2020 MUNICIPAL LAW UPDATE

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Summary of Relevant Cases

1. Expansions or changes to nonconforming uses. *Grant v. Town of Belgrade*, 2019 ME 160, 221 A.3d 112.

In 2008 Shawn Grant, the owner of two addresses spanning three nonconforming lots in Belgrade, obtained a home occupation permit from the Belgrade Planning Board for a home occupation permit to conduct boat cleaning, painting and varnishing for one of the properties. Over the next decade Grant installed docks extending from the other property and expanded the business beyond boat restoration to rent out boat slips, kayaks, and paddle boards and customers used the property to park, access the docks, and launch small watercraft. In 2018 Grant applied for a seasonal dock and boat rental business at his property under the Commercial Development Review Ordinance and the Shoreland Zoning Ordinance ("SZO") – and the Planning Board denied both applications concluding that the property failed to meet the minimum lot standards in the SZO. The Board of Appeals ("BOA") upheld the Planning Board's determination, and the Superior Court affirmed the BOA's decision.

Grant appealed to the Law Court and argued: 1) that the BOA erred when it determined that waterfront activities constituted a new commercial use requiring permits; and 2) the BOA misinterpreted the SZO when it concluded the property was subject to the SZO's dimensional requirements. The Law Court affirmed the judgment of the Superior Court.

After first determining that 2008 home occupation permit did not extend to include the present activities on the property, the Law Court disposed of the first argument and held that although the SZO does not include the model shoreland zoning section regulating docks it maintained the definition of a marina and the BOA reasonably determined that the current activity should be regulated as a commercial use.

The Court also agreed with the BOA's interpretation of the SZO that a change of use from residential to commercial would render the lots less conforming. While one provision of the SZO exempts nonconforming lots from area, shore frontage, and lot width requirements – another provision provided that a non-conforming condition shall not be permitted to become more non-conforming. Because the lot was legally nonconforming with an existing residential use and commercial uses require a greater minimum lot area and shore frontage standards, the lots would be less conforming with the proposed commercial use. In arriving at this interpretation, the Law Court referenced zoning principles and objectives to generally abolish nonconforming uses and structures – thus zoning provisions that restrict nonconformities are liberally constructed and zoning provisions that allow nonconformities are strictly construed.

2. Ripeness and standing to challenge town ordinance.[1] *Blanchard v. Town of Bar Harbor*, 2019 ME 168, 221 A.3d 554.

After Bar Harbor voters approved amendments to the Town's Land Use Ordinance that would allow substantially larger cruise shops to use the Town's ferry terminal property, 22 individuals with properties in Bar Harbor, Sorrento, and Hancock that have views overlooking the waters adjacent to the ferry terminal, challenged the ordinance on multiple grounds including that the ordinance did not comply with the Town's comprehensive plan and that the DEP Order approving the amendment was inconsistent with DEP regulations. The Superior Court entered judgment for the Town.

The Law Court did not reach the merits of the case but instead held the property owners lacked standing to challenge the ordinance and that the claim was not ripe.

While the Superior Court held that only the property owners from Bar Harbor had standing, the Law Court found none of the property owners had standing when there was no immediate threat to their own property or business interests, nor were their alleged interests captured under an exception allowing anticipatory challenges. Further, because the plaintiffs were seeking relief for a "wrong" that had already occurred, i.e. the adoption of the ordinance amendments, the challenge was remedial instead of preventative and thus had to show particularized injury. The Court held there was no particularized injury in this case when none of the property owners were abutters nor was there any evidence demonstrating the tangible effect on the property owners' views.

The Court also held that the case was not ripe for review since THERE WAS NO GENUINE CONTROVERSEY IN THAT it failed to satisfy the two prong analysis: that (1) the issues must be fit for judicial review, and (2) hardship to the parties will result if the court withholds review. In this case the ordinance amendments simply extended the types of uses allowed in the zone – and thus there was no "concrete, certain, or immediate legal problem" in that "any challenge that the property owners make at this point is necessarily speculative as to the extent of development, improvement, or construction that might occur, and thus the sort of injury they might suffer." AND NO PROJECT PROPOSED OR APPLICATION FOR BUILDING PERMITS. Second, like the fitness prong, the hardship prong "requires adverse effects on the plaintiff, . . . and speculative hardships do not suffice to meet [the] requirement"… and at that point no building or development permits have been sought.

