STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: November 1, 2024)

TOWN OF CUMBERLAND,	:	
	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. PC-2013-2272**
	:	
JOSEPH CAFFEY, BRENDA CLEMENT, JAMES GRUNDY, JUNE SPEAKMAN, and ROBERT CUTTLE, in their capacity as members of the State of Rhode Island Housing Appeals Board, and FRED PESATURO and ROY GEMMA,	:	
	:	
Defendants.	:	

DECISION

McHUGH, J. Before this Court is Fred Pesaturo's Motion to Adjudge the Town of Cumberland in Contempt for allegedly violating a judgment issued by this court in 2014. The Town of Cumberland objects. For the reasons articulated below, Fred Pesaturo's Motion to Adjudge the Town of Cumberland in Contempt is denied.

I

Travel

This action arises out of an administrative appeal decided by the court in 2014. *See Town of Cumberland v. Caffey*, No. PC-2013-2272, Mar. 21, 2014, Vogel, J. In that decision, the court affirmed the State Housing Appeals Board's ("SHAB") reversal of the Town of Cumberland's rejection of the comprehensive permit application submitted by Fred Pesaturo ("Pesaturo"). *Id.* at

1. There, the court found that there was substantial evidence in the record to support SHAB's conclusion that there was no reasonable justification for denial of the application. *Id.* at 4.

On September 23, 2022, Pesaturo filed the instant Motion to Adjudge the Town of Cumberland in Contempt of the 2014 Superior Court Decision upholding SHAB's decision. *See generally* Def.'s Mot. to Adjudge in Contempt ("Def.'s Mot."). Hearings on the matter were held on May 1, 2023, October 11, 2023, January 18, 2024, and May 15, 2024. The basis for the Motion is the Town of Cumberland's ("Town") failure to issue a building permit to Pesaturo. *Id.* In his supporting memorandum, Pesaturo contends that interference with his obtaining of a building permit constitutes contempt of the 2014 Superior Court Decision. (Def.'s Post-Hr'g Mem. of Law at 2.) The Town objects.

II

Relevant Facts

In 2010, Pesaturo and Roy Gemma ("Gemma") applied for a Comprehensive Permit for a residential project (the "Project") in accordance with the Rhode Island Low and Moderate Income Housing Act (the "Act") to the Town of Cumberland's Planning Board (the "Board"). *See* Contempt Hr'g Ex. B (Comprehensive Permit Appl. Tr. at 3:17-24, Apr. 28, 2010). They sought to construct two buildings which would contain a total of sixteen low-and-moderate-income housing units. *See* Contempt Hr'g Ex. F (Permit Application at 1). The proposed location was land at the intersection of Mendon and Albion Roads in Cumberland, designated as lots 81, 82, and 83 on Cumberland Tax Assessor's Plat 58 (the "Property"). *See* Contempt Hr'g Ex. B (Comprehensive Permit Appl. Tr. at 3:17-24, Apr. 28, 2010). The Board denied the application. *See* Contempt Hr'g Ex. 2 (Cumberland Planning Board Findings of Fact & Decision, at 3).

They appealed to SHAB, which overturned and vacated the Board's decision. (Hr'g Tr. at 16:23-17:3, Oct. 11, 2023.) In effect, the SHAB decision granted the Comprehensive Permit. The Town appealed SHAB's decision to this court. (Hr'g Tr. at 9:3-5, Jan. 18, 2024.) In 2014, the court affirmed the SHAB decision. Hr'g Tr. at 17:4-6, Oct. 11, 2023.

On August 12, 2014, Kelley Morris Salvatore ("Morris Salvatore"), the town planner at the time, sent Pesaturo a letter, stating her view that Pesaturo was only at the master plan review stage, and would need to proceed to the preliminary approval stage to move forward with the Project. (Hr'g Tr at 15:1-5, May 1, 2023); Contempt Hr'g Ex. A (August 12, 2014 Letter to Fred Pesaturo). Morris Salvatore informed Pesaturo that if he submitted the items required by the preliminary plan checklist by September 1, 2014, the Project could be heard at the September 10, 2014 technical reviews committee meeting. (Hr'g Tr. at 15:14-17, May 1, 2023.) Pesaturo never appealed the determination that additional materials were required. (Hr'g Tr. at 57:2-14, May 15, 2024.)

