**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**NEWPORT, SC.** **SUPERIOR COURT**

**(FILED: May 31, 2013)**

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| **DONELSON C. GLASSIE, JR. and MARCIA S. GLASSIE** | : | |
| **V.** | : | **C.A. No. NC 03-0576** |
| **COASTAL RESOURCES MANAGEMENT COUNCIL** | : | |

## DECISION

**VAN COUYGHEN, J.** The matter before this Court is an administrative appeal pursuant to G.L. 1956 § 42-35-15. Donelson C. Glassie, Jr. and Marcia S. Glassie (Plaintiffs) appeal a September 26, 2003 Decision (Decision) of the Coastal Resources Management Council (CRMC), designating High Street in Jamestown, Rhode Island as a public right-of-way, permitting access to the Narragansett Bay shore.

### I

### Facts and Travel

High Street is located on tax assessor's plat 9 in Jamestown. It is approximately 50 feet wide and runs approximately 682 feet easterly from the corner of Walcott Avenue to the Narragansett Bay shore. Lots 293, 295, 296, 380, and 574 all abut High Street. The Plaintiffs own lot 296. High Street is paved until it transitions into an open, grassy area with boulders and tree stumps blocking vehicular access. At the end of High Street is a sixteen to twenty foot high bank leading to the shore.

On November 19, 1997, High Street first was considered for dedication as a public right-of-way by a CRMC Subcommittee (Subcommittee). After consideration of the evidence and

testimony on record, the Subcommittee, consisting of Noelle Lewis, Peter Troy, and James Beattie, recommended that High Street be designated as a public right-of-way.

On June 9, 1998, the CRMC considered the recommendation of the Subcommittee along with the evidence and testimony on record. Present at the meeting were CRMC members Michael Tikoian, Robert Smith, Noelle Lewis, Turner Scott, George DiMuro, Jerry Sahagian, Lloyd Sherman, Augie Nunes, and Peter Troy. Rather than decide the issue, the CRMC remanded the matter to the Subcommittee, at Plaintiffs' request, so that Plaintiffs could produce and present additional evidence. On October 1, 1998, Subcommittee members Peter Troy, Pam Pogue, and Eileen Naughton met to accept further evidence.

On April 10, 2001, the Subcommittee held a workshop and concluded that the evidence regarding High Street as a public right-of-way was inconclusive. On July 24, 2001, the matter was considered by the full CRMC. The members present were Michael Tikoian, Robert Smith, Joseph Shekarchi, Thomas Palangio, Jerry Sahagian, Paul Lemont, Peter Troy, Joseph Paolino, Pamela Pogue, Jan Reitsma, David Abedon, Neill Gray, Patrick McDonald, and Susan Sosnowski. However, at the request of the Town of Jamestown, a further continuance was granted so that supplementary evidence could be provided in support of High Street's designation as a public right-of-way.

On October 25, 2001 and November 15, 2001, additional public meetings occurred before Subcommittee members Peter Troy and Paul Lemont. At those meetings, the Town of Jamestown presented evidence supporting the designation of High Street as a public right-of-way. The Plaintiffs and other members of the public also presented evidence for consideration. On March 26, 2002, upon review of the entire record from the multiple public meetings, the Subcommittee recommended to the CRMC that High Street be designated a public right-of-way.

On January 28, 2003, the CRMC met to consider the Subcommittee's recommendation. Before acting on the recommendation, the Chairman verified, via roll call, that a quorum of council members had fully read and reviewed the record which contained transcripts of the previous Subcommittee hearings, as well as the exhibits that were admitted at said hearings. Thereafter, CRMC members Michael Tikoian, Paul Lemont, Jerry Sahagian, Joseph Paolino, Jan Reitsma, Raymond Coia, Neill Gray, Joseph Shekarchi, Turner Scott, and Susan Sosnowksi considered the Subcommittee's recommendation. The CRMC then adopted the Subcommittee's recommendation to designate High Street as a public right-of-way.

On October 9, 2003, the CRMC issued a written Decision declaring High Street a public right-of-way. On November 5, 2003, Plaintiffs timely appealed the CRMC's Decision.[1]

## II

## Standard of Review

Section 42-35-15 of the Administrative Procedures Act of Rhode Island General Laws provides that "[a]ny person, including any small business, who has exhausted all administrative remedies available to him or her within the agency, and who is aggrieved by a final order in a contested case [possesses a right] to judicial review." Id. § 42-35-15(a). In pertinent part, § 42-35-15(g) of the Act provides:

> The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency 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 authority of the agency;

[1]Although the matter was timely appealed, it was not assigned to a Justice of this Court until after the parties had completed the filing of their briefs on January 13, 2011. The administrative record actually was not complete until the filing of the transcripts on June 8, 2012.

> (3) Made upon unlawful procedure;
> (4) Affected by other error of law;
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

An administrative appeal is by nature "an extension of the administrative process." Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993). Within the administrative process, it is well established that "the further away from the mouth of the funnel that an administrative officer is when he or she evaluated the adjudicative process, the more deference [that is] owed the factfinder." Id. Thus, an administrative agency should give great deference to the credibility or factual findings of a subcommittee. See Environmental Scientific Corp., 621 A.2d at 209. Similarly, "the factual findings of [an administrative] agency are [due] great deference" by the appellate court. Champlin's Realty Associates v. Tikoian, 989 A.2d 427, 437 (R.I. 2010). Consequently, the authority granted to the appellate court is "circumscribed and limited to 'an examination of the certified record to determine if there is any legally competent evidence therein to support the agency's decision.'" Nickerson v. Reitsma, 853 A.2d 1202, 1205 (R.I. 2004) (quoting Barrington Sch. Comm. v. Rhode Island State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992)); see also Environmental Scientific Corp., 621 A.2d at 208 (explaining that the rationale of an administrative agency should be supported by competent legal evidence).