3. Remedy due to taxpayers for unlawful under-assessment of other taxpayers' properties. *Bolton v. Town of Scarborough*, 2019 ME 172, 221 A.3d 941.

[1] Credit to the official Twitter feed of the State of Maine Judicial Branch (@MECourts) for all of the case summary headings (except the first case) in this Municipal Law Update.

In *Angell Family 2012 Prouts Neck Tr. v. Town of Scarborough*, 2016 ME 152, 149 A.3d 271, the Law Court held unconstitutional the Town of Scarborough's former practice of allowing any owner of two separate but abutting parcels, one of which was undeveloped, to request that those parcels be valued as if they were a single lot to attain a lower overall assessment than if the parcels were valued separately. The Law Court remanded the matter to the Scarborough Board of Assessment Review ("BAR") "for a determination of the appropriate abatements" to address the inequality in tax treatment affecting the Taxpayers because of the unconstitutional practice.

Before the BAR, the Taxpayers contended that they were entitled to 31.48 percent abatements to their land values. They calculated this to be the average discount that the abutting lot program participants received. (IE AVERAGE DISCOUNT) The BAR ultimately awarded the Taxpayers eight percent abatements to their land values (IE TOTAL DOLLARS AMOUNT AVOIDED). The BAR explained that because the combined value of these abatements was equal to the total amount of taxes avoided by the abutting lot program participants, the eight percent figure provided each Taxpayer with a proportionate share of the total benefit of the program.

The Taxpayers appealed this decision to the Superior Court. The Superior Court vacated the BAR's decision and remanded for further proceedings. On remand for the second time, the BAR awarded the Taxpayers 14.74 percent abatements to their land values THROUGH A DIFFERENT FORMULA. The Taxpayers and Town cross-appealed to the Superior Court. The Superior Court upheld the 14.74 percent abatement and the parties again cross-appealed to the Law Court.

On appeal to the Law Court, the Taxpayers renewed their arguments that they were due 31.48 percent abatements. The Town argued that the BAR's original 8 percent abatement was constitutionally firm. The Law Court reinstated the BAR's original 8 percent abatement.

The Court found that the Taxpayers' injury "was not that their properties were over-assessed in comparison to the properties in the abutting lot program, but that they paid more than their fair share of taxes as a result of the discounts that were unlawfully provided by that program." 2019 ME 172, ¶ 25. Accordingly, based on the facts developed on remand, the BAR's eight percent abatement, was more than sufficient to make the Taxpayers whole. IN DOING SO, THE COURT ANALYZED THE U.S. SUPREME COURT DECISION OF MCKESSON V. DIVISION OF ALCOHOLIC BEVERAGES IN WHICH THE COURT HELD THERE ARE THREE REMEDIES FOR A DISCRIMINATORY TAX: 1) INVALIDATE AND WITHDRAW BENEFITS FROM THE FAVORED CLASS – WHICH THE LAW COURT FOUND WAS NOT AVAILABLE BECAUSE THE BOARD DID NOT HAVE THE AUTHORITY TO RETROACTIVITY RAISE THE ASSESSED VALUES OF THE PARCELS. 2) EXTEND BENEFITS TO THE EXCLUDED CLASS – WHICH WOULD PROVIDE BENEFITS TO THE APPELLANTS THAT WOULD INCREASE BY SEVERAL MAGNITUDES THE EFFECT ON THE NONAPPEALING TAXPAYERS; AND 3) USE SOME OTHER MEASURE. DEFERENCE TO THE STATES TO DETERMINE.

The Court held that this remedy satisfied both the constitutional due process requirement that the Taxpayers be provided with "meaningful backward-looking relief" by refunding the portion

of their taxes resulting from the unconstitutional discrimination and equalized the "public burdens" in accordance with the Maine Constitution. I

4. Sufficiency of evidence to support ruling on motion to enforce prior consent decree. *Town of Gorham v. Duchaine*, 2020 ME 7, 224 A.3d 241.

On an appeal from an order granting the Town's motion to enforce a consent decree entered earlier in a land-use dispute, the Law Court vacated the order and remanded for further proceedings when there was not sufficient competent evidence in the record to support the trial court's conclusion.