Pesaturo met with Morris Salvatore to move forward with the Project. (Hr'g Tr. at 12:5-12, May 1, 2023.) The town solicitor at the time, Thomas Hefner ("Hefner"), approached Morris Salvatore and asked her to record Pesaturo's development plan (the "Plan"). *Id.* at 26:14-17. Morris Salvatore subsequently recorded Pesaturo's plan and wrote a caption describing it as an "approved comprehensive permit." *Id.* at 26:21-27:11. The caption is marked as being made on November 10, 2014. (Hr'g Tr. at 62:11-20, May 15, 2024.) Morris Salvatore disagreed with Hefner's view that the Plan constituted a final plan. Hr'g Tr. at 27:7-11, May 1, 2023.

Following the recording of the Plan, Pesaturo began to move forward with the Project. In November 2016, he applied for a Land Disturbance Permit. (Hr'g Tr. at 37:3-14, Oct. 11, 2023.) In 2017, Pesaturo secured funding from Centerville Bank. (Hr'g Tr. at 15:18-21, May 15, 2024.) In 2018, Pesaturo sought guidance from Hefner regarding the status of the Project at the time. *Id.*

at 16:20-23. On December 13, 2018, Hefner wrote a letter, which opined that Pesaturo and Gemma had "the right to build [sixteen] residential units in two buildings on the three lots consistent with the plans which were presented to SHAB and the Superior Court and consistent with the Low and Moderate Income Housing Act." (Hr'g Tr. at 13:16-14:11, Jan. 18, 2024); Contempt Hr'g Ex. 3 (December 13, 2018 Letter to Fred Pesaturo).

By October 2019, Pesaturo had completed all necessary work to begin excavation on the Property. (Hr'g Tr. at 34:4-6, May 15, 2024.) Pesaturo never received a building permit for the Property and testified that he was denied the ability to make an application in 2019. *Id.* at 49:23. On October 25, 2019, the new town planner, Jonathan Stevens, wrote Pesaturo a letter stating that, "[a]ssuming [Mr. Pesaturo was] issued an approved Final Plan, such approval . . . expired" because construction had not started within twelve months after the Project was recorded on November 10, 2014. (Contempt Hr'g Ex. D (October 25, 2019 Letter to Fred Pesaturo) at 1.)

III

Standard of Review

"'The authority to find a party in civil contempt is among the inherent powers of our courts.'" *Town of Coventry v. Baird Properties, LLC.*, 13 A.3d 614, 621 (R.I. 2011) (quoting *Now Courier, LLC v. Better Carrier Corp.*, 965 A.2d 429, 434 (R.I. 2009)). The purpose of holding a party in contempt is to "coerce the contemnor into compliance with [a] court order and to compensate the complaining party for losses sustained." *Now Courier, LLC*, 965 A.2 at 434 (internal quotations omitted). A finding of contempt is committed to the sound discretion of the trial justice. *Durfee v. Ocean State Steel, Inc.*, 636 A.2d 698, 704 (R.I. 1994). Establishing civil contempt requires a demonstration by "clear and convincing evidence . . . that an order of the court, sufficiently specific in its directive to the parties, has been violated." *Now Courier, LLC*, 965 A.25

at 434 (citing *State v. Lead Industries Association, Inc.*, 951 A.2d 428, 464 (R.I. 2008)); *see also Ventures Management Company, Inc. v. Geruso*, 434 A.2d 252, 254 (R.I. 1981) (explaining that a finding of contempt is only appropriate where an order has been violated, and that order is "clear and certain and its terms [are] sufficient to enable one reading the . . . order to learn" what types of conduct are permissible thereunder). Clear and convincing evidence must produce in the mind of the factfinder a firm belief or conviction that the allegations in question are true. *R.I. Mobile Sportfishermen, Inc. v. Nope's Island Conservation Association, Inc.*, 59 A.3d 112, 121 n.16 (R.I. 2013) (quoting *Cahill v. Morrow*, 11 A.3d 82, 88 n.7 (R.I. 2011)). Further, the trial justice must have a clear conviction without hesitancy of the truth of the precise facts in issue. *In re Kurt H.*, 152 A.3d 408, 411 (R.I. 2017) (quoting *In re Jermaine H.*, 9 A.3d 1227, 1231 (R.I. 2010)).

