STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: December 23, 2021)

H.V. COLLINS PROPERTIES, INC., ***Plaintiff,***	:	
v.	:	**C.A. No. PC-2016-3957**
STATE OF RHODE ISLAND, by and through the DEPARTMENT OF TRANSPORTATION, and PETER ALVITI, JR., in his individual capacity as Director of the Rhode Island Department of Transportation, ***Defendants*****.**	:	

DECISION

SILVERSTEIN, J. (Ret.) Before the Court is the Motion for Partial Summary Judgment brought by Defendants State of Rhode Island and Peter Alviti, Jr. pursuant to Rule 56(c) of the Superior Court Rules of Civil Procedure. Defendants seek a determination that Count II of the Second Amended Complaint, pled solely against Peter Alviti, Jr., is barred by the doctrine of qualified immunity. Defendants also seek a determination that any prejudgment interest to be awarded as a component of just compensation is governed by G.L. 1956 § 37-6-23, rather than G.L. 1956 § 9-21-10. Plaintiff H.V. Collins Properties, Inc. objects, arguing that Peter Alviti, Jr. is not protected by qualified immunity and any prejudgment interest rate is governed by § 9-21-10, rather than § 37-6-23. Jurisdiction is pursuant to G.L. 1956 § 8-2-14 and Article 1, Section 16 of the Rhode Island Constitution.

I

Facts and Travel

A

Background

H.V. Collins Properties, Inc. (Plaintiff) is a Rhode Island corporation that maintains its corporate offices at 99 Gano Street in Providence, Rhode Island. (Second Am. Compl. ¶ 1.) Defendant State of Rhode Island is sued by and through the Rhode Island Department of Transportation (RIDOT), a department of the State. *Id.* ¶ 2. Defendant Peter Alviti Jr. (Director Alviti) is named in his individual capacity, acting under color of state law as the Director of RIDOT. *Id.* ¶ 3.[1]

Since 1950, Plaintiff has been the legal owner of the real estate located at 99 Gano Street (Property) in Providence, Rhode Island, which consists of Lot 611, bordering the Seekonk River and Beach Avenue. *Id.* ¶¶ 4-5. A fence previously existed around the perimeter of the Property. *Id.* ¶ 6. The Property also contained a seawall at the bank of the Seekonk River that Plaintiff maintained until 2016 and a boat dock that extended into the Seekonk River from the seawall that Plaintiff maintained until at least 1978. *Id.* ¶¶ 12-13.

Beach Avenue is a paper street[2] between two lots on Plaintiff's property, one of which is Lot 611. *Id.* ¶ 5. The paper street was recorded in 1847. *Id.* ¶ 7.

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[1] Where the Court's Decision is relevant to both defendants, the State of Rhode Island, by and through RIDOT, and Director Alviti will be referred to collectively as Defendants. Where the Court's Decision is relevant only to the State of Rhode Island, by and through RIDOT, it will be referred to as the State. Where the Court's Decision is relevant only to Director Alviti, he will be referred to as Director Alviti.

[2] This Court has previously stated, "The law with regard to platted streets[, or 'paper streets,'] . . . is well settled in [Rhode Island]. Where a plat is recorded with streets delineated thereon and lots are sold with reference to the plat, there is, so far as the public is concerned, an incipient dedication of such streets." *Parrillo v. Riccitelli*, 84 R.I. 276, 279, 123 A.2d 248, 249 (1956) (citing *Brown*

Beach Avenue remained submerged under the Seekonk River until the 1940s, when the shoreline began to recede. *Id.* ¶ 8. By 1950, Beach Avenue was partially submerged and Lot 611 was fully submerged. *Id.* ¶ 9. Plaintiff filled in Beach Avenue and Lot 611, a process that was completed in 1972. *Id.* ¶ 10.

In 2004, the City of Providence (City) constructed a boat ramp next to the Property, and in January 2004, the City and Plaintiff executed an agreement requiring the City to reinstall the perimeter fencing around the northern and southern boundaries of the Property. *Id.* ¶ 11.

This case stems from the Defendants' decision to construct the "Blackstone River Bikeway" (Bikeway) directly across Plaintiff's property. *H.V. Collins Properties, Inc. v. State*, No. PC-2016-3957, 2020 WL 5847489, at *1 (R.I. Super. Sept. 24, 2020). In August 2015, the State exercised its eminent domain powers to acquire certain property upon which the State was going to build the Bikeway, believing that the Property belonged to the City. *Id.* In fact, the Property belonged to Plaintiff. *Id.* A construction crew entered the Property, without notice or consent from Plaintiff, and began to build the Bikeway over Beach Avenue, beginning at the intersection of Gano and Trenton Streets and following the Seekonk River before ending at Waterman Street in Providence. (Second Am. Compl. ¶¶ 14-15.) The entire project consisted of 0.7 miles of a bike path. *Id.* ¶ 15. The construction crew laid a foundation, removed the fencing, and demolished the seawall. *Id.* ¶ 16. They also dumped stones, fill, and rip-rap over and between the location of the seawall and the Seekonk River. *Id.* ¶ 16.

v. Curran, 83 A. 515, 518 (1912)). "To complete such a dedication and establish as public highways the streets that appear on the recorded plat, there must be an acceptance on the part of the public," either by public user or through proper action on the part of public authorities. *Id.* (citing *Marwell Construction Co. v. Mayor and Board of Aldermen of City of Providence*, 61 R.I. 314, 321, 200 A. 976, 979 (1938))." *H.V. Collins Properties, Inc. v. State*, No. PC-2016-3957, 2019 WL 4390346, at *2 (R.I. Super. Sept. 9, 2019).

The State and the construction crew ignored Plaintiff's request to cease construction. *Id.* The State believed, as did the City, that the City owned Beach Avenue, and the City accepted compensation from the State in the amount of one dollar in connection with the taking. *H.V. Collins Properties, Inc.*, 2020 WL 5847489, at *1.

The Bikeway bisects the Property and prevents direct access to the Seekonk River and Lot 611 and private use of Beach Avenue. (Second Am. Compl. ¶ 19.) The removal of the fencing also allows the public to access the Property. *Id.* The State has not paid any compensation thus far to Plaintiff. *Id.* ¶ 22.