The case was initiated as an 80K enforcement action alleging multiple violations of the Gorham Land Use and Development Code. The parties settled the dispute by agreeing to terms in a consent decree which was entered as a judgment by the District Court, which listed nine areas of compliance by specified deadlines, along with a $2,000 penalty and the Town's costs. The decree also included a $10,000 penalty that would be suspended pending completion of the compliance plan items and prospective penalties in the amount of $100 per day.

Nine months later the Town filed a motion to enforce the consent decree alleging that the defendant failed to comply with the plan and sought the suspended penalty of $10,000 and $45,000 in per-day penalties. The Town attached affidavits of its engineer and code enforcement officer in support of its motion and the defendant filed its opposition. The court granted the Town's motion seven days later without holding a hearing or informing the parties how it would decide the motion, made no express findings of fact, and provided no rationale for its calculation of penalties and fees. Neither party filed a motion for findings of fact pursuant to M.R. Civ. P. 52.

The Law Court reviewed the order to determine whether there was competent evidence in the record to support the trial court's conclusions - and found there was no evidence since the court must rely on evidence presented at a hearing or through affidavits as provided in M.R. Civ. P. 43(e). In arriving at that holding, the Court cited to *Wiseman v. Wieschoff*, 489 A.2d 847, 848 (Me. 1984) and held that if the court acts on the basis of affidavits, both parties should be afforded an opportunity to file affidavits pertaining to the issue. In this case, the trial court did not hold a hearing, did not inform the parties it would decide the motion on affidavits, and did not give the defendant an opportunity to submit affidavits in opposition to the Town's affidavits submitted with its motion. Further, simply attaching documents to a motion is not the equivalent of properly introducing or admitting them as evidence.

5. Withdrawal of Frye Island from MSAD 6. *MSAD 6 Board of Directors v. Town of Frye Island*, 2020 ME 45, 229 A.3d 514.

The Town of Frye Island has attempted to withdraw from MSAD 6 FOR 20 YEARS, shortly after its secession from the Town of Standish in 1998 – LATEST CHAPTER IN THAT SAGA. SEASONAL TOWN, NO SCHOOL AGED KIDS. After its first attempt to withdraw in 2000, the Legislature

enacted an emergency private and special law that amended the original secession law prohibiting Frye Island from withdrawing from MSAD 6 until authorized by the Legislature through a further amendment TO THAT PRIVATE AND SPECIAL LAW (P. & S.L. 2001, ch. 8, L.D. 500). The Legislature enacted a new statutory process for municipalities to withdraw from school districts in 2009. Frye Island again voted for withdrawal under that new process in 2018 and amended its charter in 2018 that included language noting that the Charter "repealed" L.D. 500 under its home rule authority. MSAD 6 filed a complaint seeking a declaratory judgment that Frye Island's effort to withdraw was unlawful. The Superior Court, inter alia, granted the request for declaratory judgment that Frye Island was not authorized to withdraw from MSAD 6 in the absence of legislation specifically authorizing it to invoke the withdrawal process.

The Law Court upheld the Superior Court's decision, and held that contrary to Frye Island's contention, the question of its ability to withdraw from MSAD 6 was not purely "local and municipal in character" under the home rule provisions in Maine's Constitution. Instead the Constitution commits the general power to promote education to the Legislature and authorized the Legislature to enact statutory provisions to further that power. Any financial commitments from other municipalities within MSAD 6 that could be affected by a withdrawal is a further indicator that Frye Island's withdrawal is not solely local and municipal in character.

Additionally, under the home rule provisions in 30-A M.R.S. § 3001, a municipality may not exercise any power or function the legislature has "denied either expressly or by clear implication"– and in this case Frye Island "cannot do an end-run around a validly enacted private and special law by purporting to repeal it through a charter amendment." IN THIS CASE THE LEGISLATURE IS RESPONSIBLE FOR LAWS PROVIDING FOR SUITABLE SUPPORT FOR AND MAINTENANCE OF SCHOOLS – AND HAS PLENARY AUTHORITY OVER PUBLIC SCHOOL SYSTEM IN THE STATE. The Court also held that LD 500 was not "implicitly repealed" through the 2009 statutory withdrawal amendments - WHICH IS DISFAVORED. Finally, the Court held that LD 500 did not violate the Maine Constitution's special legislation clause and held that Frye Island's constitutional claims were properly dismissed by the Superior Court.

6. Municipal permitting procedures; review of municipal decisions. *Friends of Lamoine v. Town of Lamoine*, 2020 ME 70, 234 A.3d 214.