IV

Analysis

A

Separation of Powers Doctrine

Our Supreme Court has held that a municipality may be held in contempt, so long as doing so does not violate the separation of powers doctrine. *See Quattrucci v. Lombardi*, 232 A.3d 1062, 1066 (R.I. 2020). In *Quattrucci*, the Rhode Island Supreme Court relied on the test affirmed by the United States Supreme Court in *Chadha v. Immigration and Naturalization Service*, 634 F.2d 408 (9th Cir. 1980), *aff'd*, 462 U.S. 919, 959 (1983), to determine whether holding the City of Providence in contempt for violating a judgment violated the doctrine. *Id.* at 1066 (citing *Chadha*, 634 F.2d 408, *aff'd*, 462 U.S. at 959).

The separation of powers doctrine may be violated when: (1) '"[o]ne branch [of government] interfere[s] impermissibly with the other's performance of its constitutionally

assigned function;"' or (2) '"when one branch assumes a function that more properly is entrusted to another."' *Id.* (quoting *Woonsocket School Committee v. Chafee*, 89 A.3d 778, 793 (R.I. 2014)).

In *Quattrucci*, retired city employees alleged that the City of Providence violated a consent judgment, which specified that the employees were entitled to cost of living adjustments. *Id.* at 1063-64. The Court ultimately held that the municipality's new ordinance effectively nullified that court judgment, and as a result, the municipality "infringed on the exercise of judicial power[,]" violating the first prong of *Chadha*, and "disrupt[ed] the [judicial] branch in the performance of its duties," which also violated the second prong. *Id.* at 1067 (quoting *Chadha*, 634 F.2d at 425).

In this case, Pesaturo alleges that the Town of Cumberland violated the 2014 Superior Court Decision by failing to issue him a building permit. (Def.'s Post Hr'g Mem. of Law at 2.) If Pesaturo can show that the 2014 Superior Court Decision requires the Town to issue him the permit, and that the Town has defied that order, such defiance by the Town would constitute a violation of the 2014 judgment. In that situation, this Court could hold the Town in contempt of the judgment because the Town's actions would effectively be an "attempt[] to alter . . . a decision once made by the Superior Court." *See Quattrucci*, 232 A.3d at 1067 (internal quotation omitted). Such an attempt would warrant the Court invoking its power to hold a party in contempt.

Accordingly, if Pesaturo can show that the Town has violated the 2014 Superior Court Decision, this Court may hold the municipality in contempt without violating the separation of powers doctrine.

B

Violation of the 2014 Superior Court Decision

This Court will first consider whether the terms of the 2014 Superior Court Decision are clear and certain. *See Ventures Management Company*, 434 A.2d at 254. If the terms are clear and certain, then the Court will determine whether the Town has violated the court judgment.

1

The 2014 Superior Court Decision is Clear and Certain.

The Superior Court's 2014 Decision effectively approved Pesaturo and Gemma's application for a Comprehensive Permit, not a Final Plan. (2014 Superior Court Decision at 1, 8, 25 ("SHAB unanimously voted to vacate the Board's decision and approve the Application [for a Comprehensive Permit]."[1])). The SHAB decision states it "approve[d] the comprehensive permit application of Developers, subject to the receipt of all necessary state approvals." (SHAB Decision at 14.) Therefore, the terms of the 2014 Superior Court Decision, which affirmed the unambiguous language from the SHAB Decision, are clear and certain. Pesaturo's application for a Comprehensive Permit was approved. *Id.*

2

Procedural Requirements of the Rhode Island Low and Moderate Income Housing Act

The Development Review Act, which establishes the application process for land development projects generally, provides the stages of review for major land development projects:

> "(b) Major plan review shall consist of three stages of review, master plan, preliminary plan and final plan, following the pre-application

[1] The court unambiguously uses the term "Application" to mean "Application for a *Comprehensive Permit*" throughout the 2014 Superior Court Decision. (2014 Superior Court Decision, 1) (emphasis added).

