Easement Bar Condemnation?.....	8
V. Is the Warrant Sufficiently Specific?	8
III. SUMMARY OF ARGUMENT	8
IV. ARGUMENT.....	10
A. Standard of Review	10
B. The Town Has Met the Low Bar Necessary to Issue a Warrant	11
C. Alleged Defects Raised by the Defendant Must be Ignored.....	12
1. The Order Does Not Implicate Constitutional Issues	12
2. The Application Demonstrated a Compelling Need.....	13
3. The Town Cannot be Precluded from Relief for Asserting An Easement Over the Property	16
4. The Warrant is Sufficiently Precise	18

V. CONCLUSION.....	20
CERTIFICATE OF SERVICE	21

TABLE OF AUTHORITIES

Cases

<i>Antler’s Inn & Rest., LLC v. Dept. of Pub. Safety</i> , 2012 ME 143 60 A.3d 1248	15
<i>Goudreau v. Pine Springs Rd. & Water, LLC</i> , 2012 ME 70 44 A.3d 315	11
<i>Hamm v. Hamm</i> , 584 A.2d 59 (Me. 1990)	18
<i>Hutchinson v. Bruyere</i> , 2015 ME 16 111 A.3d 36	13, 14
<i>Martin v. Brown</i> , 650 A.2d 937 (Me. 1994)	10
<i>State v. Perrigo</i> , 640 A.2d 1074 (Me. 1994)	10
<i>State v. Veglia</i> , 620 A.2d 276 (Me. 1993)	10
<i>State v. Wilcox</i> , 2004 ME 7 840 A.2d 711	18
<i>Stevens v. Anderson</i> , 393 A.2d 158 (Me. 1978)	16
<i>Sullivan v. Porter</i> , 2004 ME 134 861 A.2d 625	10
<i>United States v. Bonner</i> , 808 F.2d 864 (1st Cir. 1986)	18
<i>United States v. Vega-Figueroa</i> , 234 F.3d 744 (1st Cir. 2000)	19
<i>Wilcox v. City of Portland</i> , 2009 ME 53 970 A.2d 295	13

Other Authorities

Maine Const. Art. I, Sec. IV	18
2003 ME Super. LEXIS 217 (Me. Super. Oct. 16, 2003)	19

Rules & Regulations

M.R. App. P. 5(b)(2)(A)	13, 14
M.R. Civ. P. 80J	7, 11, 12, 15, 11

Constitutional Provisions & Statutes

30-A M.R.S. § 3101	16, 17
30-A M.R.S. § 4452(1)(A)	19
4 M.R.S. § 180	7, 11
5 M.R.S. § 6200	15

12 M.R.S. § 1847(1).....	15
23 M.R.S. § 3023	16, 17
32 M.R.S. § 18231	7
38 M.R.S. § 480-A.....	14

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

In 1955 the United States government deeded to Appellee Town of Sangerville (“Appellee” or “Town”) a large parcel of land within the Town that runs north and east to Appellant’s land (“Town land”). (A. 7). The Town has since used the property as a woodlot under the guidance of the Town’s forestry committee, and residents have used it for hiking and hunting. In 2019 and 2020, Appellant Philip Kinney (“Appellant” or “Kinney”) purchased over 200 acres of land from the Town across three separate parcels (the “Property”). Surrounded by the 200 acres is an old road known as the South Sangerville Grange Road (“the Road”) that runs north-south through the Property. (A. 7). Since Appellant purchased the Property, there has been an ongoing dispute over the Town’s authority to access the Town land via the Road. (A. 7). Shortly after his arrival in 2024, Appellant installed a gate blocking the Road, prohibiting access to the Town land by the Town and its residents. (A. 12). The Town informed Appellant that it believed the Road remained a public way, but at the minimum, it retained an easement across the Road. (A. 12). Appellant continued to refuse access, leading the Town to explore taking the Road or clarifying its legal interest in the Road via eminent domain. (A. 12).