B

Director Alviti's Involvement

Preconstruction development for the Bikeway began in late 2013. (Kalunian Aff. ¶ 3, June 29, 2021.) In November 2013, when Plaintiff heard of the plans to construct the Bikeway across its Property, it caused a letter from its attorney to be sent to the Project Manager, indicating that it was the owner of the Property and that RIDOT had no rights in it. (Pl.'s Mem., Ex. B (Nov. 6, 2013 Letter).)[3] This letter was addressed only to the then-Project Manager, and Plaintiff sent it a year and a half before Director Alviti became director of RIDOT. *Id.*

Despite this letter, project development continued for several years. (Kalunian Aff. ¶ 3, June 29, 2021.) It consisted of identifying, appraising, and acquiring any land necessary to complete the project. *Id.* RIDOT's permanent professional staff led the project's development phase and were assisted by retained consultants. *Id.* ¶ 4. RIDOT's director does not personally

[3] "Pl.'s Mem." refers to Plaintiff H.V. Collins Properties, Inc.'s Objection to Defendants' Motion for Partial Summary Judgment. "Ex. B" refers to the exhibit labeled Exhibit B attached to Plaintiff H.V. Collins Properties, Inc.'s Objection to Defendants' Motion for Partial Summary Judgment.

research the circumstances surrounding particular parcels identified for acquisition. *Id.* Rather, the director relies on the work undertaken by RIDOT's staff and consultants. *Id.*

The acquisition of the parcels (Plat 2845), which included Beach Avenue, had already been approved by the prior director and the State Properties Committee when the State Properties Committee met on February 6, 2015. (Defs.' Mem., Exs. 2, 3 (Jan. 30, 2015 Memo, Feb. 6, 2015 Interdepartmental Memorandum).)[4] RIDOT sought reauthorization of the acquisition to accommodate regulatory concerns and ensure compliance within the time frame established by § 37-6-14, which requires condemnation documents be recorded within six months of authorization. (Defs.' Mem., Exs. 1, 3 (June 12, 2015 Memo, Feb. 6, 2015 Interdepartmental Memorandum).) The reauthorization identified the City as the owner of Beach Avenue. *Id.* On or about June 19, 2015, approximately four months after Director Alviti became director, he received for his review and approval a memorandum addressed to the State Properties Committee requesting reauthorization to acquire land and easements for the Bikeway.[5] (Kalunian Aff. ¶ 7, June 29, 2021); *see also* Defs.' Mem., Ex. 1 (June 12, 2015 Memo.)

The proposed acquisition had also already been approved by RIDOT's Chief Real Estate Specialist, the Chief of Real Estate Acquisition, and the Chief Engineer. (Defs.' Mem., Ex. 1 (June 12, 2015 Memo Attachment).) Again, on June 23, 2015, the State Properties Committee approved reauthorization. (Defs.' Mem., Ex. 4 (June 26, 2015 Interdepartmental Memorandum).)

[4] "Defs.' Mem." refers to Defendants' Motion for Partial Summary Judgment on Count II and the Rate of any Prejudgment Interest. "Exs. 2, 3" refer to the exhibits labeled Exhibit 2 and Exhibit 3 attached to Defendants' Motion for Partial Summary Judgment on Count II and the Rate of any Prejudgment Interest.

[5] Peter Alviti, Jr. became Director of RIDOT in February 2015. *See* RHODE ISLAND DEPARTMENT OF TRANSPORTATION, *Peter Alviti, Jr. P.E.*, https://www.dot.ri.gov/about/index.php (last visited Nov. 16, 2021).

Thereafter, on August 12, 2015, Director Alviti signed the condemnation plat, effectuating the taking, and filed it in the City's land evidence records. (Second Am. Compl. ¶¶ 35-37.)

C

Prior Proceedings

As this Court previously stated in its decision granting Plaintiff's Motion for Partial Summary Judgment, Defendants' attempted condemnation of the Property was ineffective:

> "[A]t the time the State attempted to condemn Beach Ave. in 2015, the Court finds the State failed to produce evidence of the acceptance by the City of the paper street and certainly no evidence of such acceptance within a reasonable time . . . Accordingly, the State's attempted condemnation of Beach Ave. from the City was ineffective." *H.V. Collins Properties, Inc.*, 2019 WL 4390346, at *4.

This Court "declare[d] that [Plaintiff] is the legal owner of the Contested Land in issue, Lot 611, and the riparian rights appurtenant to both properties." *Id.* at *8. The Court determined the State's actions constituted a taking of the Property and riparian rights that resulted in a substantial impairment in Plaintiff's Property, and an inverse condemnation of Lot 611, thus entitling Plaintiff to just compensation:

> "The Court finds that the State's construction of the Bike Path constituted a taking of Plaintiff's property, entitling Plaintiff to just compensation in an amount to be determined in a future proceeding. *See* R.I. Const. art. I, § 16. In building the Bike Path, the State's construction crew entered the Contested Land, destroyed Plaintiff's fencing, and raised the grade of Beach Ave . . . These actions provided the public with unobstructed use of Beach Ave., while depriving the Plaintiff of its use of this portion of 99 Gano Street . . . [T]he Court finds that the State's actions resulted in a substantial impairment in Plaintiff's property as a matter of law . . . By obstructing Plaintiff's access to Lot 611, coupled with the construction of the Bike Path across the Contested Land, the State has obstructed Plaintiff's use of the shoreline bordering the Property, thereby obstructing Plaintiff's riparian rights." *Id.* at *6-8.

On February 14, 2020, the Court denied the State's motion for reconsideration of the granting of partial summary judgment in favor of Plaintiff. *See* Decision, Feb. 14, 2020.

On September 24, 2020, the Court denied the State's motion to dismiss for failure to join indispensable parties, namely, the City of Providence and the Coastal Resources Management Council, granted Plaintiff's motion for leave to file a second amended complaint, and denied the State's motion for a stay pending Supreme Court review of its petition for certiorari. *H.V. Collins Properties, Inc.*, 2020 WL 5847489, at *4. Pursuant to the Court's decision, Plaintiff added Peter Alviti, Jr., the Director of RIDOT, as a defendant to this case. (Second Am. Compl. ¶ 3.)

In Plaintiff's Second Amended Complaint, Count I is against Defendant State of Rhode Island, by and through RIDOT, and alleges a taking of private property without just compensation in violation of article 1, § 16 of the Rhode Island Constitution,[6] and the Fifth and Fourteenth Amendments to the United States Constitution.[7] *Id.* ¶¶ 24-33. Count II is against Director Alviti in his individual capacity and alleges a violation of 42 U.S.C. § 1983[8] for the unlawful taking of private property. *Id.* ¶¶ 34-41.

[6] "Private property shall not be taken for public uses, without just compensation. The powers of the state and of its municipalities to regulate and control the use of land and waters in the furtherance of the preservation, regeneration, and restoration of the natural environment, and in furtherance of the protection of the rights of the people to enjoy and freely exercise the rights of fishery and the privileges of the shore, as those rights and duties are set forth in Section 17, shall be an exercise of the police powers of the state, shall be liberally construed, and shall not be deemed to be a public use of private property." R.I. Const. art. 1, § 16.

[7] The Fifth Amendment states that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V. The Fourteenth Amendment also states that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ." U.S. Const. amend. XIV.

[8] "Every person who . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . ." 42 U.S.C. § 1983.