> meeting(s) specified in [§] 45-23-35. Also required is a public informational meeting and a public meeting.
> "(c) The planning board may vote to combine review stages and to modify and/or waive requirements as specified in § 45-23-62. Review stages may be combined only after the planning board determines that all necessary requirements have been met by the applicant." G.L. 1956 § 45-23-39(c).[2]

Thus, the first stage of review is Master Plan Review, and it requires an applicant to submit several materials for review by the local board, including but not limited to the following:

> "[I]nformation on the natural and built features of the surrounding neighborhood, existing natural and man-made conditions of the development site, including topographic features, the freshwater wetland and coastal zone boundaries, the floodplains, as well as the proposed design concept, proposed public improvements and dedications, tentative construction phasing; and potential neighborhood impacts." Section 45-23-40(a)(2).[3]

The Act provides mechanisms for "applications seeking relief from specific provisions" of the Development Review Act. G.L. 1956 § 45-53-4(a)(1)(vii).[4] Among other relief, the Act allows applicants to submit a comprehensive permit to the town planning board "in lieu of separate applications[.]" Section 45-53-4(a). Requests for relief from certain requirements under the

[2] Section 45-23-39 was repealed by P.L. 2023, ch. 308, § 1 and P.L. 2023, ch. 309, § 1, effective January 1, 2024. However, the appropriate standard for an appeal is "the law in effect at the time when the applicant . . . submitted its application for a permit to the zoning board[,]" absent a "clear expression of retroactive application." *East Bay Community Development Corporation v. Zoning Board of Review of Town of Barrington*, 901 A.2d 1136, 1144 (R.I. 2006). Hence, § 45-23-39 is applicable.

[3] Section 45-23-40 was repealed by P.L. 2023, ch. 308, § 3 and P.L. 2023, ch. 309, § 3, effective January 1, 2024. As noted above, the appropriate standard for an appeal is "the law in effect at the time when the applicant . . . submitted its application for a permit to the zoning board[,]" absent a "clear expression of retroactive application." *See East Bay Community Development Corporation*, 901 A.2d at 1144. Hence, § 45-23-40 is applicable.

[4] Section 45-53-4 was repealed by P.L. 2023, ch. 310, § 1 and P.L. 2023, ch. 311, § 1, effective January 1, 2024. As noted above, the appropriate standard for an appeal is "the law in effect at the time when the applicant . . . submitted its application for a permit to the zoning board[,]" absent a "clear expression of retroactive application." *See East Bay Community Development Corporation*, 901 A.2d at 1144. Hence, § 45-53-4 is applicable.

Development Review Act depends on whether the project is classified as a minor or major land development project. *Id.*

The Development Review Act defines a major land development as "[a]ny land development plan not classified as a minor land development plan." Section 45-23-32(21), (23). The Development Review Act defers to local municipalities to define "minor land developments" in their local regulations. *Id.* The Town defines a minor residential land development plan as one "consisting of 10 or fewer units." (Cumberland LDSR Regs.§ 2-A.) Thus, Pesaturo's Project is a major land development plan because the Project consists of sixteen units. *See id.*; § 45-23-32(21).

The Act provides that "[p]reliminary and final plan review shall be conducted according to local regulations," but may be waived with approval from the municipality. Section 45-53-4(a)(4)(iv), (vii). The Town's regulations provide that, generally, preliminary and final plan reviews require submitting additional documentation for review by the planning board. *See* Cumberland LDSR Regs. §§ 5-G(2); 5-G(4). Regardless of the specific requirements, it is evident that additional stages of review are required under local regulations and that review stages can only be combined by a determination of the planning board.[5] *See id.*

[5] The Town's regulations states:

> "The Planning Board may vote to combine review stages and to modify and/or waive requirements as specified in these Regulations. *Review stages may be combined by the Planning Board only after the Board determines that all necessary requirements of all stages being combined have been met by the applicant*." (Cumberland LDSR Regs. § 5-G (emphasis added)).

