STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: May 23, 2014)

PAUL J. MCCABE	:	
	:	
V.	:	**C.A. No. WC-2013-0176**
	:	
TOWN OF CHARLESTOWN	:	

DECISION

K. RODGERS, J. This matter is before the Court on Paul J. McCabe's (McCabe) de novo appeal from a decision of the Town of Charlestown (Charlestown or the Town) Municipal Court. The issue presented to this Court is whether McCabe violated Town Ordinance §§ 210-8.1(I)(9)(c) and 210-7(C)(1) in failing to replace or repair a failed cesspool on his property located at 12 Allen's Cove Road in the Town.

Jurisdiction is pursuant to G.L. 1956 § 45-2-32.

I

Background

Charlestown is a rural coastal community nestled in the southern part of Rhode Island. The Town is home to three salt ponds, Ninigret, Green Hill and Quonochontaug, as well as beaches along the Atlantic Ocean. Residents of the Town access potable water through private and public wells, therefore relying wholly on groundwater for drinking water. Additionally, Town residents rely entirely on septic systems or individual subsurface disposal systems (ISDS) for treating wastewater. Thus, the Town is one of several communities in this State which is particularly sensitive to the need to protect surface and ground waters from contamination.

In 1987, the General Assembly recognized and addressed the precarious situation that some communities, including Charlestown, face in maintaining and balancing their delicate ecosystems by enacting the Rhode Island Septic System Maintenance Act of 1987 (the Act), codified at §§ 45-24.5-1, et seq. Specifically, the General Assembly found:

> "Recreational and drinking supply waters are the least tolerant of waste water contamination and, therefore, require rigorous protection. ISDS will continue, for the near term, to be the primary means of waste water treatment in many areas of the state where public and private water supplies and recreational waters exist. Therefore, to help avoid both contamination of state waters and the associated risks to the public health, and to help preserve the natural ecosystems, waste water disposal systems must be properly maintained to prevent their malfunction and/or failure." Sec. 45-24.5-2.

The Act thereby authorized municipalities to "adopt ordinances creating waste water management districts" and mandated that such "waste water management district ordinance programs shall be designed to operate as both an alternative to municipal sewer systems and as a method to protect surface and ground waters from contamination." Sec. 45-24.5-3. The Act also authorized municipalities adopting such ordinances to impose fines for noncompliance, not to exceed $500 per violation, with each day of a continuing violation constituting a separate and distinct violation. Sec. 45-24.5-4(9). The Rhode Island Department of Environmental Management (RIDEM) retains all its existing authority under the Act, thereby rendering concurrent jurisdiction over ISDS issues in municipalities that have adopted wastewater management district ordinance programs. Sec. 45-24.5-5.

In accordance with the Act, the Town created its Wastewater Management Commission and, inter alia, enacted a series of ordinances, including Ordinance § 210-8.1(I)(9)(c), that would safeguard the Town's surface and ground water by phasing out cesspools and replacing them with an approved onsite wastewater treatment system (OWTS). Initially, the Town mandated removal of all cesspools in the Town and replacement with OWTS by May 10, 2009. As a result of the economic hardships experienced by many Rhode Islanders and Town residents following our nation's economic downturn, the Town extended the phase-out date for all cesspools first to May 10, 2011, and eventually to May 10, 2012.

The most current iteration of Ordinance § 210-8.1(I)(9)(c) reads, in pertinent part:

> "(c) All cesspools in the Town of Charlestown shall be removed and replaced with an ISDS suitable for the Wastewater Management District by the following dates in accordance with each zone based on proximity to critical resources [ ]:
>
> "[2] May 2012 - Zone 2 - Cesspools located within the CRMC Salt Pond Region Special Area Management Plan (SAMP)/RIDEM Salt Pond Critical Resource Area (CRA) and defined by CRMC as Lands Developed Beyond Carrying Capacity [ ]." Id. (as amended by Ord. No. 311 (March 9, 2009) and Ord. No. 330 (Nov. 8, 2010).