On July 7, 2021, Defendants filed their Motion for Partial Summary Judgment as to Count II of Plaintiff's Second Amended Complaint and as to the rate of any prejudgment interest, if any, to be added to any recovery by Plaintiff. (Defs.' Mem.) On August 2, 2021, Plaintiff filed its Objection to Defendants' Motion for Partial Summary Judgment. (Pl.'s Mem.) On August 13, 2021, Defendants filed their Reply in Further Support of Motion for Partial Summary Judgment. (Defs.' Reply.)[9]

On August 20, 2021, the Court heard the parties' arguments on the two issues before the Court: (1) whether Count II against the director is barred by qualified immunity, and (2) whether the proper interest rate is governed by § 37-6-23, § 9-21-10, or another method. (Hr'g Tr. (Tr.), Aug. 20, 2021.)

II

Standard of Review

It is well settled that "[s]ummary judgment is 'a drastic remedy,' and a motion for summary judgment should be dealt with cautiously." *Estate of Giuliano v. Giuliano*, 949 A.2d 386, 390 (R.I. 2008) (quoting *Ardente v. Horan*, 117 R.I. 254, 256-57, 366 A.2d 162, 164 (1976)). "Thus, [s]ummary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the [C]ourt determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law." *Quest Diagnostics, LLC v. Pinnacle Consortium of Higher Education*, 93 A.3d 949, 951 (R.I. 2014) (internal quotation marks omitted) (alterations in original). Pursuant to Rule 56(c) of

[9] "Defs.' Reply" refers to Defendants' Reply in Further Support of Motion for Partial Summary Judgment on Qualified Immunity (Count II) and the Rate of any Prejudgment Interest.

the Superior Court Rules of Civil Procedure, summary judgment "may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

When seeking summary judgment, "'[t]he moving party bears the initial burden of establishing the absence of a genuine issue of fact.'" *McGovern v. Bank of America, N.A.*, 91 A.3d 853, 858 (R.I. 2014) (quoting Robert Kent et al., *Rhode Island Civil Procedure* § 56:5, VII-28 (West 2006)). Once this burden is met, the burden shifts to the nonmoving party to prove by competent evidence the existence of a genuine issue of fact. *Id.* The nonmoving party may not rely on "'mere allegations or denials in the pleadings, mere conclusions or mere legal opinions'" to satisfy its burden. *D'Allesandro v. Tarro*, 842 A.2d 1063, 1065 (R.I. 2004) (quoting *Santucci v. Citizens Bank of Rhode Island*, 799 A.2d 254, 257 (R.I. 2002) (per curiam)).

III

Discussion

A

Qualified Immunity

The first issue in this case is whether Count II, alleging a violation of 42 U.S.C. § 1983 by Director Alviti in his individual capacity, is barred by the doctrine of qualified immunity. The thrust of Defendants' argument is that no reasonable jury could find that Director Alviti's decision to condemn Beach Avenue was objectively unreasonable based on the facts he knew and the information presented before him in June 2015, thus he is shielded from liability by qualified immunity. (Defs.' Mem. 2.)

Defendants assert that all the information available to Director Alviti—including the information gathered by RIDOT staff and consultants as part of the preconstruction development process, the reauthorization memorandum showing the City owned Beach Avenue, a document

showing three other officials had already approved the condemnation, and the approval by the State Properties Committee—suggests that Director Alviti was reasonable in believing the City was the owner of Beach Avenue. *Id.* at 6.

Moreover, Defendants argue Director Alviti's individual, limited personal knowledge should not be conflated with facts known by the State. (Defs.' Reply 1.) They assert that what Director Alviti *should have* known had he inquired into whether the City was the actual owner of Beach Avenue is immaterial, and that the reasonableness of his action should be based only on what he *actually* knew. *Id.* at 6. They cite to *Anderson v. Creighton*, 483 U.S. 635 (1987), where the United States Supreme Court held that "[t]he relevant question . . . is the objective (albeit fact-specific) question whether a reasonable officer could have believed [the plaintiff's] warrantless search to be lawful, in light of clearly established law and the information the searching officers possessed." *Anderson*, 483 U.S. at 641; *see also* Defs.' Reply 3.

Although the ownership of the Property was disputed in 2013 when Plaintiff's counsel sent a letter to the Project Manager indicating Plaintiff was the owner of the Property, Defendants argue that Director Alviti had no notice of this dispute because the correspondence was addressed to someone other than him and was sent before he became director. (Defs.' Reply 4; Pl.'s Mem., Ex. B (Nov. 6, 2013 Letter).) In short, Defendants contend that whether any information regarding the ownership of the Property was easily ascertainable or known to anyone else within RIDOT is irrelevant because, ultimately, Director Alviti had no personal knowledge of those facts. (Defs.' Reply 5.)

The core of Plaintiff's argument is that Defendants have not established as a matter of law that Director Alviti made a reasonable factual mistake that the City owned Beach Avenue. (Pl.'s Mem. 1.)

First, the Plaintiff argues that the law of paper streets and dedications of land was clearly established at the time of the taking. *Id.* at 6. Second, Plaintiff argues Director Alviti's actions were not reasonable because he signed the condemnation deed that triggered the taking of Plaintiff's Property based on the conclusion that the Property's "mere location on a paper street platted in the mid-1800s meant that the City . . . owned this [Property]." *Id.* at 7.

The most significant aspect of Plaintiff's argument is its assertion that Director Alviti's mistake was unreasonable based on what he *should have known* had he inquired about the ownership of the Property, and thus he cannot be protected by qualified immunity. (Tr. 15:10-11.) Plaintiff cites to *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153 (2016), where the United States Supreme Court recognized '"[q]ualified immunity may be overcome . . . if the defendant knew or *should have known* that his conduct violated a right clearly established at the time of the episode in suit."' *Campbell-Ewald Co.*, 577 U.S. at 167-68 (emphasis added) (quoting *Filarsky v. Delia*, 566 U.S. 377, 394 (2012) (Ginsburg, J., concurring)). Based on this case, Plaintiff argues that Director Alviti had a duty to inquire, and his failure to do so is the equivalent of "turn[ing] a blind eye" to the facts. (Tr. 20:8-23.)

Plaintiff contends that Director Alviti should have known Plaintiff was the owner of the Property because the *State* was on notice of Plaintiff's ownership of the Property. (Pl.'s Mem. 7.) Plaintiff supports its conclusion with all the ways Plaintiff treated the Property as its own before and during the preconstruction development of the Bikeway (storing materials for its construction business on the Property, mowing the grass, cleaning up debris, landscaping, maintaining fences, and executing an agreement with the City requiring the City to install a fence) and with the 2013 letter from Plaintiff to the Project Manager previously mentioned. *Id.* at 7-9. Plaintiff says these "easily ascertainable" facts would have revealed to Director Alviti that the City never accepted or

designated Beach Avenue as a paper street through public use or official action. *Id.* at 9. Thus, Director Alviti cannot say he made a reasonable mistake as to the ownership of the Property and as to whether Beach Avenue was a paper street. *Id.* at 9-10.