The Lamoine Planning Board denied two separate applications filed by Harold MacQuinn for the expansion of an existing gravel extraction operation FROM ^% TO !)* ACRESunder the Town's Gravel Ordinance and the Site Plan Review Ordinance. The Board of Appeals conducted a de novo review of the Gravel Ordinance application and an appellate review of the Site Plan Review Ordinance application, overturned the Planning Boards decisions on both permit applications and remanded to the Planning Board to issue both permits and the Planning Board did so. The Friends of Lamoine filed an 80B appeal only on the BOA's decision to reverse the Planning Board's denial of the Site Plan Review Ordinance permit and the Superior Court vacated the BOA's decision.

The Law Court upheld the Superior Courts decision after first determining that the Friends' 80B complaint was timely under the provisions in 30-A M.R.S. § 4482-A FIRST TIME INTERPRETING THIS STATUTE (ENACRED IN THE WAKE OF BRYANT v. TOWN OF CAMDEN)in that the Planning Board's decision to issue the permits after the BOA remand was the last and final step in the permitting process and thus the final decision for purposes of applying the 30 day appeal period, and not the BOA's decision remanding to the Planning Board.

Further, the Law Court found that the Superior Court correctly reviewed the Planning Board's decision since the BOA properly applied an appellate review standard under the Site Plan Review Ordinance when that ordinance language provided for BOA review that was limited to "when errors of interpretation are found" and when the BOA "may not alter the conditions attached" to the PB's decision. The Law Court held that an ordinance need not use particular language such as the word "appellate" in establishing appellate review – but instead "what is important is the function that the ordinance's language prescribes." Finally, the Law Court held that there was sufficient evidence in the record to support the PB's denial of the application.

7. Municipal procedures; review of municipal decisions. *Raposa v. Town of York*, 2020 ME 72, 234 A.3d 206.

This is the second time this matter reached the Law Court. The facts in brief are as follows: the Raposas own residential property that abuts property owned by Joshua Gammon, who had used his property for a commercial landscaping business. Before Gammon bought the property in 2004 it had been used by the prior owner as both a lawful nonconforming excavation business and a residence. The Raposas contacted the Town's CEO to argue that Gammon's use of the property was not consistent with the prior owner's nonconforming use. The CEO responded in writing that the current nonconforming use was consistent with the prior nonconforming use, that the prior use had not been discontinued following the sale of a portion of the lot to Gammon, and that there was no violation. The Board of Appeals granted the Raposas' appeal at the hearing regarding the lot-creation and change-of-use issues, but the transcript reflected "considerable uncertainty leading up to this vote." The Board's written decision, issued a month later, again referenced the prior hearing and noted that the appeal was granted, but included in the findings of fact that the use of the lot by Gammon "does not constitute a change of use but is in intensification of the same use" and that "the legally non-conforming use ha[s] not been shown to be interrupted during [Gammon's predecessor's] ownership."

Both the Raposas and Gammon appealed to Superior Court which granted the Town's motion to dismiss the Raposas' appeal for lack of subject matter jurisdiction. In *Raposa v Town of York*, 2019 ME 29, 204 A.3d 129, the Law Court remanded back to the Superior Court and held that a CEO's written decision interpreting a land use ordinance is appealable to the BOA and Superior Court – whether or not the CEO finds a violation – as long as the ordinance does not expressly preclude appeal. On remand, the superior court affirmed the Board's decision, concluding that (1) the Board's written decision was the operative decision for judicial review and (2) the findings contained in that decision were supported by substantial evidence in the record.

On appeal once again, the Law Court held that the Board was required to justify its vote to grant the Raposas' appeal with written findings that support- not contradict – its decision. Since the Board's written findings support a denial, rather than a grant, of the Raposas' appeal on the change-of-use issue, the Law Court vacated the decision and remanded to the Board for further proceedings to decide whether to grant or deny the appeal and to issue findings that support the Board's decision.

In a dissent, Justice Mead (with Justice Jabar joining) would have held that the operative decision for purposes of appellate review was the written decision and that it was supported by substantial evidence.

8. Standing before Town zoning boards where applicant has an easement to the property at issue. *Tomasino v. Town of Casco*, 2020 ME 96, ___A.3d ___.