As an additional safeguard in protecting the Town's surface and ground water, the Town enacted Ordinance § 210-7(C)(1), which provides that "[t]he owner [of a malfunctioning individual sewage disposal system (ISDS)] shall be given sixty (60) days to contact the DEM and apply for a permit to repair or replace the system . . . "

Intentional failure to comply with a written notice of a violation of any provision within Ordinance § 210 can result in fines up to $500 per day. Ord. § 210-11(C).

II

Facts

Having reviewed the evidence presented by both parties, the Court makes the following findings of fact.

McCabe owns residential property located at 12 Allen's Cove Road, designated as Charlestown Assessor's Plat Map 9, Lot 216 (the Property). At all relevant times, the Property has been and continues to be serviced by a cesspool. It is undisputed that the Property is located within Zone 2 of the present cesspool phase-out plan in the Town, and therefore the cesspool thereon was required to be replaced with an approved OWTS by May 2012. Ord. § 210-8.1(I)(9)(c)(2).

Since 2006, McCabe has received numerous letters from the Town identifying his obligations related to the cesspool phase-out program, which then required replacement by May 10, 2009, and annual pumping and inspection until replaced. A notice identifying these requirements was sent to all cesspool owners on July 1, 2006. See Ex. 2. On June 10, 2008, the Town issued a written reminder to all Town homeowners with a cesspool, including McCabe, that specifically stated:

> "Cesspools are a sub-standard and inadequate means of on-site wastewater treatment . . . and shall be **replaced with an onsite wastewater treatment system (OWTS), which conforms to current state and local standards by May 10, 2009.** This process requires that a certified OWTS designer be hired by the homeowner for the design and application to the Rhode Island Department of Environmental Management for a permit to install a conforming septic system for the property . . . . Failure to comply with [this ordinance] can result in fines of up to $500 per day." Id.

By letter dated April 6, 2009, a third notice was sent to property owners, including McCabe, advising that the phase-out deadline had been extended in accordance with five different zones depending on the proximity of the homeowner's property to critical resources and/or the density of development. Ex. 3. McCabe's Property was identified as being within Zone 2 and, at that time, the cesspool was required to be removed and replaced by May 10, 2011. Id. The Town also notified homeowners that failure to comply will result in the issuance of a Notice of Violation. Id.

A "FINAL Cesspool Phase-Out Notice" was sent to McCabe by letter dated July 1, 2010, informing him of the May 10, 2011 deadline for removing and replacing his cesspool. Ex. 4. That notice also provided information relative to the necessary RIDEM permit for an OWTS Repair Application, a list of Rhode Island licensed OWTS designers, and the availability of temporary waivers for cesspool owners with certain income levels defined by the United States Department of Housing and Urban Development. Id. The July 2010 notice advised that failure to comply will result in the issuance of a Notice of Violation and may also result in fines up to $500 per day. Id.

On August 4, 2010, the Town Wastewater Management Enforcement Officer Matthew Dowling (Dowling) investigated a complaint concerning sewage that was emanating from the ground on McCabe's property. Dowling testified before the Court and presented as competent and knowledgeable in the area of wastewater systems, Town and State laws and regulations pertaining to the same, and the enforcement efforts by the Town concerning McCabe's Property. Dowling was a credible witness.

Upon investigation, Dowling discovered that McCabe's cesspool had failed, resulting in sewage surfacing to the ground and flowing onto an adjacent property located

at 22 Allen's Cove Road. Photographs introduced into evidence depicted the septic breakout from the Property resulting in obvious standing sewage located on the adjacent property downgrade from McCabe's Property. Ex. 5. Dowling informed McCabe of these findings via letter dated August 5, 2010, and captioned "*Notice of Failed Cesspool*," which stated, in pertinent part:

> "In accordance with the Charlestown Onsite Wastewater Management Ordinance Chapter 210, Section 210-7 C1, '*The owner of a malfunctioning individual sewage disposal system (ISDS) shall be given sixty (60) days to contact the RIDEM and apply for a permit to repair or replace the system*.' Furthermore, the Onsite Wastewater Management Ordinance Chapter 210, Section 210-8 1.I(9)(c) [sic] stipulates that cesspools located in Zone 2 (where your property is located) must be removed and replaced with a system suitable for the Wastewater Management District by May 2011.
>
> "You are **REQUIRED** to contact a state licensed contractor to apply for a permit to repair the system within **60 days** from the date of this notice. Failure to comply will result in a Notice of Violation issued by the Town which will be recorded in the Land Evidence Records and may result in monetary penalties (Fines) up to $500 per day per violation." Ex. 6 (emphasis in original).

Subsequently, on August 30, 2010, RIDEM issued a Notice of Intent to Enforce requiring McCabe to obtain an approved RIDEM permit to retain a licensed OWTS designer and have him/her submit a formal OWTS repair application and plan to RIDEM within thirty days; submit a modified proposal or additional information to RIDEM within fourteen days if notified that deficiencies exist or additional information is needed; and commence work within twenty days of approval and complete work within 120 days of approval. Ex. 7. It is undisputed that McCabe took no action with regard to either

Dowling's August 5, 2010 letter or RIDEM's August 30, 2010 Notice of Intent to Enforce.

In November 2010, the Town again apprised McCabe by written notification of his obligations under the cesspool phase-out program. Specifically, McCabe was advised that the deadline for removing and replacing existing cesspools in Zone 2 had been extended to May 10, 2012. Ex. 8.

In the meantime, McCabe still had not addressed his failed cesspool dating back to August 4, 2010. The Town issued a "*Notice of Failed Cesspool*" on December 10, 2010, again reminding McCabe he was in violation of § 210-7(C)(1). Ex. 9. The Town also provided McCabe information on low interest financing that was available for cesspool removal and replacement. Id. RIDEM issued McCabe a Notice of Violation on December 31, 2010, stating in detail the basis for the violation, the repair application process, the administrative penalty imposed, and the right to an administrative hearing. Ex. 10. RIDEM's Notice of Violation was recorded in the Town's Land Evidence Records in Book 351, Page 802. Id.

Thirteen months after his cesspool failed and caused sewage to flow onto the adjacent property, McCabe submitted a letter dated September 5, 2011, to RIDEM's Office of Compliance and Inspection asserting that he had had his cesspool examined by a septic service company on September 4, 2011, and that it was working and not leaching at the surface. Ex. 11. However, no OWTS repair application had been submitted to RIDEM nor had repairs been made. Accordingly, the Town then issued a "Notice of Violation for Non-Compliance" to McCabe on October 27, 2011, delivered it by certified mail, and recorded it in the Town's Land Evidence Records in Book 360, Page 906. Ex.

12. This "Notice of Violation of Non-Compliance" identified and enclosed Dowling's August 5, 2010 "*Notice of Failed Cesspool*," and stated:

> "According to our records to this date, the cesspool has not been repaired and a [RIDEM] Permit for On-Site Wastewater Treatment has not been obtained, constituting a **VIOLATION** of the referenced Ordinance (Section 210-7 C1) (sic).
>
> "Additionally, you may be subject to a monetary **FINE** of up to $500-dollars per day, per violation levied through the Town of Charlestown's Municipal Court system.
>
> . . .
>
> "A Notice of Violation Release will be issued once the Charlestown Office of Wastewater Management receives an approved RIDEM OWTS Application for Alteration or Application for Repair to mitigate the failing cesspool." Id. (emphasis in original).

The Notice of Violation of Non-Compliance did not provide a time period with which McCabe was required to comply. It did, however, advise McCabe that he could request a hearing before a quorum of the Town's Wastewater Management Commission, said request to be made within thirty days of receipt of this Notice of Violation of Non-Compliance. Id. McCabe failed to respond to this Notice of Violation of Non-Compliance in any way.