3

Level of Planning Review

This Court must determine the Plan's level of review to find whether the Town should be held in contempt.

The Town argues that Pesaturo's Project did not advance past the master plan review stage, and accordingly, following the 2014 Superior Court Decision, he was required to pursue subsequent stages of review to receive final approval for the Project. (Pl.'s Proposed Findings of Fact and Conclusions of Law (Pl.'s Mem. of Law) at 16.) Conversely, Pesaturo argues that the Project is at the final plan level, and therefore, he was not required to go for further review. (Def.'s Post Hr'g Mem. of Law at 17.) Additionally, Pesaturo argues that he was permitted to submit a single application that granted him relief from specific provisions of review and that the Town's failure to provide further hearings on the matter results in automatic approval of the Project. *Id.* at 25-26.

Pesaturo submitted materials consistent with the Master Plan Review stage. *See* Hr'g Tr. at 51:4-15, Oct. 11, 2023. The Town characterizes the plan that was submitted as a conceptual level plan that is devoid of the detail required by both state and municipal law. (Pl.'s Mem. of Law at 16.) In 2010, when Pesaturo went before the Planning Board initially, his attorney acknowledged that the Board was considering only the conceptual issue of density. *See* Contempt Hr'g Ex. B at 1-25. This same Board issued the decision that was the subject of the 2014 Superior Court Decision.

Preliminary plan review requires an applicant to submit items required by local regulations, including but not limited to the following: "engineering plans depicting the existing site conditions, engineering plans depicting the proposed development project, a perimeter survey, all permits

required by state or federal agencies prior to commencement of construction." Section 45-23-41(a)(2).[6] The Town would then review the preliminary plan in accordance with the requirements of the Development Review Act, which includes a public hearing. Sections 45-23-41(a)(3), 45-23-60, and 45-23-63.

Final plan review requires an applicant to submit another set of required items for review, including a construction schedule and financial guarantees. Section 45-23-43(a)[7]. Because Pesaturo is seeking to have the Town held in contempt, he needs to show that he has submitted the requisite materials. There is no indication in the record or supportive evidence that Pesaturo submitted such an application for final plan review, even assuming he made it past the preliminary plan review phase.

Pesaturo argues that he was granted approval to submit a single comprehensive permit application granting him relief from certain land development procedures. (Def.'s Mem. in Reply at 1.) While the Act allows the submission of a single application for a comprehensive permit application, it requires that the applicant submit a "written request . . . identify[ing] the specific sections and provisions of applicable local ordinances and regulations from which the applicant is seeking relief[.]" Section 45-53-4(a)(1)(ii). Pesaturo has not submitted any documentation that

[6] Section 45-23-41 was repealed by P.L. 2023, ch. 308, § 3 and P.L. 2023, ch. 309, § 3, effective January 1, 2024. As noted above the appropriate standard for an appeal is "the law in effect at the time when the applicant . . . submitted its application for a permit to the zoning board[,]" absent a "clear expression of retroactive application." *See East Bay Community Development Corporation*, 901 A.2d at 1144. Hence, § 45-23-41 is applicable.

[7] Section 45-23-43 was repealed by P.L. 2023, ch. 308, § 3 and P.L. 2023, ch. 309, § 3, effective January 1, 2024. As noted above the appropriate standard for an appeal is "the law in effect at the time when the applicant . . . submitted its application for a permit to the zoning board[,]" absent a "clear expression of retroactive application." *See East Bay Community Development Corporation*, 901 A.2d at 1144. Hence, § 45-23-43 is applicable.

demonstrates that he submitted a written request or that there was any agreement between him and the Board that granted him such relief.

Pesaturo can point to Hefner's letter as proof that the Town agreed to allow him to move forward with the Project. However, Hefner admitted that he did not have the requisite authority to grant building permits as town solicitor. Hr'g Tr. at 27:7-10, Jan. 18, 2024. Based on the foregoing, Pesaturo only made it past the comprehensive permit application and master plan review stages. Thus, the next part of the analysis is determining what steps are necessary after master plan approval and whether they occurred.