As a preliminary step to any negotiated purchase of rights or to an eminent domain proceeding, the Town must first obtain a boundary survey and appraisal. (A. 12). The Town attempted to have its contracted surveyor visit the property pursuant

to 32 M.R.S. § 18231, but Appellant forbade access unless a warrant was executed pursuant to 4. M.R.S. § 180. (A. 34). The Town then applied to the Dover-Foxcroft District Court for a survey warrant pursuant to 4 M.R.S. § 180 and M.R. Civ. P. 80J (the “Application”). (A. 11-36). After a hearing on the merits of the Application, the District Court issued a survey warrant on December 18, 2025 (the “Warrant”). (A. 7-9). The Warrant noted that

“the Town has shown a compelling need...for the welfare of the Town’s residents. The Town must have access to its lands for the purposes for which it holds the lands, which are public purposes. While Mr. Kinney argues that there are other ways the Town could develop [to] access its lands, the Town believes that the road at issue is the best means of access, though it wishes to complete its survey before making a final decision on this point.”

(A. 7-8). The Warrant further noted that “a survey, as one is normally conducted, would [not] lead to any serious inconvenience” for Appellant. (A. 8). Last, the Warrant authorized the Town’s designated surveyor and other necessary Town officials to enter Applicant’s property to conduct the survey. (A. 9). This appeal (the “Appeal”) ensued.

II. ISSUES PRESENTED

- I. DID THE DISTRICT COURT ERR IN DETERMINING THE TOWN MET ITS BURDEN UNDER M. R. CIV. P. 80J?
- II. DID THE DISTRICT COURT CORRECTLY BAR CONSIDERATION OF PREMATURE EVIDENCE?

- III. DID THE TOWN PRESENT A COMPELLING NEED?
- IV. DOES THE TOWN'S ASSERTION OF AN EASEMENT BAR CONDEMNATION?
- V. IS THE WARRANT SUFFICIENTLY SPECIFIC?

III. SUMMARY OF ARGUMENT

This dispute makes a mountain out of a mole hill. It arises out of the Town's request for a warrant to conduct a non-intrusive land survey, something landowners are already entitled to do by statute. Despite Appellant's attempts to suggest otherwise, it does not arise out of an exercise of eminent domain. To date, no such condemnation has occurred or been authorized by the Town. Rather, the Application merely seeks to allow Town officials and a surveyor on the Property so that the Town could properly evaluate the location and value of the property to determine whether a negotiated purchase or eminent domain proceeding is viable and, if so, to be able to rely on a proper metes and bounds of the affected property. The Town readily met the low standard necessary to issue a warrant for a survey or test. This alone is sufficient to dispose of the Appeal.

In an attempt to distract from the early posture of this potential condemnation process and the flimsiness of his grounds to oppose the authorized limited incursion, Appellant focuses much of his claims on possible defects of a future taking. Not only are these claims, at the minimum, premature, they are also unfounded. More

specifically, Appellant raises four issues with the issuance of the Warrant: (1) the Town had improper motivations to seek the Warrant; (2) the Town did not show a compelling need required for the Warrant to issue; (2) the Town is not entitled to the Warrant because it already asserts an interest in the Road; and (4) the Warrant itself is procedurally defective.

Each of these claims fail. As explained in more detail below, Appellant's concerns about the Town's motivations for seizure are premature, as no taking has occurred. Moreover, the Town readily demonstrated a compelling need, providing access to the outdoors for its residents, as well as access to valuable timber, which the Legislature has repeatedly acknowledged are in support of the public welfare. That the Town asserts an easement over the Road does not preclude it from seeking to assert a fee simple interest. In fact, it appears that the legislative intent was to allow the Town to take such action. Last, any procedural defects in the Warrant are minor and do not meet the standard necessary to void it.

The Court must deny the Appeal. The Town has met its burden. Appellant does not raise any legitimate issue with the District Court's Order, and has not evidenced how allowing it would "lead to any serious inconvenience."

IV. ARGUMENT

A. Standard of Review

In the criminal context in Maine, a search warrant is subjected to “a very deferential standard of review” to determine if there was a substantial basis for the finding of probable cause. *See State v. Perrigo*, 640 A.2d 1074, 1076 (Me. 1994). More specifically, “a reviewing court is not to make a *de novo* determination of whether there was probable cause for the issuance of a search warrant, but must accord deference to the decision to issue the warrant and must limit its inquiry to whether the evidence viewed as a whole provided a substantial basis for the finding of probable cause.” *State v. Veglia*, 620 A.2d 276, 278 (Me. 1993). In doing so, the court looks at “the totality of the circumstances, with all reasonable inferences that may be drawn to support the issuance of the warrant.” *Id.* (citation omitted). While no similar standard has been established in the civil context, given the heightened consequences of improper warrant issuance in a criminal matter, the Town urges the Court to adopt a similarly deferential standard here.