The last extension of the deadline for removal of his cesspool having come and gone on May 10, 2012, on June 15, 2012, the Town issued McCabe a "Notice of Violation for Non-Compliance" with § 210-8.1(I)(9)(c). Ex. 13. This Notice of Violation for Non-Compliance was also recorded in the Town's Land Evidence Records in Book 370, Page 494 and was sent by certified mail. Id. McCabe was advised that, within sixty days of having been served with the Notice of Violation for Non-

Compliance, he must remove and replace the existing cesspool with an OWTS suitable for the Wastewater Management District, and that a Notice of Violation Release would be issued once the RIDEM sent the Town a Certificate of Conformance indicating the cesspool had been removed and replaced in accordance with local ordinance and applicable RIDEM and other State regulations. Id. The June 15, 2012 Notice of Violation for Non-Compliance also stated that failure to comply will result in referral to the Town Solicitor for appropriate legal action and/or fines up to $500 per day, per violation levied through the Town's Municipal Court. Id. Like the Notice of Violation for Non-Compliance with § 210-7(C)(1) issued in October 2011, the June 15, 2012 Notice of Violation for Non-Compliance advised McCabe that he could request a hearing before a quorum of the Town's Wastewater Management Commission, said request to be made within thirty days of receipt of the Notice of Violation for Non-Compliance. Id. Once again, McCabe failed to respond in any way to the Town's June 15, 2012 Notice of Violation for Non-Compliance.

On December 20, 2012, a summons and complaint was served on McCabe charging him with a violation of Ordinance § 210-8.1(I)(9)(c) for failing to replace his cesspool by May 10, 2012, and a violation of Ordinance § 210-7(C)(1) for failing to apply for a permit to repair or replace his cesspool within sixty days of when his cesspool initially failed on August 4, 2010. Ex. 14. A trial before the Charlestown Municipal Court took place on February 20, 2013. On March 20, 2013, the Municipal Court entered an order whereby Defendant was found guilty of violating §§ 210-8.1(I)(9)(c) and 210-7(C)(1) and was fined $100 per day and $50 per day, respectively, for each violation until his property is brought into compliance. Ex. 16.

McCabe timely appealed to this Court pursuant to § 45-2-32.

III

Standard of Review

The creation of the Charlestown Municipal Court was authorized by the General Assembly pursuant to § 45-2-32. The Charlestown Municipal Court has "original jurisdiction . . . to hear and determine cases involving the violation of any ordinance . . . [of the Town of Charlestown.]"[1] Sec. 45-2-32(a); see also Ord. § 27-7(A). Both the Rhode Island General Laws and the Town Ordinance vest this Court with jurisdiction to hear the instant appeal, wherein "any defendant found guilty of any offense . . . may within seven (7) days of the conviction, file an appeal from the conviction to the superior court and be entitled in the latter court to a trial de novo . . . " Sec. 45-2-32(a); Ord. § 27-7(B).

In a non-jury trial, the standard of review is governed by Rule 52(a) of the Rhode Island Superior Court Rules of Civil Procedure, which provides that, "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon." Super. R. Civ. P. 52(a). Accordingly, "'[t]he

[1]While original jurisdiction for the violation of any ordinance lies with the Municipal Court, Ordinance § 210-11 appears to create concurrent jurisdiction with the Wastewater Management Commission, whereby an administrative hearing process may be requested by an owner of an ISDS who is cited with a violation within thirty days of receipt of the notice of violation. See Ord. § 210-11(D). The decision by the Wastewater Management Commission is reviewable by the Fourth Division District Court in the same manner as this Court reviews decisions of administrative agencies. See Ord. §§ 210-11(B), (G); cf. G.L. 1956 § 42-35-15. Notably, the Ordinance also provides for judicial review whereby "Municipal Court may be optional." Ord. § 210-11(B). As McCabe failed to initiate the review process before the Wastewater Management Commission after having been duly served with each Notice of Violation, the Town properly exercised its right to adjudicate these matters and impose fines through the Municipal Court. No objection or alternative standard of review has been presented, and therefore, this Court will undertake to decide this case in accordance with § 45-2-32(a) and Ordinance § 27-7(B).