Plaintiff further argues that Defendants have ignored all the takings that took place in this case, and that Director Alviti is personally liable for not only the misappropriation of the land that compromised Beach Avenue, but also the inverse condemnation of Lot 611 by cutting off its access to the lot, and its riparian rights. *Id.* at 4-5.

"'The doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Garza v. Lansing School District*, 972 F.3d 853, 877 (6th Cir. 2020) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)). Rhode Island law recognizes the defense of qualified immunity for state actors. *See Fabrizio v. City of Providence*, 104 A.3d 1289, 1294 (R.I. 2014). "Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Pearson*, 555 U.S. at 231. Courts deny qualified immunity when "[t]he contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson*, 483 U.S. at 640.

A qualified immunity analysis involves a two-step test for resolving government officials' qualified immunity claims, which was first set out by the Supreme Court of the United States in *Saucier v. Katz*, 533 U.S. 194 (2001).

In a qualified immunity analysis, "'the first step in evaluating a claim . . . is to determine whether the plaintiff has alleged the deprivation of an actual constitutional right at

all . . . .'" *Fabrizio*, 104 A.3d at 1294 (quoting *Monahan v. Girouard*, 911 A.2d 666, 674 (R.I. 2006)).

The second step is to determine "'whether the right was clearly established at the time of the defendant's alleged violation.'" *Baillargeon v. Drug Enforcement Administration*, 707 F. Supp. 2d 305, 307 (D.R.I. 2010) (quoting *Estrada v. Rhode Island*, 594 F.3d 56, 62-63 (1st Cir. 2010)). "'The second step has two aspects: (1) the clarity of the law at the time of the alleged civil rights violation and (2) whether, on the facts of the case, a reasonable defendant would have understood that his conduct violated the Plaintiffs' constitutional rights.'" *Id.* (quoting *Estrada*, 594 F.3d at 63).

1

First Prong: Allegation of Deprivation of Actual Constitutional Right

This Court has already ruled that Plaintiff has suffered a deprivation of an actual constitutional right. In 2019, this Court held that the State's attempted condemnation of Beach Avenue was ineffective because Plaintiff was the true legal owner of Beach Avenue and the other Property affected by the taking. *H.V. Collins Properties, Inc.*, 2019 WL 4390346, at *4. The State's actions resulted in a substantial impairment of Plaintiff's Property, thus entitling it to just compensation. *Id.* at *6. The State has yet to compensate Plaintiff for its loss. *Id.* Therefore, the first prong of the qualified immunity analysis is satisfied.

2

Second Prong: Clearly Established Rights

i

The Clarity of the Law at the Time of the Alleged Civil Rights Violation

The second prong of a qualified immunity analysis requires "consider[ing] whether existing case law was clearly established so as to give the defendants fair warning that their conduct violated the plaintiff's constitutional rights." *Guillemard-Ginorio v. Contreras-Gómez*, 585 F.3d 508, 527 (1st Cir. 2009) (quotations omitted). "The law is considered clearly established either if courts have previously ruled that materially similar conduct was unconstitutional, or if a general constitutional rule already identified in the decisional law [applies] with obvious clarity to the specific conduct at issue." *Id.* (quotations omitted). "The inquiry requires [a court] to consider the state of the law at the time of the challenged act, or in other words 'conduct the judicial equivalent of an archeological dig.'" *Lopera v. Town of Coventry*, 652 F. Supp. 2d 203, 213 (D.R.I. 2009) (quoting *Savard v. Rhode Island*, 338 F.3d 23, 28 (1st Cir. 2003) (*en banc*) (affirmed by *Lopera v. Town of Coventry*, 640 F.3d 388, 404 (1st Cir. 2011)). "[T]he salient question is whether the state of the law at the time of the alleged violation gave the defendant fair warning that his particular conduct was unconstitutional." *Maldonado v. Fontanes*, 568 F.3d 263, 269 (1st Cir. 2009).

The law surrounding condemnations and paper streets was clearly established at the time of Director Alviti's conduct. General Laws 1956 § 42-64.12 provides for compensation to a landowner when their land is taken by eminent domain, and it contains other provisions and requirements that the government must follow to ensure a lawful execution of its eminent domain powers. *See* §§ 42-64.12-6, 42-64.12-7, 42-64.12-8, 42-64.12-8.1. Section 37-6-16 requires the

condemning agency to publish a notice of condemnation before actually condemning the property. Section 37-6-16. Further, Rhode Island's Constitution contains a takings clause in Article 1, § 16 that provides for compensation for the taking of private property. R.I. Const. art. 1, § 16. Moreover, this Court has already found that "[t]he law with respect to . . . 'paper streets,' is well-settled in Rhode Island." *H.V. Collins Properties, Inc.*, 2019 WL 4390346, at *3.

> "'Where a plat is recorded with streets delineated thereon and lots are sold with reference to the plat, there is, so far as the public is concerned, an incipient dedication of such streets.' *Parrillo v. Riccitelli*, 84 R.I. 276, 279, 123 A.2d 248, 249 (1956) (citing *Brown v. Curran*, 83 A. 515, 518 (1912)). 'To complete such a dedication and establish as public highways the streets that appear on the recorded plat, there must be an acceptance on the part of the public,' either by public user or through proper action on the part of public authorities. *Id.* (citing *Marwell Construction Co. v. Mayor and Board of Aldermen of City of Providence*, 61 R.I. 314, 321, 200 A. 976, 979 (1938))." *Id.*

All these sources of law were clearly established at the time Director Alviti was serving as director of RIDOT. Therefore, the first part of the second prong of the test for qualified immunity has been satisfied here, in that existing law regarding condemnation and paper streets was clearly established at the time of Director Alviti's conduct.

ii

Whether, on the Facts of the Case, a Reasonable Defendant Would Have Understood that his Conduct Violated the Plaintiff's Constitutional Rights

The second prong of the qualified immunity analysis also considers whether a reasonable defendant would have understood that his conduct violated a plaintiff's constitutional rights. *Estrada*, 594 F.3d at 63.

Plaintiff cites to *Campbell-Ewald Co.*, cited *supra*, a United States Supreme Court case that quoted Justice Ginsburg's concurrence in *Filarsky*, cited *supra*, stating that "[q]ualified immunity may be overcome . . . if the defendant knew or should have known that his conduct

violated a right 'clearly established' at the time of the episode in suit." *Campbell-Ewald Co.*, 577 U.S. at 167-68. The United States Supreme Court has held in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), that part of a qualified immunity analysis is looking at whether an official "*reasonably should have known*" his actions would violate a plaintiff's constitutional right. *Harlow*, 457 U.S. at 815 (quotations omitted). However, based on Director Alviti's position, responsibilities, and the information presented to him in the normal course of business, this Court finds that a reasonable person in Director Alviti's position would not have *reasonably* known that his actions violated another's constitutional right. Thus, the second part of the second prong is not satisfied.