"Legally competent evidence is indicated by the presence of 'some' or 'any' evidence supporting the agency's findings." Environmental Scientific Corp., 621 A.2d at 208 (citing Sartor v. Coastal Resources Mgmt. Council, 542 A.2d 1077, 1082-83 (R.I. 1988)); see Arnold v. Rhode Island Dept. of Labor and Training Bd. of Review, 822 A.2d 164, 167 (R.I. 2003) (holding that legally competent evidence is that which a "reasonable mind might accept as

adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance") (quoting Rhode Island Temps, Inc. v. Dep't of Labor and Training, Bd. of Review, 749 A.2d 1121, 1125 (R.I. 2000)). "'If competent evidence exists on the record considered as a whole, the court is required to uphold the agency's decision."' Strafach v. Durfee, 635 A.2d 277, 280 (R.I. 1993) (quoting Barrington School Committee v. Rhode Island State Labor Relations Board, 608 A.2d 1126, 1128 (R.I. 1992)).

Furthermore, an appellate court may review an agency decision to determine whether it was "otherwise occasioned by error of law." Tierney v. Dept. of Human Serv., 793 A.2d 210, 213 (R.I. 2000). Questions of law in regard to administrative decisions are reviewed de novo. See Narragansett Wire Co. v. Norber, 118 R.I. 596, 376 A.2d (1977).

**III**

**Analysis**

The Plaintiffs appeal the CRMC's Decision to designate High Street as a public right-of way. Specifically, Plaintiffs allege unlawful procedure by asserting that (1) the CRMC failed to adhere to its own administrative rules for subcommittee recommendations and that the decision-making process was overly lengthy and unnecessarily delayed; (2) a quorum of the CRMC did not fully review the administrative record; and (3) the CRMC made insufficient factual findings. Further, as a matter of law, Plaintiffs contend that the CRMC misapplied the law of dedication relative to the designation of High Street in Jamestown as a public right-of-way.

## A

## Unlawful Procedure

The Plaintiffs first argue that the CRMC did not adhere to its own regulations with respect to subcommittee procedures which require that "[o]nly those subcommittee members who have attended all meetings of the Subcommittee may vote on the Subcommittee recommendation." Code of Rhode Island Rules 04 000 002-2, Sec. 3. Thus, Plaintiffs aver, the Subcommittee's recommendation is invalid.[2]

The Court's objective in considering the language of a statute, "'is to give effect to the General Assembly's intent, and [t]he plain statutory language is the best indicator of [such] intent.'" Mutual Development Corp. v. Ward Fisher & Co., LLP, 47 A.3d 319, 328 (R.I. 2012) (quoting DeMarco v. Travelers Insurance Co., 26 A.3d 585, 616 (R.I. 2011) (internal quotations omitted). Our Supreme Court has declared:

> When interpreting regulatory language, this Court adheres to the well-settled rule that '[w]hen the language of a statute is clear and unambiguous, [this Court] must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.' School Committee of Cranston v. Bergin–Andrews, 984 A.2d 629, 641 (R.I. 2009) (quoting State v. LaRoche, 925 A.2d 885, 887 (R.I. 2007)); see Murphy, 959 A.2d at 541 (stating that this Court employs the same rules of construction when interpreting an ordinance as are applied when interpreting statutes). Reynolds v. Town of Jamestown 45 A.3d 537, 542 (R.I. 2012).

However, "giving words their plain meaning . . . is not the equivalent of myopic literalism." Ryan v. City of Providence, 11 A.3d 68, 71 (R.I. 2011). Rather, "it is entirely proper . . . to look to the sense and meaning fairly deducible from the context" when "determin[ing] the true import of statutory language." Id. Legislative intent may be gleaned "from an examination of the language, nature, and object of the statute." Id. Consequently, "it

[2] The Court observes that Plaintiffs did not question the validity of the Subcommittee's vote in any of the proceedings below.

would be foolish and myopic literalism to focus narrowly on one statutory section without regard for the broader context." Id. Thus, when considering a statute as a whole, "individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections." Id. In addition to these constructs, however, the Court must remain "mindful of the longstanding principle that statutes should not be construed to achieve meaningless or absurd results." McCain v. Town of North Providence ex rel. Lombardi, 41 A.3d 239, 243 (R.I. 2012) (internal citations omitted).

Chapter 23 of title 46 of the Rhode Island General Laws governs the CRMC. Section 46-23-20.1 of that chapter provides that "the governor, with the advice and consent of the senate, shall appoint two (2) hearing officers . . . ." Sec 46-23-20.1(a). Said hearing officers are required to "hear proceedings as provided by this section, and the council, with the assistance of the chief hearing officer, may promulgate such rules and regulations as shall be necessary or desirable to effect the purpose of this section." Sec. 46-23-20.1(b). In addition, any "rules and regulations promulgated by the council shall be subject to the Administrative Procedures Act." Sec. 46-23-11.

Section 46-23-20.1(c) provides in pertinent part:

> Whenever the chairperson of the coastal resources management council . . . makes a finding that the hearing officers are otherwise engaged and unable to hear a matter in a timely fashion, he or she may appoint a subcommittee which will act as hearing officers in any contested case coming before the council. The subcommittee shall consist of at least one member, provided, however, that in all contested cases an additional member shall be a resident of the coastal community affected . . . Hearings before subcommittees shall be subject to all rules of practice and procedure as govern hearings before hearing officers. Sec. 46-23-20.1(e) (emphasis added).