To the extent that the Court declines to do so, factual determinations rendered by the District Court should be subjected to a deferential standard of review. *See Sullivan v. Porter*, 2004 ME 134, ¶ 12, 861 A.2d 625 (“we apply a deferential standard of review to a jury’s findings of fact”); *Martin v. Brown*, 650 A.2d 937, 939 (Me. 1994) (“the trial court’s findings of fact are entitled to a deferential standard of

review and will not be overturned unless clearly erroneous”). With regard to Appellant’s allegations of legal error, namely exclusion of evidence and sufficiency of the warrant, such claims must be reviewed *de novo*. See *Goudreau v. Pine Springs Rd. & Water, LLC*, 2012 ME 70, ¶ 11, 44 A.3d 315 (noting matters of law are reviewed *de novo*).

B. The Town Has Met The Low Bar Necessary To Issue A Warrant.

The parties have stipulated that 4 M.R.S. § 180 and M.R. Civ. P. 80J govern the Application. (A. 7). Section 180 allows a District Court Judge to issue such warrants consistent with rules issued by this Court. See 4 M.R.S. § 180. This Court has provided such guidance through M.R. Civ. P. 80J which applies to warrants for surveys and tests—exactly what is at issue here.

The requirements to secure an administrative inspection warrant under Rule 80J are sparse. Specifically, an applicant must solely show:

- 1) The statutory authority pursuant to which the applicant is authorized to acquire lands by eminent domain and a description of the lands to be surveyed or tested;
- 2) The facts sufficient to demonstrate a compelling need for such warrant;¹
- 3) A statement that the applicant has requested permission from the owner of the premises to conduct such survey or test and such permission has been denied; and

¹This compelling need may be demonstrated by an allegation that acquisition of the land in issue is or may be necessary in order for the applicant to comply with state law or regulations or for protection of the public safety, health or welfare. See M.R. Civ. P. 80J(b)(2).

- 4) A statement that the applicant has at least three days in advance of the presentation of the application given written notice to the owner and occupant of the land of the time and place at which the applicant intends to present the application to the court and the right of the owner and occupant to be present and to be heard thereat.

M.R. Civ. P. 80J(b). Simply put, the Town has met this low burden. More specifically, the Town included the statements mandated by factors one, three, and four above in paragraphs 10, 11, 17 and 18 of the Application. (A. 12, 13, 34-35). The Application also met the burden to demonstrate a compelling need for the inspection as explained in depth below. On this front, the District Court noted that the Town demonstrated a compelling need by alleging that “it must have access to its lands for the purposes for which it holds the lands, which are public purposes.” (A. 8). Because the Application meets the required criteria for issuance of a warrant, the District Court did not err in its determination, and this Court should deny the Appeal.

C. **Alleged Defects Raised By Defendant Must Be Ignored.**

1. **The Order Does Not Implicate Constitutional Issues.**

The Order allows the Town to enter the Property for the sole and limited purpose of conducting a survey to determine what land may be appropriate for condemnation should the Town elect to pursue that route. This authorization is further limited temporally consistent with Rule 80J. In other words, the Order does not authorize a taking.

Appellant's argument that the District Court improperly prohibited him from raising issues related to the Town's alleged bad faith and abuse of power do not pertain to the issue at hand: a boundary survey. These issues may bear on whether a taking may ultimately be affected, but are premature as such action has not been taken, let alone materially begun at this time. As a result, settling the constitutional issues raised by Appellant would be purely advisory, and an improper exercise of power by this Court. *See Wilcox v. City of Portland*, 2009 ME 53, ¶ 14, 970 A.2d 295 (noting that consideration of appeals claims unsupported by current factual circumstances "would be premature" and that the Court "[does] not issue such advisory opinions"). Consequently, this basis for appeal must be ignored.

2. The Application Demonstrated a Compelling Need.

Appellant's contention that the District Court erred in determining that the Application failed to show a compelling need is infirm on two fronts: (1) it is unsupported by the record; and (2) it is unsupported by law.

First, "an appellant must ensure that the record on appeal includes a transcript of all evidence that bears on any finding or conclusion that the appellant contends is unsupported by the evidence or contrary to the evidence." *Hutchinson v. Bruyere*, 2015 ME 16, ¶ 7, 111 A.3d 36 (citing M.R. App. P. 5(b)(2)(A)). Appellant contends that no compelling need exists, in part, because alternate methods of accessing the Town's property are available. (Blue Br. 19). Yet, Appellant made no attempt to

ground this assertion in record evidence, but rather asserts without support that he has been to the Property and the Town Manager has not. (Blue Br. 19). It is not surprising that these allegations are not accompanied by citations to the appendix and/or record—because they are not contained within the appendix and/or record. As a result, the Rules of Appellate Procedure and this Court’s precedent must bar Appellant from relying on such claims. *See* M.R. App. P. 5(b)(2)(A); *Hutchinson v. Bruyere*, 2015 ME 16, ¶ 7, 111 A.3d 36.