Preconstruction development for the Bikeway began in late 2013. (Kalunian Aff. ¶ 3, June 29, 2021.) Director Alviti did not become director of RIDOT until February 2015. Director Alviti was not a party to the previous communications regarding Plaintiff's ownership of the Property. In November 2013, a year and a half before Director Alviti became director, Plaintiff only communicated with the Project Manager at the time indicating it was the owner of the Property and that RIDOT had no rights in it. (Pl.'s Mem., Ex. B (Nov. 6, 2013 Letter).)

The project development consisted of extensive research and identifying, appraising, and acquiring any land necessary to complete the project by RIDOT permanent professional staff and retained consultants, but not Director Alviti. (Kalunian Aff. ¶¶ 3-4, June 29, 2021.) Most importantly, it was not RIDOT's director's job to personally research the circumstances surrounding particular parcels identified for acquisition. *Id.* ¶ 4. Rather, the director relied on the work undertaken by RIDOT's staff and consultants. *Id.*

The acquisition of the Property had already been approved by the prior director and the State Properties Committee. (Defs.' Mem., Exs. 2, 3 (Jan. 30, 2015 Memo, Feb. 6, 2015 Interdepartmental Memorandum).) Thereafter, the project development team requested

reauthorization to conform to the time frame requirement. (Defs.' Mem., Exs. 1, 3 (June 12, 2015 Memo, Feb. 6, 2015 Interdepartmental Memorandum).) All memoranda presented to Director Alviti identified the City as the owner of Beach Avenue. *Id.* About four months after Director Alviti became director, he received for his review and approval a memorandum addressed to the State Properties Committee requesting *reauthorization* to acquire land and easements for the Bikeway. *See* Kalunian Aff. ¶ 7, June 29, 2021; *see also* Defs.' Mem., Ex. 1 (June 12, 2015 Memo) The proposed acquisition had also already been approved by RIDOT's Chief Real Estate Specialist, the Chief of Real Estate Acquisition, and the Chief Engineer. (Defs.' Mem., Ex. 1 (June 12, 2015 Memo Attachment).) Again, on June 23, 2015, the State Properties Committee approved *reauthorization*. (Defs.' Mem., Ex. 4 (June 26, 2015 Interdepartmental Memorandum).) Thereafter, Director Alviti signed the condemnation plat effectuating the taking and filed it in the City's land evidence records. (Second Am. Compl. ¶¶ 35-37.)

Based on the above facts, Director Alviti could not have reasonably understood that his act of effectuating the taking of the Property would result in an unlawful taking and inverse condemnation of Plaintiff's Property. The identification, appraisal, and acquisition of the Property all took place before he became director and was conducted by a team of staff and consultants. Approval and authorization of the taking also took place, not just once, but multiple times, before Director Alviti assumed his position. Several memoranda came before him for *reauthorization* based on the fact that the previous director, the State Properties Committee, the Chief Real Estate Specialist, the Chief of Real Estate Acquisition, and the Chief Engineer had already approved of the project.

To impose a duty to constantly inquire into any and all possible information relating to all project development plans and ownership of property would create an unmanageable obligation

on individuals in similar managerial positions. Imposing such a duty would mean that Director Alviti would have had to disregard all the approved memoranda brought before him and all the research his staff conducted and work backwards to review everything that every person worked on in order to know exactly what everyone working for the State knew or had been told. What Director Alviti should have known was the information presented to him by permanent staff members, consultants, and other RIDOT employees as part of his job responsibilities as director of RIDOT.

Therefore, the Court finds as a matter of law that Count II, alleging a violation of 42 U.S.C. § 1983 by Director Alviti in his individual capacity, is barred because Director Alviti is protected by the doctrine of qualified immunity. The Court further finds that the doctrine applies to every aspect of all three takings of Plaintiff's Property (Beach Avenue, Lot 611, and the riparian rights), and thus Plaintiff's argument that Defendants' Motion for Partial Summary Judgment ignores the two takings in addition to Beach Avenue is immaterial. Director Alviti is entitled to qualified immunity regarding all three takings.

B

Eminent Domain and Inverse Condemnation

Context warrants making a few observations on the general principles of the law of eminent domain and inverse condemnation.

"The power of eminent domain refers to the right of the sovereign, or of those to whom the power has been delegated, to condemn private property for public use, and to appropriate the ownership and possession thereof for such use upon paying the owner a due compensation." *Rhode Island Economic Development Corp. v. Parking Co., L.P.*, 892 A.2d 87, 96 (R.I. 2006) (citing 26 Am. Jur. 2d *Eminent Domain* § 2 at 418 (2004)). The state's authority is limited by the

Constitution, which prescribes "boundaries . . . imbedded in the Takings Clause . . . ." *Id.* Where the state takes private property, it must only be taken for public use, and the taking must be accompanied by just compensation. *Id.*; *see also* U.S. Const. amend. V; R.I. Const. art. 1, § 16. "Article I, Section 16 of the Rhode Island Constitution echoes the federal Takings Clause." Harris K. Weiner, Esq., *Eminent Domain and Economic Development: Rhode Island General Assembly Addresses*, 57 R.I.B.J. 13, 13 (2008).

Typically, the eminent domain process begins when the acquiring agency announces its intention to take private property for public use. *Id.* Thereafter, the acquiring agency will attempt to negotiate the purchase of the properties being taken. *Id.* If the landowner rejects an offer, the condemning agency may file condemnation papers and then tender payment in the amount of the offer of just compensation. *Id.* at 13-14. Sometimes, courts may require a "pre-condemnation hearing before allowing the exercise of eminent domain authority." D. Zachary Hudson, *Eminent Domain Due Process*, 119 Y.L.J. 1280, 1307 (2010). Thereafter, "title changes by operation of law" from the landowner to the acquiring agency. Weiner, *supra*, at 14. If the landowner is unsatisfied with the tendered compensation, they can initiate suit and potentially "obtain[] a higher price for the property taken." *Id.* "Eminent domain trials are essentially battles between expert appraisers." *Id.*

Eminent domain takings, which involve "an intended government acquisition of private land for public use[,]" is different from an inverse condemnation, "in which government action . . . causes a property owner to lose *all* economically beneficial use of his or her property." *Id.* at 16.

"'Inverse condemnation' is a term used to describe a cause of action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by

the taking agency." *E & J Inc. v. Redevelopment Agency of Woonsocket*, 122 R.I. 288, 290 n.1, 405 A.2d 1187, 1189 n.1 (1979) (citing *Ferguson v. Keene*, 238 A.2d 1 (1968)). "The inverse-condemnation cause of action provides landowners with a means of seeking redress for governmental intrusions that, if performed by private citizens, would warrant analysis under the law of trespass." *Harris v. Town of Lincoln*, 668 A.2d 321, 327 (R.I. 1995) (internal citation omitted). Landowners must show that the government "intentionally invaded protected property interest, or [that] the invasion was direct, natural, or probable result of authorized activity" and that the "invasion appropriated benefit to government at property owner's expense, or at least preempted his right to enjoy his property for extended period of time . . . ." 32 Am. Jur. 3d *Proof of Facts* 405 § 4 (Update Dec. 2021). "It does not matter that the government did not intend to take a person's property in order to entitle the owner to seek compensation." *Id.* § 5.