Pesaturo received actual notice that he was required to come before the Board again for preliminary plan stage review. Hr'g Ex. A. In a letter from Morris Salvatore, in her capacity as Director of the Cumberland Office of Planning and Community Development, she informed him "in order to get your project legally permitted, you will have to come before the Planning Board for 'preliminary plan stage.' I have enclosed an application and checklist for your convenience, which you should give to your surveyor/engineer for completion." *Id.*

The letter from Morris Salvatore, along with the submitted materials being conceptual in their nature, supports a finding that the Plan was only at the preliminary approval stage. This is because the materials that were submitted initially were conceptual in nature. Hr'g Tr. at 51:13-15, Oct. 11, 2023. Pesaturo's failure to provide more detailed information indicates that the Plan was not at the final plan stage. The fact that the Board's initial decision to deny the comprehensive permit application was reversed does not warrant a holding that Pesaturo had a final plan. If this Court were to accept this interpretation, it would allow a reviewing body to elevate the stage the plan was at. A denial of an initial plan being reversed would allow complete circumvention of the process set forth by statute. This Court declines to make such a finding. Such a finding by this

Court would, in essence, allow Pesaturo to completely circumvent the preliminary and final approval stages which are set forth by Rhode Island's statutory scheme. This Court therefore determines that Pesaturo did not have a final plan approval following the 2014 Superior Court Decision.

Because the 2014 Superior Court Decision did not grant Pesaturo approval of a final plan for his Project, there is no basis to conclude that the Town is in contempt of the judgment. There certainly is not clear and convincing evidence to support such a conclusion. Pesaturo points to the Plan being referred to as a final plan in the Board's decision. (Def.'s Post Hr'g Mem. of Law at 17.) However, in the initial hearing by the Planning Board, former town planner, John Aubin, specifically states that the matter being heard was not a final plan. Hr'g Ex. B at 117-18. While the decision of the Board was later overturned, there is no determination by either SHAB or the Superior Court that the Plan is a final plan.

Pesaturo has not met his burden of clear and convincing evidence that the Town has acted in contempt of the order. It is not clear that the stage was at final plan review. Although Pesaturo argues it was, he also described the plan as a master plan while testifying before this Court. Hr'g Tr. at 13:5-8, May 15, 2024. The evidence is, at best, contradictory. Pesaturo points to the letter of Hefner and his own testimony at the hearings. *Id.* at 19:22-24. Conversely, the Town relies on the level of detail submitted with the application and the testimony of Morris Salvatore. Hr'g Tr. at 17:14-19, May 1, 2023.. The burden is on Pesaturo to show by clear and convincing evidence that the Town acted in contempt of the order. His failure to conclusively establish the level of review is fatal to his position.

Pesaturo further argues that § 45-53-4 provides that alternative timelines can be agreed upon. (Def. Post Hr'g Mem. of Law, 30). The mere fact that a town can waive it is immaterial.

While it is certainly true that the Town could have agreed to an alternative timeline, there is no indication that it agreed to do so here. There is no evidence that Pesaturo and the Town agreed to waive certain land development requirements. Having the ability to waive time requirements, and actually waiving those time requirements, are completely different things. Finally, Pesaturo was on notice and reminded that he had to continue with the statutory land development requirements as of August 12, 2014. Hearing Ex. A. Based on the foregoing, Pesaturo has not complied with the statutorily prescribed review stages described above, and therefore, the Town is not in contempt.

4

Expiration of the Plan

For the reasons set forth above, the plan is best characterized as a Master Review Plan. However, even if Pesaturo could show that he had a valid final plan, such a plan has since expired. The Rhode Island General Laws establish a time restriction for the type of project involved in this case. Specifically, they provide:

> "A comprehensive permit shall expire unless construction is started within twelve (12) months and completed within sixty (60) months of the recording of the final plan unless a longer and/or phased period for development is agreed to by the local review board and the applicant." Section 45-53-4(d)(iv)(9).