Appellant also argues that the Town’s stated purpose for potentially seeking condemnation—to provide access for forestry management, hunting and recreation on public land—does not contribute to the public welfare and thus cannot serve as a basis for the Town’s compelling need. (Blue Br. 18; A. 11). This argument utterly disintegrates when examining the repeated declarations of the Legislature which explicitly support the opposite conclusion. *See* 38 M.R.S. § 480-A (stating “The Legislature finds and declares that the State’s rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands and coastal sand dunes systems are resources of state significance. These resources have great scenic beauty and unique characteristics, unsurpassed recreational, cultural, historical and environmental value of present and future benefit to the citizens of the State and that uses are causing the rapid degradation and, in some cases, the destruction of these critical resources, producing significant adverse

economic and environmental impacts and threatening the health, safety and general welfare of the citizens of the State”); 5 M.R.S. § 6200 (noting “the continued availability of public access to [outdoor] recreation opportunities and the protection of the scenic and natural environment are essential for preserving the State's high quality of life”). The Legislature has also noted that it is in the public interest to allow for responsible harvesting of timber products from public land. *See* 12 M.R.S. § 1847 (1) (“The Legislature declares that it is in the public interest and for the general benefit of the people of this State...that the public reserved lands be managed under the principles of multiple use to produce a sustained yield of products...”). In short, it is well settled that providing access to outdoor recreation and timber products impacts public welfare.

It is also worth noting that the standard set forth in Rule 80J to show a compelling need is low—all that is required is “an allegation.” M.R. Civ. P. 80J(b)(2). Notwithstanding the defects in Appellant’s argument noted above, it is undisputed that the Town’s Application contains the bare allegation required. (A. 11). While Appellant argues that the Town did not sufficiently demonstrate a compelling need, he did not argue before the District Court that the Town’s interests in its land were not compelling. *See Antler’s Inn & Rest., LLC v. Dept. of Pub. Safety*, 2012 ME 143, ¶ 9, 60 A.3d 1248 (noting failure to raise an issue precludes future reliance). As a result, Appellant’s argument is unavailing and this Court should determine that the

District Court did not err in determining that the Town demonstrated a compelling need.

3. The Town Cannot Be Precluded From Relief for Asserting an Easement Over The Property.

Next, Appellant asserts that the Town may not employ the power of eminent domain under 23 M.R.S. § 3023 because it also claims a public easement over the Road. (Blue Br. 20-21). This argument fails for three independent and equally valid reasons.

First, 23 M.R.S. § 3023 explicitly empowers the Town to take property, in part, “if title is defective.” 23 M.R.S. § 3023. While the Town believes it holds a public way or easement over the Appellant’s property, the Appellant’s refusal to honor this easement has clouded such right. *See generally Stevens v. Anderson*, 393 A.2d 158 (Me. 1978). Because state law explicitly authorizes the exercise of eminent domain in such situations, and the Application is a necessary precursor to such exercise, the Town’s asserted easement does not deprive it of the right to see an inspection. *See* 23 M.R.S. § 3023.

Second, even if the Town’s right to access the property was not clouded, the Town would still be within its right under state law to pursue a taking despite already maintaining an easement over the Road. 23 M.R.S. § 3023 allows a municipality to “take property or interests therein” for highway purposes, and 30-A M.R.S. § 3101 allows a municipality to “acquire real estate or easements for any public use by using

the condemnation procedure for town ways” using the procedure set forth in Title 23. Both of these statutes authorize a taking to effect a spectrum of interests in property. This suggests that the Legislature intended to allow municipalities leeway in determining what specific type of property interest was needed to obtain its goals, and did not seek to bar a municipality from addressing claims of abandonment or discontinuance, or obtaining a fee simple interest in property over which it already held an easement, if such clarification or enlargement of the municipality’s right was required to promote the public interest. Moreover, nowhere does the statute prohibit a municipality from taking an easement or fee simple interest in property over which it already retains an easement. *See generally* 23 M.R.S. § 3023; 30-A M.R.S. § 3101. In the absence of such prohibition, the Appellant’s argument that the Town is precluded from doing so falls short.