C

Prejudgment Interest Rate

The Court turns now to the second dispute, regarding which statute, if any, governs the prejudgment interest rate due in this case. The Defendants' argument is that any prejudgment interest accrued on the compensation award should be governed by § 37-6-23, the eminent domain statute, to ensure just compensation and not excessive compensation. (Defs.' Mem. 2.)

Defendants argue that eminent domain and inverse condemnation are different from each other only procedurally. (Defs.' Mem. 8.) They assert that the Rhode Island Superior Court's ruling in *Woodland Manor, III Associates, L.P. v. Reisma*, No. PC89-2447, 2003 WL 25657220 (R.I. Super. Feb. 24, 2003), "applies with equal force to this action." (Defs.' Mem. 8-9.) In that case, the superior court applied the treasury bill rate under the eminent domain statute, § 37-6-23,

to an inverse condemnation action, reasoning that "the award serves the exact same purpose." *Woodland Manor, III Associates, L.P.*, 2003 WL 25657220; *see* Defs.' Mem. 9.

Defendants further argue that the purpose behind the eminent domain interest rate per § 37-6-23 and the 12 percent rate per § 9-21-10 are "fundamentally different." (Defs.' Mem. 9.) The purpose of § 37-6-23, they argue, is to redress delay and not incentivize settlement, and § 9-21-10 is meant to encourage settlement of claims and not merely to compensate. *Id.* at 9-10.

Defendants contend that an award of the 12 percent interest rate would be excessive. *Id.* at 10. They argue it would "provide vastly more compensation than is necessary to 'make the property owner whole.'" *Id.* at 10; *see also Albrecht v. United States*, 329 U.S. 599, 602 (1947). Their position is that a 12 percent rate would run counter to the holding in *NRG Co., v. United States*, 31 Fed. Cl. 659 (1994). (Defs.' Mem. 10). In that case, the United States Court of Federal Claims held that "compensation is not 'just' if the delay compensation is calculated in a way that produces a windfall to property owners well in excess of their economic loss." *NRG Co.*, 31 Fed. Cl. at 670.

Defendants assert that § 37-6-23 controls because a more specific statute prevails over a general statute when they both contain competing provisions. (Defs.' Mem. 10.) They cite to *Irons v. Rhode Island Ethics Commission*, 973 A.2d 1124 (R.I. 2009), where the Court recognized the principle that the specific statute governs the general. *Id.* at 10-11; *see also Irons*, 973 A.2d at 1134. Defendants support their position by arguing that § 37-6-23 and § 9-21-10 address the same subject matter, and because § 37-6-23 addresses prejudgment interest on a condemnation award, it should govern rather than § 9-21-10, which is applicable to civil damages generally. (Defs.' Mem. 11.)

Defendants further bring to this Court's attention that, although § 37-6-23 was amended after *Woodland Manor, III Associates, L.P.*, and still does not explicitly include inverse condemnation cases, the General Assembly has yet to expressly exclude inverse condemnation cases as those affected by § 37-6-23. *Id.* Plaintiff rejects this argument and emphasizes the fact that § 37-6-23 does not expressly include inverse condemnation cases and applies only to eminent domain cases. (Pl.'s Mem. 20.) Plaintiff then argues that the 12 percent rate is the default rate, where no other statute touches on the issue, and no other statute applies here because this is not an eminent domain case. (Pl.'s Mem. 19; Tr. 35:15-19.) An eminent domain proceeding, Plaintiff argues, is not analogous to an inverse condemnation case. (Tr. 35:15-22.)

Plaintiff relies heavily on *Hardy v. United States*, 138 Fed. Cl. 344 (2018), in arguing that an inverse condemnation suit is a legal proceeding akin to a regular civil action because the property owner typically has to prove the State's liability based on the property owner's ownership of the land. (Pl.'s Mem. 15; *see also Hardy*, 138 Fed. Cl. at 350 (noting differences between eminent domain takings and inverse condemnation takings)). The essence of Plaintiff's argument is that this five-years-long case has resulted in unwarranted and mounting legal fees and costs, which the State imposed on Plaintiff, and consequently the application of § 9-21-10 is most consistent with the General Assembly's directive to encourage settlement of takings disputes where the State has failed to properly exercise its eminent domain powers. (Pl.'s Mem. 14.)

Further, Plaintiffs point out that § 37-6-23 specifically requires a petition for assessment of damages be filed, which has not been done here because the Plaintiff was never given legal notice of the taking and was never offered compensation. *Id.* at 19.

1

Section 37-6-23

Section 37-6-23 provides, in pertinent part:

> "Calculation of interest and payment of judgment. – (a) *If a petition for assessment of damages is filed*, then the property owner shall be entitled to interest on the fair market value of the property taken by the acquiring authority from the date it is condemned to the day that judgment enters. Interest thereon shall be calculated on the fair market value of the property which exceeds the amount offered by the acquiring authority pending final disposition of the court proceedings. Upon a recovery of final judgment, an execution shall be issued therefor and shall be forthwith paid by the general treasurer out of any funds appropriated and available therefor. Interest on any judgment shall be computed daily to the date of payment and shall be compounded annually. Interest shall be calculated as follows:
>
> "(1) Where the period for which interest is owed does not exceed one year, interest shall be calculated for such period form [*sic*] the date of taking at an annual rate equal to the weekly average one year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the taking.
>
> "(2) Where the period for which interest is owed is more than one year, interest for the first year shall be calculated in accordance with subdivision (1) of this section and interest for each additional year shall be calculated on the combined amount of the principal and accrued interest at an annual rate equal to the weekly average one year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the beginning of each additional year." Section 37-6-23 (emphasis added).

The statute requires that a petition for an assessment of damages be filed before a court applies the appropriate interest rate. *Id.*; *see also* Weiner, *supra*, at 15-16. The purpose of § 37-6-23 is to make the plaintiff whole and afford "just" compensation. *See Ocean Road Partners v. State*, 670 A.2d 246, 253 (R.I. 1996) (holding "the statutory-condemnation procedure was designed to award fair compensation for land taken for public use but was not intended to provide unjust enrichment

to a condemnee at the expense of the state"). Interest under this statute is "'both part of the [condemnation] award itself, and represents part of [the] just compensation to which a condemnee is constitutionally entitled, arising out of the delay which takes place between the taking of the property and ascertainment of the award.'" *Ankner v. Napolitano*, 764 A.2d 712, 714 (R.I. 2001) (quoting 6A *Nichols on Eminent Domain* § 26E.02[4] at 26E-34-35 (3d. rev. ed. 2000)).