It is clear from the foregoing that a subcommittee member is the functional equivalent of a

hearing officer for purposes of hearing a contested case. It also is clear that subcommittees must have at least one member, except in contested cases, where there must be at least two members.

To effectuate the purpose of the statute, the CRMC promulgated its Code of Regulations. It provides in pertinent part:

> The Chairman of the Council shall establish standing subcommittees with varying functions as approved by the Council.
> . . .
> Hearing Subcommittees shall consist of all Council members who attend the initial Subcommittee meeting and all subsequent meetings of the Subcommittee.
> Only those Subcommittee members who shall have attended all meetings of the Subcommittee meeting may vote on the Subcommittee recommendation. Code of Rhode Island Rules 04 000 002-2, Sec. 3.

This regulation clearly requires that only those members who have attended every meeting may vote; however, the language is silent as to whether all Subcommittee members must attend every single meeting. Furthermore, although Subcommittee members who do not attend every meeting cannot vote on the final recommendation, nothing in the regulation precludes such members from contributing towards discussions prior to the actual vote. Indeed, if the Court were to determine otherwise, it would mean that any Subcommittee member who attends less than every single meeting would be rendered superfluous at the end stage of the proceedings. Considering that subcommittees serve the same purpose as hearing officers, that a subcommittee may consist only of just one member (or two in contested cases), and that only those members who attend every meeting may vote, the Court concludes that a final subcommittee recommendation may be approved by the vote of just one member. See § 46-23-20.1(e) ("The subcommittee shall consist of at least one member . . . .")

The record reveals that the hearings in the instant matter commenced in November 1997. As the direct result of two evidentiary remands by the CRMC, the first of which was requested

by Plaintiffs, the Subcommittee's final recommendation was delayed until March 26, 2002.[3] During this protracted period, the makeup of the Subcommittee changed, with Mr. Troy and Mr. Lemont being the surviving members of the Subcommittee when the final vote was taken. Mr. Troy was the only member who attended all of the previous Subcommittee meetings and, as such, was the only member who could vote in accordance with the CRMC Regulations.

During the March 26, 2002 workshop, Mr. Lemont acknowledged that, although he had not attended all of the previous meetings, he had read and reviewed all of the documents in the record. Thereafter, he and Mr. Troy discussed the evidence and the reasons for recommending that High Street be declared as a public right-of-way. They then both voted in favor of making said recommendation. Under a strict reading of the CRMC Regulations, only Mr. Troy was eligible to vote on the final recommendation. However, the error of this vote, if any, was harmless because Mr. Lemont's vote was not necessary in light of the fact that Mr. Troy's vote, standing alone, was sufficient to ensure passage of the recommendation; thus, Plaintiffs' substantial rights were not prejudiced. See § 42-35-15(g) ("The court may . . . reverse or modify the decision if substantial rights of the appellant have been prejudiced.")

Furthermore, although Section 3 of the CRMC Regulations requires that only those subcommittee members who have attended all of the meetings may vote on the final recommendation, it is not clear that this mandate is necessary or desirable to effectuate the purpose of the statute, as required by § 46-23-20.1. Section 42-35-11 of the Administrative Procedures Act (APA) provides in pertinent part:

[3] Although Plaintiffs assert that the decision-making process was overly lengthy and unnecessarily delayed, the Court observes that one reason for the delay was Plaintiffs' own request for a remand at the CRMC hearing on the Subcommittee's first recommendation. See, e.g., State v. Anthony, 448 A.2d 744, 747 (R.I. 1982) (analyzing a speedy trial motion in the context of a criminal case: "To come within its parameters, a defendant need only demonstrate that he or she is not responsible for the delay in question."). Here, Plaintiffs were responsible for much of the delay about which they now complain.

> The proposal for decision shall contain a statement of reasons and include the determination of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or one who has read the record. The parties by written stipulation may waive compliance with this section. Sec. 42-35-11(b).

Assuming that Mr. Lemont's vote was necessary for passage of the Subcommittee's recommendation, which it was not, it would appear that by attending all of the meetings after the CRMC's previous remand, coupled with his reading of the prior record, he satisfied the requirements of § 42-35-11(b).

Furthermore, although "[t]he APA expresses a strong preference for having decisions made by someone who has heard the evidence presented[,]" an agency has the discretion to replace a hearing officer in the middle of the proceedings. New England Coalition on Nuclear Pollution v. United States Nuclear Regulatory Comm'n, 582 F.2d 87, 100 (1st Cir. 1978). In such a situation, the agency "would have to hold a De novo hearing unless 'it fairly could be said that a credibility evaluation from a hearing and seeing the witnesses testify was unnecessary. . . .'" Id. (quoting Gamble-Skogmo, Inc. v. FTC, 211 F.2d 106, 114 (8th Cir. 1954)). Although the credibility of conflicting experts may play a role in a decision, "that credibility is a function of logical analysis, credentials, data base, and other factors readily discernible to one who reads the record." Id. Where the process of evaluating an issue already is elongated, "[an agency's] interest in not holding new hearings is obvious and significant." Id.

From the foregoing, it can be concluded that the APA permits the substitution of a hearing officer where credibility is not a pivotal part of the decision-making process. This conclusion is buttressed by the language of § 42-35-11(b), which permits the preparation of a proposed decision by either a hearing officer or an individual who has read the record. It is undisputed that Mr. Troy attended all of the meetings in the instant matter; had substitution been

necessary, it would have been permissible under the APA. Consequently, the requirement that "[o]nly those Subcommittee members who shall have attended all meetings of the Subcommittee meeting may vote on the Subcommittee recommendation[,]" (Code of Rhode Island Rules 04 000 002-2, Sec. 3), likely exceeds the authority granted to the CRMC. See Town of Warren v. Thornton-Whitehouse, 740 A.2d 1255, 1261 (R.I. 1999) (declaring that a regulation may be "preempted if it conflicts with a state statute on the same subject"). However, assuming substitution had been an issue in this case, the Court would have to determine whether credibility was a pivotal issue such that a de novo hearing was necessary.