trial justice sits as a trier of fact as well as of law.'" Parella v. Montalbano, 899 A.2d 1226, 1239 (R.I. 2006) (quoting Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984)). "'Consequently, he [or she] weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences.'" Id. (quoting Hood, 478 A.2d at 184). It is well established that "assigning credibility to witnesses presented at trial is the function of the trial justice, who has the advantage of seeing and hearing the witnesses testify in court." McBurney v. Roszkowski, 875 A.2d 428, 436 (R.I. 2005) (citations omitted). The trial justice may also "'draw inferences from the testimony of witnesses, and such inferences, if reasonable, are entitled on review to the same weight as other factual determinations.'" DeSimone Elec., Inc. v. CMG, Inc., 901 A.2d 613, 621 (R.I. 2006) (quoting Walton v. Baird, 433 A.2d 963, 964 (R.I. 1981)).

Furthermore, "[w]hen rendering a decision in a non-jury trial, a trial justice 'need not engage in extensive analysis and discussion of all evidence. Even brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case.'" Parella, 899 A.2d at 1239 (quoting Donnelly v. Cowsill, 716 A.2d 742, 747 (R.I. 1998) (citation omitted)). The trial justice need not "'categorically accept or reject each piece of evidence in his [or her] decision for [the Supreme] Court to uphold it because implicit in the trial justices [sic] decision are sufficient findings of fact to support his [or her] rulings.'" Notarantonio v. Notarantonio, 941 A.2d 138, 147 (R.I. 2008) (quoting Narragansett Elec. Co. v. Carbone, 898 A.2d 87, 102 (R.I. 2006)).

IV

Analysis

A

Ordinance Violations

At trial, McCabe did not dispute that his cesspool failed in August 2010, nor that he did not obtain a permit to repair or replace the system from RIDEM pursuant to Ordinance § 210-7(C)(1). McCabe also did not dispute that he had not removed or replaced the cesspool at his Property as of May 10, 2012, despite numerous reminders from the Town that removal and replacement were required pursuant to Ordinance § 210-8.1(I)(9)(2). Instead, McCabe argues that replacement of the cesspool constitutes an undue hardship and that fines levied may constitute an unconstitutional taking in the event there is a sheriff's sale of the Property. These arguments will be discussed seriatim. As a threshold matter, however, this Court concludes, based upon the undisputed facts discussed at length in Section II, supra, that (i) McCabe is in violation of Ordinance § 210-7(C)(1) inasmuch as he has not obtained RIDEM approval for repairs following the Town's August 5, 2010 written notification to McCabe that the cesspool on his Property has failed; and (ii) McCabe is in violation of Ordinance § 210-8.1(I)(9)(2) as he had not had his cesspool replaced with an approved OWTS by the May 10, 2012 deadline.

B

Undue Hardship

McCabe contends that replacing his cesspool would require crossing onto an unidentified neighbor's property and having to dig up a large portion thereof, requiring an

easement. The evidence of record, however, does not support this assertion in any way. No plat maps or system design plans were offered into evidence which address this claim. There is no evidence before the Court that would permit the Court to accept McCabe's assertions as true.

Moreover, even if McCabe's contentions were accurate, McCabe has had ample time to work with his neighbors to implement the installation of an approved OWTS, negotiate the purchase of property that McCabe claims is needed to fully situate an approved OWTS on property owned by him, and/or to obtain an easement over such property owned by this unidentified neighbor. Instead, McCabe has outrightly failed to respond to the numerous notices he received concerning both his failed cesspool in August 2010 and the required removal and replacement of his cesspool with an approved OWTS, and seeks this Court's indulgence in excusing his inaction for several years.