Assuming the 2014 Superior Court Decision approved a final plan, such plan was effectively approved on April 22, 2014, when the Superior Court entered its judgment. Hearing Ex. 4. Taking the dates and deadlines at face value, the permit expired pursuant to the statute on April 22, 2015 because no work had been started on the Project by that point. Pesaturo stated in his reply memo that the work had already been started; however, his testimony suggests otherwise. (Def.'s Mem. in Reply at 3.) In his testimony, Pesaturo noted that he was merely ready to start construction in 2019, which was four years after the permit had already expired. Hr'g Tr. at 60:9-

15, May 15, 2024. He additionally admitted that he did not start the project within twelve months or complete it within sixty months. *Id.* at 60:5-16. Any argument that the time limits were complied with are unavailing due to Pesaturo's own testimony on the matter.

Pesaturo argues that the Town cannot rely on the time limits set forth by the statute because they intentionally interfered with his right to obtain a building permit. (Def.'s Post Hr'g Mem. of Law, 30.) However, Pesaturo testified that he sought to obtain a building permit until 2019, at which point the permit had already expired because work had not begun on the Project within twelve months of receiving the permit. Hr'g Tr. at 28:18-22, May 15, 2024. There is no indication that he sought to receive a building permit prior to expiration of the comprehensive permit. Thus, Pesaturo's argument that the deadline should not expire due to the Town's interference is not convincing.

Despite the timeline set forth by § 45-53-4, Pesaturo argues that the appropriate deadline is that of G.L. 1956 § 9-1-17. That section provides the following:

> "The following actions shall be commenced and sued within twenty (20) years next after the cause of action shall accrue and not after: actions on contracts or liabilities under seal; and actions on judgments or decrees of any court of record of the United States, or of any state." Section 9-1-17.

Pesaturo's reliance on § 9-1-17 is misplaced. While it is true that a judgment is generally good for twenty years, here, such a finding would allow Pesaturo to enjoy a significantly longer period to commence his building application than that ordinarily allowed for the type of project that is implicated in this case. Pesaturo's interpretation of § 9-1-17, if correct, would effectively render the time limits set forth by § 45-53-4 meaningless.

Even assuming the Court granted a final approval in 2014, such approval has since expired. Accordingly, Pesaturo is not entitled to receive a building permit for the Project.

C

Equitable Estoppel

Pesaturo has argued, based upon the facts set forth above, that the Town should be estopped from interfering with the completion of the Project. (Def.'s Post Hr'g Mem. of Law at 19.)

The doctrine of equitable estoppel may be applied against a municipality "when appropriate circumstances, justice, and right so require." *Schiavulli v. School Committee of Town of North Providence*, 114 R.I. 443, 448-49, 334 A.2d 416, 419 (1975). The Rhode Island Supreme Court has previously articulated the following

> "first, an affirmative representation or equivalent conduct on the part of the person against whom the estoppel is claimed which is directed to another for the purpose of inducing the other to act or fail to act in reliance thereon; and secondly, that such representation or conduct in fact did induce the other to act or fail to act to his injury." *Cigarrilha v. City of Providence*, 64 A.3d 1208, 1213 (R.I. 2013).

Applying equitable estoppel "is dependent upon '[t]he facts and circumstances of each case."' *Faella v. Chiodo*, 111 A.3d 351, 357 (R.I. 2015) (quoting *Lerner v. Gill*, 463 A.2d 1352, 1362 (R.I. 1983)). '"[E]quitable estoppel is not a favored doctrine . . . [and should be] applied carefully and sparingly and only from necessity. Each of the elements of estoppel must be proved with the requisite degree of certainty; no element may be left to surmise, inference, or speculation."' *Id.* (quoting 28 Am. Jur. 2d *Estoppel and Waiver* § 166 at 633 (2011)).

Furthermore, "[a]gainst a municipality, the route to relief relying on the doctrine of equitable estoppel is even more rigorous." *Id.* '"[E]stoppel against a [public entity] . . . must be predicated upon the acts or conduct of its officers, agents or official bodies acting within the scope of their authority."' *Id.* at 358 (quoting *Potter v. Crawford*, 797 A.2d 489, 492 (R.I. 2002)). "Before [the doctrine] should be applied, it should appear that there was some positive action on the part of the agents which had induced the action of the adverse party. Mere nonaction is insufficient to

justify an application of the doctrine." *Ferrelli v. Department of Employment Security*, 106 R.I. 588, 593, 261 A.2d 906, 909 (1970). Finally, the landowner must make "substantial investment or expenditure" in reliance on a decision by zoning officials, such as the issuance of a building permit. *Shalvey v. Zoning Board of Review of City of Warwick*, 99 R.I. 692, 699, 210 A.2d 589, 593 (1965).