In its recommendation, the Subcommittee made thirty-one findings, of which only a very small number implicated a credibility issue. For example, in finding No. 9, the Subcommittee stated that it "does not believe [Plaintiffs' expert Attorney Donato D'Andrea's] interpretation of the grantors [sic] intent is credible with respect to the grantors [sic] intent." (Recommendation of Subcommittee, at 3). Finding No. 11 stated: "The credible evidence demonstrates that the Town has installed and serviced public utilities on the site, to wit, water and sewer lines, notwithstanding the evidence presented by Ms. Glassie." Id. In addition, finding No. 23 stated: "There was credible evidence from members of the public as well as abutting property owners that it was always their understanding that High Street was a public right-of-way." Id. at 4.

The use of the term "credible evidence" in this case does not necessarily imply that the credibility of a particular witness was called into question to the extent that substitution was appropriate. "Credible evidence" is defined as "[e]vidence that is worthy of belief; trustworthy evidence." Blacks Law Dictionary 636 (9th ed. 2004). A "credible witness" is defined as "[a] witness whose testimony is believable." Id. at 1740. A review of the CRMC Decision reveals that it reviewed the evidence as a whole and found Mr. D'Andrea's testimony to be unpersuasive

and that the testimony from members of the public was supported by reliable and probative evidence.

Accordingly, in addressing the above stated findings by the Subcommittee, the CRMC found: "The Full Council does not find Mr. D'Andrea's interpretation of the grantors [sic] intent persuasive with respect to the grantors [sic] intent"; "The reliable and probative testimony on the record demonstrates that the Town has installed and serviced public utilities on the site, to wit, water and sewer lines, notwithstanding the evidence presented by Ms. Glassie"; and, "There was reliable and probative evidence from members of the public as well as abutting property owners that it was always their understanding that High Street was a public right-of-way." (Decision, at 2-3).

The CRMC's Decision demonstrates that its own findings did not rely upon the credibility findings, so-called, that were made by the Subcommittee; rather, its findings were as a result of reviewing the data and testimony available in the record. See New England Coalition on Nuclear Pollution, 582 F.2d at 100 (concluding that a de novo hearing is unnecessary where the pertinent information readily is discernible from a reading of the record). The Court's extensive review of the record reveals that credibility was not a pivotal issue in this case.

While the Subcommittee stated that it did not "believe" Attorney D'Andrea's interpretation of the grantor's intent, such a finding was not dependent upon Attorney D'Andrea's demeanor while testifying because the CRMC could have concluded, and in fact did conclude, that his explanation was not supported by the reliable and probative evidence in the record. Thus, while the Subcommittee did make some credibility findings, the credibility aspect of those findings was not pivotal to the Subcommittee's recommendation in light of the abundance of supporting independent, objective evidence in the record.

In view of the fact that Mr. Lemont stated that he had reviewed the entire and protracted record, coupled with the fact that credibility was not pivotal to the Subcommittee's recommendation, the Court finds that had substitution been required in this case, the CRMC could have made such a substitution without the necessity of a de novo hearing.

Furthermore, even assuming that Mr. Lemont's vote constituted error, Plaintiffs would have to show that, as a result of that error, their substantial rights had been prejudiced under one of the six grounds set forth in § 42-35-15(g). See § 42-35-15(g) ("The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced . . . .") The Plaintiffs have not made any such showing; consequently, the Court concludes that Plaintiffs have not met their burden of proving that their substantial rights were prejudiced.

**B**

**Familiarity with the Administrative Record**

The Plaintiffs allege that the CRMC lacked familiarity with the administrative record prior to voting. They assert that "[a] real question surfaces as to whether all seven of the members did in fact read the record[,]" because "[t]here was virtually no discussion of the actual facts of the case including the evidence and exhibits that were submitted." See Pl.'s Br. at 6. The Plaintiffs then posit that "a review of the transcript of the Council's decision clearly shows that none of the findings of fact which are contained in the final decision were made or remotely discussed at the January 28, 2003 meeting." Id. at 7. The Plaintiffs thus conclude that "[t]he CRMC cannot after the fact have its legal counsel or staff then prepare comprehensive findings of fact, and place them in the final decision as if the Council itself made the findings of fact." Id.

Section 46-23-4 provides: "A quorum shall consist of seven (7) members of the council. A majority vote of those present shall be required for action." Our Supreme Court has declared "that procedural fairness exists when a quorum of [a] commission reaches its decision after having access to a transcript of the hearing and also the evidence, some of which may have been gathered by its staff." In re Rhode Island Comm'n for Human Rights, 472 A.2d 1211, 1214 (R.I. 1984) (citing Jeffrey v. Platting Board of Review of South Kingstown, 103 R.I. 578, 239 A.2d 731 (1968)). This is so because "[t]here is a presumption, soundly established, rationally reached, that administrative officials will properly consider the evidence before they reach a decision." Id.