The undisputed evidence demonstrates the Town's efforts in trying to address McCabe's substandard cesspool, short of formal action being taken. The Town first mailed out notices identifying the cesspool phase-out program on July 1, 2006, almost three years before the initial replacement date of May 10, 2009. McCabe then received a second notice on June 10, 2008. Despite repeated notices on April 6, 2009 and November 19, 2010—which informed McCabe that the replacement date would be pushed back to May 10, 2011 and then May 10, 2012, respectively—McCabe still took no action to replace his cesspool. The Town also sent numerous notices concerning his failed system and the need to comply with RIDEM regulations in having it repaired before it was required to be replaced in accordance with the cesspool phase-out program. The Town has also forwarded pertinent information to McCabe regarding low interest

loans and temporary hardship waivers, none of which McCabe submitted in order to timely address his obligations. It is simply too little, too late for McCabe to claim a hardship exists and be excused from his flagrant violations of both Ordinance provisions.

Further, any alleged hardship has no relevance to McCabe's failure to have his cesspool repaired following its August 2010 failure. Despite presenting evidence that he had the cesspool pumped in February 2014 (Ex. A) and pumped and inspected in January 2013 (Ex. L), McCabe wholly failed to address the repairs with RIDEM within sixty days of being notified by the Town that his cesspool failed.

For all these reasons, this Court rejects McCabe's claim of hardship.

C

Unconstitutional Taking

McCabe also contends that any fines imposed will be an unconstitutional taking of property because the fines imposed will quickly add up and the Town could initiate a sheriff's sale to confiscate the property. The Fifth Amendment to the United States Constitution provides that "[n]o person shall be . . . deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation." Similarly, the Rhode Island Constitution, in art. I, sec. 16, states that "[p]rivate property shall not be taken for public uses, without just compensation." This issue, however, is not properly before this Court.

Our Supreme Court has long recognized the need to confine judicial review only to those cases that present a ripe case or controversy. City of Cranston v. Rhode Island Laborers' Dist. Council Local 1033, 960 A.2d 529, 534 (R.I. 2008); State v. Lead Indus. Ass'n, Inc., 898 A.2d 1234, 1238 (R.I. 2006). Such a requirement is rooted in the

commitment "'not to pass on questions of constitutionality' unless adjudication of the constitutional issue is necessary." Lead Indus. Ass'n, Inc., 898 A.2d at 1238 (quoting Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 11, 124 S.Ct. 2301, 159 L.Ed.2d 98 (2004)). Professor Tribe has discussed the prudent policies underlying the ripeness doctrine:

> "Even when a dispute is adequately mature in a constitutional sense, however, subsequent events may sharpen the controversy or remove the need for decision of at least some aspects of the matter. Thus ripeness doctrine also furthers the prudential policy of 'judicial restraint from unnecessary decision of constitutional issues' by allowing a determination that a resolution of the dispute should come at a later date." 1 Laurence H. Tribe, American Constitutional Law, § 3-10 at 335 (3d ed. 2000).

Here, no adjudication of McCabe's constitutional claim is necessary because there has been no sheriff's sale and, thus, no taking of his Property. Until such time as McCabe fails to pay the fines, and the Town exercises any rights it may have to attach the Property and collect thereon, there is no constitutional case or controversy for this Court to resolve. These are the types of "subsequent events [that] may sharpen the controversy or remove the need for decision" that Professor Tribe discussed. Id. Presently, it is unnecessary for this Court to pass upon McCabe's constitutional claim. Lead Indus. Ass'n, Inc., 898 A.2d at 1238.

D

Penalties for Ordinance Violations

Having rejected McCabe's defenses, this Court now must determine what penalty, if any, to impose for violating both Ordinance §§ 210-8.1(I)(9)(c) and 210-7(C)(1). In

assessing these penalties, this Court reviews the enforcement provisions spelled out in the Town's Ordinance. Ordinance § 210-11(C) provides for penalties as follows:

> "Penalties. Any person or owner who intentionally fails to comply with a violation notice may be fined not more than five hundred dollars ($500.) per violation. Each day of a continuing violation shall constitute a separate violation. All fees/fines shall be payable to the Town of Charlestown for the administration and implementation of the [Wastewater Management District]. Notices of Violation shall be recorded with the Land Evidence Records for the property where the violation is identified. The Notice of Violation shall remain recorded until such time as the violation has been remedied. Upon identification that the violation has been remedied, a Notice of Violation Release will be filed with the Town Clerk by the manager of the [Wastewater Management District] and the Notice of Violation will be removed from the Land Evidence Records." Id. (emphasis added).