Section 37-6-23 applies to eminent domain cases. *See Ankner*, 764 A.2d at 713-14 (applying § 37-6-23 in eminent domain context). The calculation of interest and payment of judgment in § 37-6-23 is preconditioned on the filing of "a petition for assessment of damages[.]" Section 37-6-23(a). Until a petition has been filed, the Court cannot impose a rate for prejudgment interest. *Id.*

The record fails to disclose that such a petition was filed in this case. *See* Docket PC-2016-3957. Neither party filed a petition for an assessment of damages because this is not an eminent domain case. This Court has already ruled that the taking that occurred here was an inverse condemnation and not an exercise of the State's eminent domain powers. *H.V. Collins Properties, Inc.*, 2019 WL 4390346, at *6 (holding State participated in a physical taking of Plaintiff's land, inverse condemnation of Lot 611, and taking of Plaintiff's riparian rights). Because § 37-6-23 applies to eminent domain cases and no petition has been filed, it does not govern the interest rate due here.

Lastly, when § 37-6-23 was amended in 2003, the General Assembly did not amend § 37-6-23 to apply specifically to inverse condemnation proceedings. *See generally* P.L. 2003, ch. 260, § 1. It is not up to this Court to legislate. The imposition of prejudgment interest to damage awards is generally considered a legislative, not judicial, function. *Andrade v. State of Rhode Island*, 448

A.2d 1293, 1296 (R.I. 1982). Section 37-6-23 is not applicable here, and this Court will not read into the statute something that was not intended by the General Assembly.

Defendants' reliance on *Woodland Manor*, where the Superior Court applied the eminent domain statute, § 37-6-23, to an inverse condemnation case, bears no weight on this Court's decision as the ruling in *Woodland Manor* holds no precedential value, as discussed below.

2

Section 9-21-10

No Rhode Island law expressly sets the prejudgment interest rate due on inverse condemnation damages, although the Rhode Island Superior Court has addressed the issue. *See Woodland Manor, III Associates, L.P.*, 2003 WL 25657220 (applying the eminent domain statute, § 37-6-23, to inverse condemnation case). Nevertheless, a superior court decision is not binding on this Court. *Forte Brothers, Inc. v. State, Department of Transportation*, 541 A.2d 1194, 1196 (R.I. 1988). ("Obviously, a well-reasoned decision of a trial justice of coordinate jurisdiction may have a persuasive effect upon another justice of a trial court. However, only the decisions of [the Rhode Island Supreme Court] are of binding effect upon all justices of trial courts of this state.").

Section 9-21-10 provides, in pertinent part:

> "Interest in civil actions. – (a) In any civil action in which a verdict is rendered or a decision made for pecuniary damages, there shall be added by the clerk of the court to the amount of damages interest at the rate of twelve percent (12%) per annum thereon from the date the cause of action accrued, which shall be included in the judgment entered therein. Post-judgment interest shall be calculated at the rate of twelve percent (12%) per annum and accrue on both the principal amount of the judgment and the prejudgment interest entered therein. This section shall not apply until entry of judgment or to any contractual obligation where interest is already provided." Section 9-21-10(a).

The purpose of § 9-21-10 is to encourage early settlement of claims. In *Barbato v. Paul Revere Life Insurance Co.*, 794 A.2d 470 (R.I. 2002), our Supreme Court recognized that the Legislature's intention in enacting § 9-21-10 was to encourage settlements and to "compensate plaintiffs 'for waiting for recompense to which they were legally entitled.'" *Barbato*, 794 A.2d at 473 (quoting *Martin v. Lumbermen's Mutual Casualty Co.*, 559 A.2d 1028, 1031 (R.I. 1989)).

The Rhode Island Supreme Court has held that "because the right to receive interest on judgments was unknown at common law as it is a right created by statute, the court will strictly construe any statute that awards interest on judgments so as not to extend unduly the changes enacted by the [L]egislature." *Andrade*, 448 A.2d at 1294 (citing *Gott v. Norberg*, 417 A.2d 1352, 1357 (R.I. 1980); *Atlantic Refining Co. v. Director of Public Works*, 104 R.I. 436, 441, 244 A.2d 853, 856 (1968)). In 1976, the General Assembly changed the language from "(a) In causes of action and actions for damages to the person or to real and personal estate[,]" to "(a) In *any* civil action . . . ." P.L. 1976, ch. 146, § 1 (emphasis added); *see also Gott*, 417 A.2d at 1357. After the 1976 amendment of § 9-21-10, the Rhode Island Supreme Court decided several cases involving § 9-21-10 where the Court refused to apply the statute against the State in several different contexts.[10] Most notably, in *Gott*, cited *supra*, the Rhode Island Supreme Court refused to expand the scope of the newly amended § 9-21-10 to apply it to "interest on tax refunds awarded upon review of administrative proceedings[.]" *Gott*, 417 A.2d at 1357. The Court reasoned that, "[i]n light of the litigated history of [§] 9-21-10 . . . the Legislature intended to equalize the right of tort

[10] Before the 1976 amendment to § 9-21-10, our Supreme Court refused to apply the statute to condemnation cases because the language of the statute provided for its application only "[i]n causes of action and actions for damages to the person or to real and personal estate[.]" *See Isserlis v. Director of Public Works*, 111 R.I. 164, 167-68, 300 A.2d 273, 275 (1973) (declining to apply § 9-21-10 to condemnation suits based on the statute's history and because "the Legislature had no intention by the 1965 amendment of § 9-21-10 to broaden its coverage to include condemnation suits").

and contract litigants to collect interest on judgments" and "did not intend to provide for interest on tax refunds . . . when it amended [§] 9-21-10 in 1976." *Id.*

In *Clark-Fitzpatrick, Inc./Franki Foundation Co. v. Gill*, 652 A.2d 440 (R.I. 1994), the Court strictly construed § 9-21-10 to hold that the statute did not apply to actions against the state pursuant to G.L. 1956 § 37-13.1-1, which allowed any person, firm, or corporation who had a contract with the State of Rhode Island to work on highways, bridges, or public works to bring an action against the state and which did not yet address the possibility of prejudgment interest. *Clark-Fitzpatrick, Inc.*, 652 A.2d at 452-53; *see also Jacor, Inc. v. Cardi Corp.*, 673 A.2d 1077, 1077 (R.I. 1996). Although the current version of § 37-13.1-1 provides for prejudgment interest for disputed contract claims against the state, the case at hand is distinguishable because it does not involve a contract dispute, but rather an inverse condemnation issue where no law addresses how prejudgment interest should be applied.