Pesaturo argues that he relied upon both the judgment and the December 2018 letter from Hefner in advancing his implementation of the Project. (Def.'s Post Hr'g Mem. of Law at 19.) The Town Solicitor's 2018 letter states that "you and Mr. Gemma . . . have the right to build sixteen (16) residential units in two (2) buildings on the three (3) lots consistent with the plans which were presented to SHAB and the Superior Court and consistent with the Low and Moderate Income Housing Act." Hr'g Ex. 3.

While Pesaturo claims that Hefner's letter and the 2014 Superior Court Decision were affirmative representations that he relied on, his argument falls short. First, the 2014 Superior Court Decision does not explicitly identify the plan as being at the final plan stage of the process, instead, it refers to the application as a "comprehensive permit." *See generally Town of Cumberland v. Caffey*, 2014 WL 1246536, at *1. Hefner's letter explicitly states that Pesaturo can build his residential units "consistent with the plans which were presented to SHAB and the Superior Court and consistent with the Low and Moderate Income Housing Act." Hr'g Ex. 3. This Court finds that the plans presented to SHAB and the Superior Court in 2014 provide that Pesaturo's Project was not in final plan review, as he argues, nor do the plans follow the Low and Moderate Income Housing Act. This is because the plans provided were conceptual in nature and do not include the requisite detail.

Additionally, Pesaturo was aware of Morris Salvatore's interpretation. Hr'g Tr. at 56:6-11, May 15, 2024. Although he disputes Morris Salvatore's telling of events, this merely has to do with her interpretation. It does not contradict that Pesaturo was on notice that a different interpretation was plausible. He was on notice that there were additional steps to complete the Project, based on Morris Salvatore's letter, which explained that the Project was subject to preliminary plan review. Hr'g Ex. A. Additionally, Pesaturo has extensive experience in the construction industry. Hr'g Tr. at 2:1-23, 3:1-5, May 15, 2024. Considering the letter he received, in addition to his previous experience with the Town's review and approval process for past land development projects, Pesaturo has failed to establish that he reasonably relied on Hefner's 2018 letter. He cannot now argue that he was not on notice simply because he disagreed with what Morris Salvatore said previously.

Therefore, Pesaturo's argument that Hefner's letter constituted an affirmative representation that induced him to pursue the Project, despite failing to receive the necessary authorization, fails at step one under the doctrine of equitable estoppel. *Cigarrilha*, 64 A.3d at 1213. As discussed above, there was no affirmative representation that Pesaturo could have reasonably relied on in this case.

The Court need not consider whether "such representation or conduct in fact did induce the other to act or fail to act to his injury," because there was no affirmative representation in this case. *Id.* Moreover, to succeed on a claim of equitable estoppel, each element of equitable estoppel must be rigorously applied when asserted against a municipality and must be proved with a degree of certainty. *See Faella*, 111 A.3d at 357. There is no degree of certainty in the present case. This is because the facts are, at best, contested. Therefore, the degree of certainty requirement has not been met, and Pesaturo is not to succeed on his degree of certainty argument.

V

Conclusion

For the reasons explained above, Pesaturo's Motion to Adjudge the Town of Cumberland in Contempt is **DENIED**. Counsel shall submit an appropriate order.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Town of Cumberland v. Joseph Caffey, et al.**
CASE NO:	**PC-2013-2272**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**November 1, 2024**
JUSTICE/MAGISTRATE:	**McHugh, J.**
ATTORNEYS:	
For Plaintiff:	**Nicholas J. Hemond, Esq.** **John J. Garrahy, Esq.**
For Defendant:	**Anthony Desisto, Esq.** **Steven M. Richard, Esq.**