

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC

SUPERIOR COURT

ANTHONY J. REGINE, ANGELA P. :
REGINE, MATTHEW T. MARCELLO, :
CAMILLE F. MARCELLO, GILBERT J. :
BRADFELD, ROSE M. BRADFELD, and :
LAWRENCE C. BEST :
Plaintiffs :

v. :
COASTAL RESOURCES MANAGEMENT :
COUNCIL :
Defendant :

C.A. No. 93-0423A

DECISION

THUNBERG, J. This matter comes before the Court on the plaintiffs’ (appellants) appeal of the Coastal Resources Management Council’s (CRMC) finding that a particular parcel of land constitutes a public right of way to the shoreline. This Court has jurisdiction over this matter pursuant to G.L. 1956 § 42-35-15.

Facts/Travel

The subject property in this matter is located on tax assessor’s plat No. 116 SE between lots 11 and 13. Finding its beginning on Shore Drive, this property is ten feet wide and approximately eighty-three feet in length. This “way” ends at or near the shore of the Atlantic Ocean. On October 26, 1992, the CRMC rights-of-way subcommittee held a public hearing in order to determine whether this property constituted a public or private right-of-way. After receiving evidence and hearing testimony,

the subcommittee postponed the hearing on this particular property, allowing abutters the opportunity for additional research and due diligence.

On January 5, 1993, the subcommittee reconvened the hearing on the subject right-of-way, considering further evidence and testimony. On April 27, 1993, the subcommittee voted unanimously to recommend to the full CRMC that the parcel be designated a public right-of-way. On May 11, 1993, the Council (CRMC) voted unanimously to follow the subcommittee's recommendation, declaring the subject parcel a public right-of-way. The Council's decision enumerated nine findings supporting its decision to designate this property was a public right-of-way pursuant to the authority granted it by Title 46, chapter 23 of the Rhode Island General Laws. the appellant filed the instant appeal.

Standard of Review

This Court possesses appellate review jurisdiction of the CRMC's decision pursuant to G.L. 1956 § 45-35-15(g) which provides in pertinent part:

“The court shall not substitute its judgment for that of the {CRMC} as to the weight of the evidence on questions of fact. The court may affirm the decision of the [CRMC] or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

This Court is precluded from substituting its judgment for that of the agency with respect to the credibility of witnesses or the weight of evidence concerning questions of fact. Costa v. Registry of

Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988); Carmody v. R.I. Conflict of Interest Commission, 509 A.2d 453, 458 (R.I. 1986). The Court’s review is limited to determining whether substantial evidence exists to support the agency’s conclusions as to the application of law. Newport Shipyard v. Rhode Island Commission for Human Rights, 484 A.2d 893 (R.I. 1984).

This Court may not reverse factual conclusions of an administrative agency unless they are totally devoid of any competent evidentiary support in the record. Santini v. Lyon, 448 A.2d 124, 129 (R.I. 1982). This Court’s inquiry “is limited to determining whether the record reflects evidence, or reasonable inferences that may be drawn therefrom, to support the findings of the tribunal whose decision is being reviewed.” Guarino v. Department of Social Welfare, 410 A.2d 425, 428 (R.I. 1980).

Substantial Evidence

The appellants argue that the “CRMC’s determination that an effective dedication occurred is erroneous as a matter of law, in that the substantial evidence on the record does not support [such a finding].” *Brief for Appellants at 2*. “In order for there to be an effective dedication, there must exist ‘(1) a manifest intent by the landowner to dedicate the land in question . . . and (2) acceptance by the public either by public use or by official public action to accept the same on behalf of the municipality.’” Sartor v. Coastal Resources Management Council, 542 A.2d 1077, 1083 (R.I. 1988) (quoting Robidoux v. Pelletier, 120 R.I. 425, 433, 391 A.2d 1150, 1154 (1978)).

In support of appellants’ assertion, the appellants contend that the Council relied upon a presumption in determining that the right-of-way was accepted through public use. The appellants state that no probative testimony or documentary evidence was offered to prove public acceptance of the

right-of-way. Furthermore, the appellants assert that in an analogous case the CRMC determined that a public right-of-way could not originate from a private road.

In response, the appellee maintains that there is substantial evidence in the record to support the CRMC's finding of an incipient dedication of a public right-of-way. *Appellee's Brief* at 7. Additionally, the appellee argues that the CRMC's conclusions were not based on a presumption, but rather the undisputed testimony of a member of the community and the reasonable inferences drawn therefrom. Thus, the Council concluded that a dedication had been accepted through public use.

Further, Section 46-23-6 of the Rhode Island General Laws states in pertinent part:

“[i]n designating rights of way, the council shall consider the following matters in making its designation:

- (A) Land evidence records;
- (B) The exercise of domain over the parcel such as maintenance, construction, or upkeep;
- (C) The payment of taxes;
- (D) The creation of a dedication;
- (E) Public Use;
- (F) Any other public record or historical evidence such as maps and street indexes;
- (G) Other evidence as set out in § 42-35-10.

Pursuant to these requirements, the Council's decision clearly enumerates nine factual findings regarding the status of the right-of-way. These nine reasons are grounded in the Council's review of the attorney's report concerning her investigation of land records and recorded deeds, as well as, the testimony of a member of the community.

The Council had before it testimonial evidence elicited from a member of the community regarding free public access via the subject right-of-way to the shoreline. Also, a visual inspection of the area revealed an apparent pathway leading to the ocean. Furthermore, the original plat and recorded deeds clearly refer to the right-of-way, extending approximately eighty-three feet to the

Atlantic Ocean. The Council, considering all of the evidence, inferred that the incipient dedication had been accepted through public use. This Court, in reviewing said record, finds no evidence of clear error in this interpretation.

This Court also notes that the appellants' assertion that CRMC's decision is "arbitrary and capricious" in comparison to another *similar* CRMC decision is without merit. Contrary to this case, the appellee correctly maintains *that* case lacked any significant evidence of public acceptance. After thorough review of the record, this Court finds that the decision of the Council was not arbitrary, capricious, in excess of their statutory authority or unsupported by reliable evidence. Accordingly, the decision of the CRMC is upheld.

Counsel shall prepare the appropriate judgment for entry.