The Tomasinos obtained a building permit from the Town of Casco to remove the existing home from their property and construct a new home in its place, as well as a shoreland permit to remove three trees from the abutting property owned by the Lake Shore Realty Trust over which the Tomasinos claimed a deeded easement in order to establish a gravel road to the new home. The Trust appealed and the Board of Appeals vacated the CEO's decision to issue the shoreland permit, having developed findings on remand that "the easement is unclear as to the rights of the parties to cut trees without the other party's permission" and that no other evidence was presented to the Board to definitively resolve the issue. The Superior Court affirmed the Board's decision.

The Law Court, citing Casco's ordinance, noted that applications for permits must be signed by someone who can show evidence of right, title or interest in the property – and as an evidentiary matter the language of the deeds did not disclose whether and to what extent the easement includes the right to remove trees. Determining property rights under a deed are "well outside the Board's jurisdiction, authority, or expertise, which is instead limited to the interpretation and application of ordinance provisions" – and that "a municipal zoning case is not the proper forum for a private property dispute between neighbors."

The Court, however, upheld the Board of Appeals decision to overturn the permit and held that administrative standing is not conferred merely by possessing any kind of easement on the property at issue. In this case Tomasinos failed to demonstrate that they have the kind of interest in the easement that would allow them to cut the trees if they were granted a permit to do so, i.e., the kind of relationship to the site that gives them "a legally cognizable expectation of having the power to use that site in the ways that would be authorized by the permit or license he seeks." In conclusion, the Court held that "in the face of a dispute between private property owners" the minimum right, title or interest requirement in the Casco ordinance "is not met by an easement whose parameters have not been factually determined by a court with jurisdiction to do so."

In a dissent, Justice Connors agreed with the majority that "a municipal zoning case is not the property forum for a private property dispute between neighbors" and questions of property law are outside of a municipal board's jurisdiction – but disagreed with the holding and would have held that the Tomasinos had sufficient right, title and interest to seek a permit. Further, Justice Connors worried that the Court's holding "invites, rather than discourages, municipal boards to wade into private property disputes and will result in needlessly protracted proceedings involving squabbling neighbors" and create unnecessary conflict by forcing easement holders to actively litigate the scope of easements before seeking what might have otherwise been unchallenged permits.

9. Lapse of right to accept "incipient dedication" of road; ripeness of complaint for declaratory judgment on Town's development rights should it accept dedication. *Pilot Point LLC v. Town of Cape Elizabeth*, 2020 ME 100, ___A3d___.

The central issue in this case was whether the Town's right to accept a proposed, unaccepted way or "paper street" lapsed at common law. Surf Side Avenue, and specifically the portion referred to as the "Pilot Point Section, is shown on a plan recorded in the Cumberland County Registry of Deeds on April 10, 1911. The current owners of several lots adjacent to the Pilot Point Section and their predecessor-in-interest have "essentially used Surf Side Avenue as their back yards and engaged in some development of the Section where it abuts their respective lots. The Town Council voted to extend the Town's right to accept the incipient dedication of all but seven proposed, unaccepted ways in the Town on September 8, 2997, subject to the vacation provision in 23 M.R.S. § 3032 and further extend its rights for another twenty-year period on October 5, 2016.

The Plaintiffs, abutting lot owners to the Pilot Point Section, filed a two count complaint alleging that the Town's right to accept the way lapsed under common law and that even if the Town's right to accept the incipient dedication had not lapsed, the Town's rights were limited by the scope of the original dedication and it could not change the location, construction, or use of the Section to develop it as a public trail or other recreational space. After a trial, the Superior Court granted the Town's motion for judgment as a matter of law, concluding that "the purported structures identified…as having been in Surf Side Avenue between 1911 and September 1997…do not exhibit ownership over the property in a manner that is inconsistent with the incipient dedication, and would not likely constitute adverse possession of the property" – and further held that the second count was unripe.

On appeal, the Law Court first held that Count 1 was timely filed when the 1997 filing did not create any new rights in the Town beyond those that the Town already had at common law – and had no bearing on whether the Town's right to accept the road had lapsed before the notice was filed, and thus did not start the running of a six-year limitation period.

Regarding the merits of Count 1, the Court first held that the 1997 notice was legally sufficient to prevent the deemed vacation of the Pilot Point Section pursuant to 12 M.R.S. § 3032 when it was filed in the Registry of Deeds on September 11, 1997, prior to the statutory deadline of

September 29, 1997, and the notice unequivocally stated that the Town's intent was to extend for twenty years "all proposed unaccepted ways within the Town except seven ways which were specifically excluded.