The record in this case reveals that before addressing the Subcommittee's recommendation at the January 28, 2003 CRMC meeting, a poll was taken to determine how many CRMC members had reviewed the accompanying administrative record. Specifically, CRMC Chairman Michael Tikoian stated: "I'm going to take a polling of those [CRMC] members who read the record first, and those members [that] have read the record will be invited to deliberate and vote." The record shows that CRMC members Pouge, Reitsma, Lemont, Scott, Sahagian, Shekarchi, and Tikoian—totaling seven for the required quorum—affirmatively replied to the poll. See Jan. 28, 2003 CRMC Meeting at 80-1.

The Plaintiffs do not dispute that a quorum was reached; instead, they appear to be challenging the propriety of the members' vote by suggesting, without supporting evidence, that the voting members who made up the quorum actually did not read the record. Thus, they speculate, the CRMC voted to uphold the Subcommittee's recommendation without any basis and then left it to legal counsel to draft a written decision that would justify the vote. This argument lacks merit.

Our Supreme Court has declared that "in order to challenge an administrative process successfully on the grounds of a combination of incompatible functions, a respondent must show that the procedures 'pos[e] such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.'" La Petite Auberge, Inc. v. R.I. Comm'n for Human Rights, 419 A.2d 274, 284 (R.I. 1980) (quoting Withrow v. Larkin, 421 U.S. 35, 51 (1975)). Accordingly, when this type of irregularity is raised, the claimant "must overcome a presumption of honesty and integrity in those serving as adjudicators, which presumption is a validating feature of our entire system of administrative law as presently constituted." Id. (Internal quotations and citations omitted).

Section 46-23-20.4 provides in pertinent part:

> Subject to the provisions of this chapter, every hearing for the adjudication of a violation or for a contested matter shall be held before a hearing officer or a subcommittee. The chief hearing officer shall assign a hearing officer to each matter not assigned to a subcommittee. After due consideration of the evidence and arguments, the hearing officer shall make written proposed findings of fact and proposed conclusions of law which shall be made public when submitted to the council for review. The council may, in its discretion, adopt, modify, or reject the findings of fact and/or conclusions of law provided, however, that any modification or rejection of the proposed findings of fact or conclusions of law shall be in writing and shall state the rationales therefor. Sec. 46-23-20.4(a).

The record discloses that the Subcommittee issued a six-page recommendation to the CRMC in which it made thirty-one proposed findings of fact. It then recommended that, based upon these findings, the CRMC should designate High Street as a public right-of-way. In accordance with § 46-23-20.4(a), the CRMC simply could have adopted the Subcommittee's recommendation without the issuance of a written decision. Furthermore, once adopted, the factual findings and recommendation of the Subcommittee effectively become those of the

CRMC. See Jan. 28, 2003 CRMC Meeting at 92 (showing that Council Member Sahagian's motion to accept the Subcommittee's recommendation was approved five to two by the full CRMC).

Rather than simply adopting the Subcommittee's recommendation without further comment, the CRMC issued a six-page written Decision containing thirty-four findings of fact. However, thirty-one of those findings either were identical, or very similar, to those found in the Subcommittee's recommendation. The additional three findings of fact contained the following language:

> 13. Additionally, the evidence demonstrates that no alternative arrangements for maintenance of High Street had been made by and between the grantors and grantees.
> . . .
> 15. The evidence before the Full Council demonstrated that additionally, no abutter could show paper title to the parcel that comprises High Street.
> . . .
> 32. Further, assuming arguendo the grantor had no intent to dedicate this parcel as a public right-of-way, a majority of the Full Council finds the reliable and probative evidence demonstrates the public's use of this right-of-way was actual, open[,] notorious, hostile, continuous, and under a claim of right sufficient to create a public right-of-way by public user. (Decision, at 4-5.)

A review of the transcript from March 26, 2002 reveals that these additional facts were the subject of discussion during the March 26, 2002 Subcommittee workshop. Specifically, Mr. Troy observed that although maintenance of the street had been minimal, that probably was more a reflection of the fact that there were so few properties on the street. (Transcript (Tr.), Mar. 26, 2002, at 7.) Mr. Lemont stated: "I find there's absolutely nothing that delineates that this property, this High Street is incorporated in the deed of the Glassies." Id. at 6. He also stated:

> I've spent considerable time looking at this. If I go back to a question that I asked of the witness, Mrs. Glassie, and, if I may, I would just like to read a portion of it, I said, 'So then, if I

> understand your position, you're not claiming to own that piece of property in fee, but you're claiming that the Town does not own it either?' And that was the form of the question. The answer, 'Yes.'
>
> 'That it belongs to another party,' I said. And the answer was, 'Yes.' And I say, 'And you have not claimed any adverse possession on that property?'
>
> No, I haven't. I claim that it is a private way, just like Noanett and Russell Avenue, that's what I'm claiming, and that's always been my position. Id. at 5-6.

At the January 28, 2003 CRMC meeting, CRMC member Pogue stated that with respect to High Street, there were "reams of paper in this case and the testimony and so forth, [demonstrating] that the Town of Jamestown has, in fact, done quite a bit in terms of repairing and maintaining and plowing and patching and so forth." (Tr., Jan. 28, 2003, at 85.) Mr. Lemont, in his capacity as a CRMC member stated:

> [A]s I remembered it, it was at one point that all of a sudden the egress past a certain point was set up by a series of rocks, but prior to that time there was fairly unrestricted access and the people that were using it were viewing it as, indeed, a road, or High Street, that it was only when these rocks got there that somebody came along and said, now you're on my property, and I could not, I still cannot find out how anyone can lay claim to that land. It's not in their fee simple absolute right to their property. Id. at 90.

