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David Goldman Wins Major Land Use Case

The Law Court upended practitioners' expectations regarding how local municipal land use officials are expected to act in the face of a property rights dispute between neighbors in its decision in *Tomasino v. Town of Casco* that a recent Maine Bar Journal article referred to as "arguably the most significant land use decision of 2020."

This decision arose out of the Tomasinos' application for a permit to cut down trees whose trunks straddled both sides of the boundary line separating an area encumbered by the Tomasinos' easement rights that burdened our client's land while the remainder of land was unencumbered by any easement rights. Although the Tomasinos' deed gave them easement rights, it failed in any way to specify the scope of those rights.

Prior to the *Tomasino* decision, most lawyers' understanding was that local code enforcement officers should not weigh their assessment of applicants' property rights into their decision on whether to grant a permit. However, the Law Court adopted David Goldman's argument that the Tomasinos were required to seek clarity from a Superior Court judge as to whether they held a property right to cut our client's trees before seeking a land use permit to do so.

Although the full impact of the new land use application regime established by the *Tomasino* decision will not be known for some time, it has already forced many practitioners to rethink what they believed they knew about the standards applicable to land use permit applications. Going forward, parties involved in land use permit disputes that implicate questions regarding a party's property rights would be wise to closely study the Law Court's reasoning in *Tomasino* as that decision represents a potential sea change in how disputes of this kind are to be resolved.

For more information regarding the decision in *Tomasino v. Town of Casco* and other land use issues, please contact David Goldman at (207) 553-4609 or DGoldman@nhdlaw.com.

> *David Goldman has a wide ranging litigation practice, representing clients involved in a broad variety of complex civil litigation, including real estate and business disputes, as well as administrative appeals of municipal and state agency decisions. David also has a particular focus on appellate practice, with significant experience representing clients before the Maine Supreme Judicial Court and before Federal Courts of Appeal.*

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