The Court also held that the Town's incipient right of dedication did not lapse. Under common law, an incipient dedication must be accepted within a reasonable time or the right to accept that dedication will be lost… and "adverse possession of the incipiently dedicated way will cause the education to lapse, but mere non-use or use that is not inconsistent with the premise that the public may later open the path will not cause the incipient dedication to expire." Instead, the incipient dedication lapses when another person possesses the property and exhibits ownership over the property in a manner that is inconsistent with the incipient dedication and would thus likely constitute adverse possession of the property - based on the facts and circumstances of each case.

In this case, any such lapse must occur prior to the relevant statutory deadline of September 29, 1997 since the statutory process of vacation displaces the common law lapse standard. In this case, the Plaintiffs filed an admission that the use of Surf Side Avenue between 1911 and 1997 – even if inconsistent with the public's right of incipient dedication – was of insufficient duration prior to 1997 to warrant a finding that the dedication lapsed, and the evidence of any obstructions were insufficient as a matter of law to establish that the Town's right to accept the dedication had lapsed.

Finally, Count 2 was properly dismissed as unripe because a declaratory judgment concerning the permissible scope of any hypothetical, future development of the Pilot Point Section would only be an advisory opinion because the Town had not taken any formal, concrete steps toward accepting or developing the Pilot Point Section and may never do so – and the Plaintiffs had not shown that it will be harmed if review were withheld until such a time that the Town decides to accept the section.

10. Appurtenance to public building for purposes of the Maine Tort Claims Act. *McDonald v. City of Portland*, 2020 ME 119, ___A.3d___.

A pedestrian slipped and fell on a patch of ice on the brick-paved plaza just outside of the Portland Police Department headquarters approximately six to eight feet from the door of the building. The entire area underneath the plaza is part of the Department building and is used by pedestrians for access to the building, a parking garage, and Middle Street, and is also used to eat lunch outside.

Plaintiffs brought a personal injury action against the City for its alleged negligence in maintaining the area. The Superior Court denied the City's motion for summary judgment on immunity grounds, concluding that there were unidentified material issues of fact in dispute regarding whether or not the fall took place in an appurtenance to a government building and thus an exception to immunity. UNDER THE MTCA, AS A GENERAL RULE GOVERNMENTAL

ENTITIES ARE IMMUNE FROM SUIT ON ANY AND ALL TORT CLAIMS SEEKING RECOVERY OF DAMAGES BUT IS LIMITED BY SEVERAL EXCEPTIONS, INCLUDING THE PUBLIC BUILDING EXCEPTION, WHICH STATES THAT "A GOVERNMENTAL ENTITY IS LIABLE FOR ITS ACTS OR OMISSIONS IN THE CONSTRUCTION, OPERATION OR MAINTENANCE OF ANY PUBLIC BUILDING OR THE APPURTENANCES TO ANY PUBLIC BUILDING". EXCEPTIONS TO IMMUNITY ARE STRICTLY CONSTRUED SO AS TO ADHERE TO IMMUNITY AS THE GENERAL RULE.

On appeal, the Law Court affirmed the Superior Court. The Court first held that while appeals from the denial of a motion for summary judgment are "generally barred by the final judgment rule," a denial based on a claim of immunity is immediately reviewable pursuant to an exception to the final judgment rule if the parties do not dispute the facts material to the legal question of immunity.

The Court then held that the plaza was an "appurtenance" to a public building under the exception to the Maine Tort Claims Act since it "belongs" to the building meeting since it is a fixture which meets the test that it is (1) physically annexed to the realty, (2) adapted to the realty, and (3) intended to be irremovable from the realty. In this case the plaza serves as the roof to the portion of the building underneath it and thus cannot be removed, it is necessary for the proper function of the building by serving as access to the lobby, and the annexation and essential nature of the plaza to the functioning of the Department building showed that the City had the "requisite intent to make" the plaza "an irremovable part" of the building. The Court further rejected the City's argument that the plaza was instead essentially used as a parking area and/or sidewalk and thus did not have immunity under 14 M.R.S. § 8104-A(4). Finally, the Court held that the City's failure to treat icy conditions of a plaza appurtenant to a public building could be considered a "negligent act[] or omission" in the "maintenance" of the plaza and as such could subject the City to liability for the fall.