Third, notwithstanding that Maine law authorizes the Town to exercise eminent domain even when it already has a claim to the property at issue, this predicament is a direct result of Appellant’s own actions. He has refused the Town access to an easement that it possesses, forcing it to potentially clarify its claim via eminent domain. (A. 34). As the District Court noted, “Mr. Kinney is arguing a Catch-22: since the Town had taken the position that it had possessory rights in the road it may not seek court action to exercise those rights, yet it may not at the same time access the road because Mr. Kinney owns it and he has chosen to bar entry by

the surveyor and any Town agents.” (A. 8). Simply put, the Town would not be seeking an inspection if Mr. Kinney had honored the Town’s easement. Due to his refusal of entry, the Town was forced to request authorization from the District Court—a request Appellant now seeks to weaponize.²

4. The Warrant is Sufficiently Precise.

Last, Appellant incorrectly attempts to invalidate the Warrant by arguing that the description of the location to be searched is impermissibly vague. (Blue Br. 21-23). While a warrant cannot be issued without “a special designation of the place to be searched,” (Maine Const. Art. I, Sec. IV), courts have considerable leeway in determining what constitutes a sufficiently particular designation. What is necessary is sufficient information to prevent a “a general search” and “seizure of property falling outside” of a warrant. *State v. Wilcox*, 2004 ME 7, ¶8, 840 A.2d 711. The First Circuit has clarified, noting that “the test for determining the adequacy of the description of a location to be searched is whether the description is sufficient to enable the executing officer to locate and identify the premises with reasonable effort, and whether there is any reasonable probability that another premise might be mistakenly searched.” *United States v. Bonner* 808 F.2d 864, 866-867 (1st Cir. 1986).

²The rationale supporting dismissal of Appellant’s argument is analogous to the doctrine of unclean hands. See *Hamm v. Hamm*, 584 A.2d 59, 61 (Me. 1990).

To this end, even the incorrect designation of property to be searched is not necessarily fatal to a warrant, even in the criminal context. In *State v. Cobb*, the Penobscot County Superior Court upheld a warrant which listed the incorrect location to be searched. *See generally State v. Cobb*, CR-03-356, 2003 ME Super. LEXIS 217 (Me. Super. Oct. 16, 2003). There, the Superior Court noted that the applicants for the warrant provided credible evidence and indicated the correct location to be searched and there was no ambiguity that the executing entity understood the proper location to effect the warrant. *State v. Cobb*, CR-03-356, 2003 ME Super. LEXIS 217 at *6 (Me. Super. Oct. 16, 2003).^{3,4}

Here, there is no reasonable probability that an inspection of the Appellant's property will result in a far-reaching general search. As Appellant notes, there was ample discussion and physical evidence presented as to where the survey would occur. In addition, the Warrant authorizes a surveyor and Town officials to enter the property solely for the purpose of conducting such survey. Based on the lengthy history of this dispute, Town officials are well aware of the land at issue—and of equal importance land not at issue. Because these officials are authorized by the Court

³The Superior Court noted that the matter in *State v. Cobb* was “indistinguishable” from *United States v. Vega-Figueroa*, 234 F.3d 744 (1st Cir. 2000) where the court also determined that a warrant containing incorrect location information was valid as the officers executing the warrant were well aware of the correct location to be searched. *State v. Cobb*, CR-03-356, 2003 ME Super. LEXIS 217 at *5 (Me. Super. Oct. 16, 2003).

⁴It is worth noting that the cases cited involve searches within a structure—a significantly more invasive search than what the warrant authorizes, which merely allows entry onto outdoor property. Entry onto outdoor property during reasonable hours is routinely authorized by Maine law for officials carrying out public duties. *See e.g.* 30-A M.R.S. § 4452(1)(A).

to assist in execution of the Warrant, there is not “reasonable probability” that areas outside the ambit of the Warrant will be searched. For this reason, Appellant’s contention that the Warrant itself is defective is without merit and must be ignored.

V. CONCLUSION

WHEREFORE, for the reasons stated above, the Town respectfully requests that this Court deny the appeal.

Dated: May 22, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kristin M. Collins, hereby certify that on this 22nd day of May, 2026, I caused an electronic copy of the Brief of Appellee to be served on counsel for Appellant via electronic mail sent to the following:

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