In light of the discussions at the March 26, 2002 Subcommittee workshop and at the January 28, 2003 CRMC meeting, and after an extensive review of the record, the Court finds that the written modifications of the Subcommittee's recommendation are supported by the record. The Court concludes from the foregoing that Plaintiffs have not sustained their burden of proving that there was any impropriety with respect to the CRMC's findings. See La Petite Auberge, Inc., 419 A.2d at 284 (placing burden to "overcome a presumption of honesty and integrity" upon the claimant).

## C

### Sufficiency of the Evidence

The Plaintiffs last maintain that there was insufficient evidence to establish that High Street had been dedicated as a public right-of-way. Specifically, they assert that the pertinent deeds do not display evidence that High Street was ever dedicated to the public, and there was no evidence that the grantor, John Howland, ever manifested the necessary intent to make such a dedication. Furthermore, Plaintiffs assert, the CRMC erroneously rejected the uncontroverted testimony of their expert witness who opined that the grantor failed to manifest the necessary intent to dedicate a public street.

Our Supreme Court has defined the term "dedication" as "a transaction whereby a landowner offers a passageway for use by the public." Sartor v. Coastal Resources Management Council, 542 A.2d 1077, 1083 (R.I. 1988). It is well settled that "the dedication of land to the public is 'an exceptional and unusual method by which a landowner passes to another an interest in his [or her] property.'" Newport Realty, Inc. v. Lynch, 878 A.2d 1021, 1032 (R.I. 2005) (quoting Robidoux v. Pelletier, 120 R.I. 425, 433, 391 A.2d 1150, 1154 (1978)).

In order for there to be an effective dedication of a public right-of-way, there must exist: "(1) a manifest intent by the landowner to dedicate the land in question, called an incipient dedication or offer to dedicate; and (2) an acceptance by the public either by public use or by official action to accept the same on behalf of the municipality." Robidoux, 120 R.I. at 433, 391 A.2d at 1154. Thus, "[w]hether the streets delineated on the plat are open to the public depends on the owner's intent at the time the plat is recorded and the lots are sold." Newport Realty, Inc., 878 A2d at 1033 (internal citations and quotations omitted).

The general rule is that

> In construing a deed the object sought is to ascertain and give effect to the intention of the parties. The court, however, seeks only to translate the instrument before it, not to create a new and different one. Accordingly the intention sought is only that expressed in the deed, and not some secret, unexpressed intention, even though the latter be that actually in mind at the time of execution. This is the fundamental rule of all judicial interpretation. Gaddes v. Pawtucket Institution for Savings, 33 R.I. 177, 186, 80 A. 415, 418 (1911) (citations omitted.)

Thus, it is clear that "[w]henever possible, the terms of a deed are construed according to their plain meaning." Sakonnet Point Marina Ass'n, Inc. v. Bluff Head Corp., 798 A.2d 439, 442 (R.I. 2002). As a result, the Court is "bound to give the language in the deed such an interpretation as will carry out the grantor's intent." Reniere v. Gerlach, 752 A.2d 480, 483 (R.I. 2000)

With respect to the dedication of land to a public right-of-way, the Court

> long has recognized that the recordation of a plat with streets delineated thereon and lots sold with reference to the plat reveals the owner's intent to offer the streets to the public for use as ways. This is recognized in our law as an incipient dedication and is a time-honored method for platting streets and roads and conveying lots with reference to the plat. It is not dependent on subdivision regulations or planning board approval. [I]n most instances, the filing and the acceptance of a plat plan are sufficient evidence of a landowner's intent to dedicate land for road purposes, particularly in situations in which lots are subsequently sold with reference to the recorded plat. Newport Realty, Inc., 878 A.2d at 1033 (internal citations and quotations omitted).

Accordingly, since "[t]he recording of a plat or subdivision, which includes streets, constitutes the dedication of such streets to the public, once there has been some form of acceptance, by official action or by public use, the street becomes a public highway." Id. (Internal citations and quotations omitted.)

However, it also should be remembered

> that application of this principle to the facts of a given case is not quite as automatic a process as it may appear. In situations in which lines and figures drawn on a land-development plat may be unclear as to their intended purpose, this Court has held that it is the task of the fact-finder to interpret the meaning of the disputed item by careful scrutiny of all lines, figures, and letters that appear on the map as well as whatever pertinent evidence may be adduced by the litigants. Each element of the plat is to be given a meaning, and no part can be considered as superfluous. Thus, the first task of the fact-finder is to examine the plat, particularly the lines and declarations that relate to the disputed land, to determine whether this evidence gives rise to a finding of no dedicatory intent or whether it is ambiguous. Id. (Internal citations and quotations omitted.)

Where such an ambiguity exists, the landowner's intent is a question of fact that may be gleaned from an evaluation of his or her statements and actions. See Robidoux, 120 R.I. at 433, 391 A.2d at 1154.

Section 46-23-6 grants the CRMC the responsibility for designating "all public rights-of-way to the tidal water areas of the state." Sec. 46-23-6(5)(i). Accordingly, the General Assembly provided:

> (vi) In 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.
>
> (vii) A determination by the council that a parcel is a right-of-way shall be decided by substantial evidence. Sec. 46-23-6(5).

At the hearings in the present case, two warranty deeds were entered into evidence. From these deeds, the CRMC found that "[a] review of the Land Evidence Records demonstrates that

prior to 1877, the land east of Walcott Avenue and running easterly to Narragansett Bay, consisting of that land currently designated as 'High Street' . . . and those lots abutting that portion of High Street were owned by a common owner, John Howland." (Decision at 2.)

