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March 6, 2023

Town of Lamoine  
Board of Appeals  
660 Douglas Highway  
Lamoine, ME 04605

RE: Towne v. Code Enforcement Officer  
Map 14, Lot 28

Dear Board Members:

This office represents the Town of Lamoine's Code Enforcement Officer in connection with the referenced appeal. Mr. Towne has asked this Board to review the Code Enforcement Officer's discretionary decision not to pursue enforcement of several alleged land use violations relating to structures that have been in place for more than thirty years. Notably, no land use violations were identified, no municipal land use enforcement actions were commenced, and no municipal appellate review was sought within any relevant time frame after any permit issuance or construction on the property. Respectfully, I urge the Board to dismiss Mr. Towne's appeal on several grounds, that I will summarize below.

1. *Mr. Towne Lacks Standing.* Section 8.B of the Building and Land Use Ordinance ("BLUO") authorizes the Board of Appeals to consider applications made by an "aggrieved party", within thirty days of a Code Enforcement Officer's or Planning Board's determination. Maine law has defined "aggrieved party" as someone who has suffered a particularized injury or damage as a result of a development activity, and who meets the standards defined in a municipal ordinance. The BLUO defines "aggrieved party" as "a person whose land is directly or indirectly affected *by the grant or denial of a permit or variance* under an ordinance, [or] a person whose land abuts land for which a permit or variance has been granted." Mr. Towne's appeal does not suggest that he can meet that definition, particularly as the Code Enforcement Officer did not grant a permit in 2023 for any of the structures about which he has complained. The BLUO definition of "aggrieved party" does not include a person who claims some impact from a Code Enforcement Officer's decision *not* to issue a permit. Mr. Towne has claimed *no* impact from the decision, beyond whatever impact has been experienced by the general public.

Here, the BULO's unambiguous definition of "aggrieved party" specifically excludes Mr. Towne, rendering him without standing to prosecute the appeal. Even if Mr. Towne could demonstrate a particularized injury that he suffered as a result of a Code Enforcement Officer's 1990, 2004 or 2014 conduct, his right to appeal expired long ago. If he had suffered such an injury years ago when the property was developed, his deadline for appealing that development expired thirty days after a municipal permit was issued. BLUO Section 8.B, which describes this Board's full scope of authority, expressly precludes Mr. Towne's 2023 appeal. Mr. Towne's 2023 request that the Code Enforcement Officer engage in enforcement activity did not, and cannot, revive a long-expired right to appellate review. The Board of Appeals has no jurisdiction to act except as strictly defined by the BULO. As the BULO makes clear that any action by an aggrieved party that may have once existed expired many years ago, the current appeal must be denied.

*2. Maine Law Precludes Appellate Review of Prosecutorial Discretion.* In several decisions, including Salisbury v. Town of Bar Harbor, 2002 ME 13, the Maine Supreme Judicial Court has upheld the principle that a municipal official's exercise of prosecutorial discretion is not subject to appellate review. In other words, a resident who is not the owner of the affected property is prohibited from appealing a decision not to undertake an enforcement action. Mr. Towne may not lawfully force the Code Enforcement Officer to exercise her prosecutorial discretion in any particular manner. Similarly, neither a Board of Appeals nor a court may overturn a municipality's exercise of discretion not to prosecute a land use enforcement action. Here, the Town has discretion not to take action against alleged land use violations taken many years ago by a previous landowner under then-existing zoning standards; and a third party like Mr. Towne may not challenge that decision on appeal. *See generally, Pike Indus. v. City of Westbrook*, 2012 ME 78.

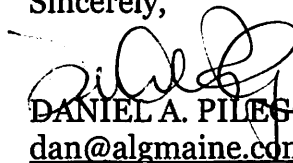
From a practical standpoint, the property's current owner had the right to rely upon the Town's acceptance of structures that had existed on the land for many years preceding her purchase, pursuant to land use standards that existed at the time of development. As the exhibits make clear, any reasonable investigation of municipal land use records would have demonstrated the Town's knowledge of, and acquiescence to, site conditions at the time of her decision to purchase the property. Mr. Towne's current effort to force the Town into overturning that reliance lacks legal or equitable support.

Town of Lamoine  
Board of Appeals  
March 6, 2023  
Page -3-

In sum, Mr. Towne lacks standing to prosecute this appeal; and the BULO provides no jurisdictional support for Board of Appeals involvement. The appeal may not be considered on its merits, and must be denied. Any other result shall be contrary to applicable Maine law.

Thank you for the Board's consideration.

Sincerely,



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DAP/ksk

cc: Rebecca Albright, CEO  
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