In *State of Rhode Island Department of Transportation v. Providence and Worcester Railroad Co.*, 674 A.2d 1239 (R.I. 1996), the Court declined to impose prejudgment interest pursuant to § 9-21-10 in a case where a conveyance of land from one defendant to the other was declared null and void and the defendants were ordered to convey the land to the plaintiff. *Providence & Worcester Railroad Co.*, 674 A.2d at 1240-41. The Court held that the trial justice erred in requiring the state to pay prejudgment interest. *Id.* at 1245. In its reasoning, the Court stated, "[t]his Court has held . . . that § 9-21-10 does not apply to judgments against the state." *Id.* at 1244 (citing *Jacor, Inc.*, 673 A.2d at 1078; *Clark-Fitzpatrick, Inc.*, 652 A.2d at 451-53). The Court also reasoned:

> "Although the trial justice in this case did not invoke § 9-21-10 when he ordered the state to pay interest on the $100,000 purchase price of the subject property, we believe the principles articulated in *Clark–Fitzpatrick* and *Jacor* must

> nevertheless control our review of the trial justice's order. The [defendant] has not presented any authority that would indicate a waiver by the state of its immunity from having to pay prejudgment interest. The state agreed to pay $100,000 for the property, but the record is devoid of any evidence that the state agreed to pay interest on this purchase price in the event that payment was delayed because of litigation or any other reason. Because the state has not acted to 'expose the state treasury to the additional financial burden of prejudgment interest,' we conclude that the trial justice erred in ordering the state to pay prejudgment interest." *Id.* at 1244-45 (quoting *Andrade*, 448 A.2d at 1295).

Lastly, in *Rhode Island Public Telecommunications Authority v. Russell*, 914 A.2d 984 (R.I. 2007), the plaintiff laid off the defendant, and the defendant sought to have a position of similar grade reinstated and requested prejudgment interest. *Russell*, 914 A.2d at 986. The trial justice declined to include prejudgment interest. *Id.* The Supreme Court sustained the trial justice's ruling, relying on the Court's "broad statement in *State of Rhode Island Department of Transportation v. Providence and Worcester Railroad Co.* . . . that '§ 9–21–10 does not apply to judgments against the state[.]'" *Id.* at 994 (quoting *Providence & Worcester Railroad Co.*, 674 A.2d at 1244).

Section 9-21-10 does not govern the prejudgment interest rate due in this case. Plaintiff is asking this Court to legislate and expand the scope of the statute, which the Court cannot do. As discussed *supra*, the imposition of prejudgment interest is a legislative, not judicial, function. *See Andrade*, 448 A.2d at 1296. "[T]he court will strictly construe any statute that awards interest on judgments so as not to extend unduly the changes enacted by the [L]egislature." *Andrade*, 448 A.2d at 1294. Although the 1976 Amendment to § 9-21-10 made the application of the statute broader by providing relief in "any civil action," our Supreme Court has declined to apply the statute against the state and it has declined to broaden the application of the statute. *See generally Russell*, 914 A.2d at 986; *Jacor Inc.*, 673 A.2d at 1077; *Clark-Fitzpatrick, Inc.*, 652 A.2d at 452-53; *Providence & Worcester Railroad Co.*, 674 A.2d at 1244-45; *Gott*, 417 A.2d at 1357.

This Court recognizes the need not only to redress delay and encourage early settlement, but also to justly compensate Plaintiff for its loss. This cannot be done through § 9-21-10 for the foregoing reasons.

3

Just Compensation

Where a taking occurs, the aggrieved party is entitled to just compensation. *Conti v. Rhode Island Economic Development Corp.*, 900 A.2d 1221, 1232 (R.I. 2006) (The Rhode Island Supreme Court has "accentuated in [its] case law 'the fundamental proposition that just compensation is the court's ultimate objective.'") (quoting *J.W.A. Realty, Inc. v. City of Cranston*, 121 R.I. 374, 381, 399 A.2d 479, 483 (R.I. 1979)). *See also H.V. Collins Properties, Inc.*, 2019 WL 4390346, at *6-8 (holding Plaintiff is entitled to just compensation). Interest is included in just compensation. *See generally Schneider v. County of San Diego*, 285 F.3d 784, 787 (9th Cir. 2002) (holding prejudgment interest is part of the constitutionally required just compensation, and should be "calculated in a manner that will ensure that the property owner receives the constitutionally mandated award").

The principle of just compensation is mandated by the United States Constitution. U.S. Const. amends. V, XIV (permitting the federal government to take property so long as just compensation is paid). The Rhode Island State Constitution mirrors the language found in the Fifth Amendment of the United States Constitution. R.I. Const. art. 1, § 16 (requiring just compensation be paid where private property is taken).

Courts have adopted different rules to determine what the measurement of just compensation should be in certain situations. *See Conti*, 900 A.2d at 1232 (indicating just compensation for taking of private property for public use can be measured by fair market value

of property or a "comparable-sales" method). Courts have also found that looking at outside evidence to determine fair market value is not an abuse of discretion. *See Warwick Musical Theatre, Inc. v. State*, 525 A.2d 905, 910 (R.I. 1987) (holding that it was not an abuse of discretion for a trial justice to consider evidence beyond comparable-sales data when the fair market value calculated failed to achieve just compensation).

Based on the five-year long delay in this case,[11] the loss that Plaintiff has suffered due to the Defendants' unlawful taking of the Property, and the Fifth and Fourteenth Amendments of the United States Constitution, as well as Article 1, Section 16 of the Rhode Island State Constitution, both of which constitutionally mandate just compensation, this Court holds that Plaintiff is entitled at trial to seek to prove that it is entitled to more than the value of the Property taken at the time of the taking in order to satisfy the mandated just compensation.

Therefore, the Court finds as a matter of law that neither § 37-6-23 nor § 9-21-10 are applicable to this case. Because just compensation is constitutionally mandated, Plaintiff is charged with establishing at trial the magnitude of such just compensation.

IV

Conclusion

The Court finds that Count II against Director Alviti is barred by the doctrine of qualified immunity because Director Alviti properly relied on all the information that was presented to him and should have been presented to him, and requiring him to inquire into any and all information known by essentially all RIDOT staff and consultants would impose an unreasonable and unmanageable obligation on all directors and other similar persons in similar positions.

[11] This case has been litigated for over five years. *See* Docket (PC-2016-3957).

The Court further finds that neither § 37-6-23 nor § 9-21-10 govern any award to Plaintiff in this case. Rather, Plaintiff may present evidence that just compensation in this matter exceeds the value of the taken property at the time of the taking.

Accordingly, Defendants' Motion for Partial Summary Judgment is granted in part and denied in part. Counsel shall prepare an order consistent with this Decision.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**H.V. Collins Properties, Inc. v. State of Rhode Island**
CASE NO:	**PC-2016-3957**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**December 23, 2021**
JUSTICE/MAGISTRATE:	**Silverstein, J. (Ret.)**
ATTORNEYS:	
For Plaintiff:	**Robert G. Flanders, Jr., Esq.; Timothy K. Baldwin, Esq.; Christopher N. Dawson, Esq.**
For Defendant:	**Renee M. Bevilacqua, Esq.; Maxford O. Foster, Esq.; Paul A. Carnes, Esq.; William M. Dolan, III, Esq.; Daniel J. Procaccini, Esq.**