The first warranty deed was from John Howland to Anna Mercer Frances, dated September 6, 1877, as recorded in the Land Evidence Records for the Town of Jamestown on September 7, 1877 in Book 8 at page 75 (1877 Deed). Included in that deed was a metes and bounds description of the southern boundary that stated: "Southerly by High Street which is to be an open way fifty feet wide from Walcott Avenue to the waters of Narragansett Bay . . . ." (1877 Deed). The second warranty deed was from John Howland to Robert M. Olyphant, dated September 23, 1878, and recorded in the Land Evidence Records for the Town of Jamestown on September 23, 1878 in Book 8 at page 137 (1878 Deed). The metes and bounds description in the 1878 deed described the northern boundary as: "Northerly on a proposed street or highway extending easterly from Walcott Avenue to the salt water six hundred and one feet, said proposed street to be forty nine and one half feet in width[.]" (1878 Deed). Attached to both Deeds were plat maps, the first of which depicted an area as "High Street," the second depicted the same area as "Proposed Street." See 1877 Deed and 1878 Deed.

At the hearings, Plaintiffs' expert, Attorney D'Andrea, opined that the common grantor, John Howland, did not manifest an intent to make High Street a public right-of-way within the 1877 and 1878 Deeds. See Tr., Oct. 1, 1998, at 19. In drawing this conclusion, Attorney D'Andrea focused on a lack of significance for the words "street," "proposed street," and "highway" within the Deeds, (see id. at 17-18), along with the mostly "neutral" references to High Street found in fifty plus other deeds concerning abutting lots. See id. at 24-25. Attorney D'Andrea consequently concluded that Mr. Howland did not dedicate High Street to the public

in the 1877 and 1878 Deeds. The CRMC rejected Attorney D'Andrea's opinion as not being "persuasive with respect to the grantors intent" when compared to the considerable evidence supporting the opposite conclusion. (Decision, at 2-3).

This Court recognizes that "[w]hile it is generally true that there is no talismanic significance to expert testimony [and it] may be accepted or rejected by the trier of fact, it is also true that, if expert testimony before [an administrative agency] is competent, uncontradicted, and unimpeached, it would be an abuse of discretion for [the agency] to reject such testimony." Murphy v. Zoning Bd. of Review of Town of South Kingstown, 959 A.2d 535, 542 (R.I. 2008). In the instant matter, the warranty deeds are clear on their face, and the Court will not seek "some secret, unexpressed intention, even though the latter be that actually in mind [of the grantor] at the time of execution." See Gaddes, 33 R.I. at 186, 80 A. at 418. As stated, well-settled law holds that "the recordation of a plat with streets delineated thereon and lots sold with reference to the plat reveals the owner's intent to offer the streets to the public for use as ways." Newport Realty, Inc., 878 A.2d at 1033. Indeed, "[t]his is recognized in our law as an incipient dedication and is a time-honored method for platting streets and roads and conveying lots with reference to the plat." Id.

The 1877 Deed explicitly provided that there is to be "an open way fifty feet wide from Walcott Avenue to the waters of Narragansett Bay." (1877 Deed.) Referring to the same area, the 1878 Deed explicitly provided that the "proposed street to be forty-nine and one-half feet in width." (1878 Deed.) Although the language of the warranty deeds contained an inconsistency concerning the width of the street, there is no ambiguity concerning the fact that these warranty deeds and attached plat maps referred to a street which overlapped by forty-nine and one-half feet out of fifty feet. The CRMC dismissed this six-inch inconsistency as de minimus. See

Decision at 4 ("The Full Council finds that notwithstanding the arguments of Ms. Glassie, the description of the parcel as fifty-feet wide in certain deeds and forty-nine and one-half feet wide in other deeds is de minimus.") Instead, after reviewing the deeds and plat maps, the CRMC found that the grantor intended to offer High Street as a public right-of-way when he deeded his property. ("The reliable and probative facts before the Full Council demonstrate an intent by the original grantor to dedicate the land in question as a right-of-way to Narragansett Bay.") (Decision at 4.)

After reviewing the warranty Deeds at issue, this Court determines that this finding was not clearly erroneous. The 1877 and 1878 Deeds and plat maps collaboratively and convincingly exhibit the intent of the original owner to create a public right-of-way to the Narragansett Bay shoreline via what is now High Street. Having determined that the grantor manifestly intended to dedicate High Street as a public right-of-way, and in fact did so, the Court next will address the issue of acceptance—either by the public, or by the Town of Jamestown, or both.

In accordance with § 46-23-6(5), the CRMC made numerous findings with regard to the land evidence records; the exercise of domain over the parcel; tax payments; public use; and other public and historical records. With respect to the land evidence and other public records, the CRMC found that "since 1877 in the deeds relating to Lot 380, the lot is described as being bounded on 'High Street' and that since at least 1925 the deeds relating to Lot 296 are described as being bounded on 'High Street.'" (Decision at 3). It further found that "as far back as 1895, a number of public records, historical evidence, maps referring to the subject parcel indicate that Street was a public road or street." Id. at 5. The CRMC also found that "since at least 1924, the Town's Tax Assessor's maps depict High Street as running through and to Narragansett Bay." Id. at 4. Furthermore, "no abutter could show paper title to the parcel that comprises High

Street." Id. The Court finds that the supporting documents speak for themselves and that the CRMC did not err in making these findings.