Importantly, then, each Notice of Violation must be considered in determining penalties to be assessed. The Ordinance requires that violation notices comport with the following:

> "Violation notices. Any owner of an ISDS determined to be in violation of this ordinance shall be issued a written Notice of Violation (NOV) via Certified Mail stating the nature of the violation, the action required to correct the violation, the date by which the violation must be corrected and the penalty for noncompliance." Ordinance § 210-11(B) (emphasis added).

After careful review of each of the Notices of Violation for Non-Compliance delivered to McCabe by certified mail, this Court concludes that the Town failed to comply with Ordinance § 210-11(B) in not having advised McCabe of the deadline by which the violation for Ordinance § 210-7(C)(1) was to have been corrected by obtaining a RIDEM permit. See Ex. 13. The October 27, 2011 "Notice of Violation of Non-

Compliance" complied in all other respects with the notice requirements in Ordinance § 210-11(B). Absent full compliance, however, this Court will not impose a penalty for intentionally failing to comply with this violation notice. See Ord. § 210-11(C).

By contrast, the Notice of Violation for Non-Compliance of Ordinance § 210-8.1(I)(9)(c) issued on June 15, 2012 fully complied with the notice requirements set forth in Ordinance § 210-11(B). Moreover, this Court finds that McCabe intentionally failed to comply with that violation notice by failing to replace his cesspool with an approved OWTS within sixty days of receiving the certified mail on June 19, 2012. See Ex. 13. Thus, McCabe intentionally failed to comply with the Notice of Violation for Non-Compliance on August 18, 2012.

Recognizing that one purpose in imposing fines is to provide individuals with an incentive to comply with existing laws, this Court notes that McCabe has been unwilling to date to resolve this matter informally with the Town and to work towards replacing his cesspool with an approved OWTS. McCabe has flagrantly ignored his legal obligations under the various provisions in the Town Ordinance, of which he has been advised since 2006, and he has buried his head in the proverbial sand when given due notice that his time to comply has passed. He admits that he continues to be in violation of the cesspool phase-out program and has not made any efforts toward obtaining approval for an OWTS. Based upon his willful conduct, this Court imposes a fine in the amount of $100 per day, commencing on the date of issuance of this Decision, and continuing thereafter until McCabe replaces his cesspool with an approved OWTS as required by Ordinance § 210-8.1(I)(9)(c).

V

Conclusion

For the foregoing reasons, this Court finds McCabe violated the Town of Charlestown Ordinance §§ 210-8.1(I)(9)(c) and 210-7(C)(1), but that the Town failed to comply with the violation notice requirements concerning the violation of § 210-7(C)(1). The Court imposes a fine in the amount of $100 per day, commencing on the date of issuance of this Decision, and continuing thereafter until McCabe replaces his cesspool with an approved OWTS as required by Ordinance § 210-8.1(I)(9)(c).

Counsel for the Town shall prepare a judgment consistent with this Decision, said judgment may serve as a lien on the Property to secure payment of the fine set forth therein.

RHODE ISLAND SUPERIOR COURT
Decision Cover Sheet

TITLE OF CASE:	Paul J. McCabe v. Town of Charlestown
CASE NO:	WC-2013-0176
COURT:	Washington County Superior Court
DATE DECISION FILED:	May 23, 2014
JUSTICE/MAGISTRATE:	Kristin E. Rodgers
ATTORNEYS:	
For Plaintiff:	Paul J. McCabe, pro se
For Defendant:	Wyatt A. Brochu, Esq.