On the issue of domain, the CRMC found that the Town of Jamestown had exercised domain over the disputed strip of land with regard to "maintenance, construction or upkeep[.]" Id. at 3. More specifically, it found that

> the evidence demonstrated that the Town performed maintenance on High Street by paving the street, cold patching the street, adding gravel on the street, and cutting grass on the street. Additionally, the Town plowed snow from the street.
> . . . the Town has installed and serviced public utilities on the site, to wit, water and sewer lines . . . . Id. at 3-4.[4]

These findings are supported by the record. At the hearings, Highway Superintendent Kevin Deacon testified that the Town puts cold patch on the roadway, and that it regularly used to cut the grass in the right-of-way until a neighbor volunteered to do so about two years prior to the hearings. (Tr., Oct. 25, 2001, at 15-16.) He also stated that there are town sewer and water services on the street, and that the Town plows the road during the winter. Id. at 16-17 and 23-27. This conduct supports a finding that the Town treated High Street as a public roadway. See Newport Realty, Inc., 878 A.2d at 1040 (observing that the repairing and maintenance of roadways by a municipality are "indicia of public roads").

With respect to taxation of the property, the CRMC found "[t]he uncontradicted evidence before the Full Council was that the parcel that comprises High Street has not been taxed as property of any individual." Id. at 4. In addition to finding that the abutters were unable to provide paper title to the property, the CRMC found that "[t]he evidence regarding the lack of taxation of the parcel was not refuted by any abutting property owners." Id. This finding is

[4] Juxtaposed against these findings, the CRMC also found that "no alternative arrangements had been made by and between the grantor and grantees." (Decision at 4). While not proof of intent, this fact lends support to the CRMC's conclusion that the grantor intended to dedicate High Street to public use.

undisputed and supports the CRMC's conclusion that there was an acceptance of the dedication. See Newport Realty, Inc., 878 A.2d at 1040 (stating that a "tax assessor's records constitute persuasive circumstantial evidence of affirmative conduct by [a municipality] . . . that reflect the universal understanding that the [disputed] roads . . . were, indeed, public").

In addressing public use of the disputed roadway, the CRMC found the reliable and probative evidence demonstrated that: (a) "High Street has been used and considered a public right-of-way by the general public since at least the 1930's"[;] (b) "High Street was used as a public right-of-way to access a cliff walk that ran along the shoreline in front of High Street from at least the 1930's"[;] (c) "Many members of the public who had personal knowledge testified that High Street was used as a public right-of-way to access the shores of Narragansett Bay as well as the cliff walk when it existed"[;] (d) "[T]he general public used High Street to drive vehicles and bicycles to the shore and access boats and skiffs that were either stored in the grassy area or immediately offshore from the subject parcel"[;] (e) "[M]embers of the public as well as abutting property owners" testified that they understood "High Street [to be] a public right-of-way"[;] (f) "Notwithstanding the testimony presented by an abutter that the public's use was permissive and sporadic, . . . until the subject parcel was blocked recently by an abutter, the general public used this right-of-way in a continuous and open manner"[;] and, (g) "The evidence of extensive, long time public use of the right-of-way to access Narragansett Bay is substantial, reliable and probative." Id. at 4-5. Thereafter, the CRMC found that "the reliable and probative evidence demonstrates that the public long ago accepted the previous landowner's offer of a dedication, notwithstanding the recent actions of an abutting property owner." Id. at 5.[5]

[5] The Court observes that Plaintiffs criticize the CRMC's finding that "assuming arguendo the grantor had no intent to dedicate this parcel as a public right-of-way, a majority of the Full Council finds the reliable and probative

The record reveals that multiple witnesses, members of the public and abutting owners alike, testified about their use of High Street and about how they considered the roadway to be public. Included among those witnesses are Elizabeth Perick; Pamela Bush; Sterling Graham; Elena McCarthy; Karen Estes; W. Randall Tyson; Darcy Magratten; Donald Richardson; Victor Richardson; Mary Webster; and Bonnie Jamison. The extensive testimony of these individuals all lend support to the CRMC's finding that there both was ongoing public use of the roadway and that those users considered High Street to be a public right-of-way.

After making these comprehensive findings, the CRMC concluded that "the evidentiary burdens of proof have in fact been met for the designation of this parcel as a public right-of-way to the shore under the CRMC enabling statute, and the applicable principals [sic] of dedication, incipient dedication, and or public user." (Decision at 6.) In light of the foregoing, this Court finds that the CRMC did not err in concluding that the grantor manifested an intent to dedicate High Street as a public right-of-way and that said dedication had been accepted by the Town and/or the public.

## IV

## Conclusion

After review of the entire record, this Court finds that the CRMC's Decision on High Street in Jamestown, Rhode Island is not clearly erroneous or affected by error of law. The CRMC's Decision is supported by the reliable, probative, and substantial evidence on the record. Furthermore, substantial rights of Plaintiffs have not been prejudiced. Accordingly, the Decision of the CRMC is affirmed and High Street in Jamestown, Rhode Island will remain a public right-

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evidence demonstrates the public's use of this right-of-way was actual, open[,] notorious, hostile, continuous, and under a claim of right sufficient to create a public right-of-way by public user." (Decision at 5.) Although this finding sounds in adverse possession, the propriety of such finding will not be addressed in this Decision as there is ample evidence in the record to support the CRMC's conclusion that High Street had been dedicated and accepted as a public roadway.

of-way providing access to the Narragansett Bay shore.

Counsel shall submit the appropriate order for entry.

**RHODE ISLAND SUPERIOR COURT**
***Decision Addendum Sheet***

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| **TITLE OF CASE:** | Donelson C. Glassie, Jr. and Marcia S. Glassie v. Coastal Resources Management Council |
| **CASE NO:** | NC-03-0576 |
| **COURT:** | Newport Superior Court |
| **DATE DECISION FILED:** | May 31, 2013 |
| **JUSTICE/MAGISTRATE:** | Van Couyghen, J. |
| **ATTORNEYS:** | |
| For Plaintiff: | Christopher J. Behan, Esq. |
| For Defendant: | Brian A. Goldman, Esq. |