

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Sullivan Superior Court
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NOTICE OF DECISION

FILE COPY

Case Name: **Town of Goshen v CARL N CASAGRANDE**
Case Number: **220-2016-CV-00028**

Please be advised that on January 24, 2017 Judge Tucker made the following order relative to:

Court Order

January 24, 2017

James I. Peale
Clerk of Court

(550)

C: H. Bernard Waugh, JR; William B. Pribis, ESQ

The State of New Hampshire

SULLIVAN, SS.

SUPERIOR COURT

No. 220-2016-CV-28

TOWN OF GOSHEN

v.

CARL N. CASAGRANDE

ORDER

The Town of Goshen filed a complaint against Carl N. Casagrande in which it seeks an order enjoining him from continuing to maintain a locked gate across a portion of Page Hill Road. The Town says the road is an unmaintained Class VI highway on which locked gates are prohibited. Mr. Casagrande contends the section of road is private, because at a town meeting in 1891 residents of Goshen voted to discontinue it as a public road. The Town disagrees and moves for summary judgment on the question.

The facts are not disputed. Carl Casagrande owns property on Page Hill Road in Goshen. The entirety of Page Hill Road was a public highway until at least the time of the Goshen town meeting in 1891. The road runs from Province Road at its southerly end, to the Newport town line where it becomes a Newport town highway. Goshen maintains the southerly 0.17 mile portion of Page Hill Road at the Province Road end, but not the remainder of the road heading toward Newport. In the absence of other action (for example, a vote for discontinuance), the lack of maintenance and repair would qualify this

section as a Class VI highway. RSA 229:5, VII.

The road's unmaintained portion begins at the driveway to Casagrande's property, where he blocks the road with a locked gate. Goshen police and fire officials have the combination to the lock, as do abutters who request it, but the general public is not able to pass. The Town contends (and Casagrande does not disagree) that if the contested section of Page Hill Road is public, it is a Class VI highway. Gates and bars may be kept along or across Class VI highways, but may not be locked and must be capable of being opened by any member of the public who wishes to use the road. RSA 231:21-a, I. *See Glick v. Ossipee*, 130 N.H. 643, 646 (1988) (Class VI highways are "full public highways that the public has the right to pass over," and "[o]nly a formal discontinuance can legally terminate the public's right to travel on any public way.") (internal citations omitted). The issue for summary judgment is whether the 1891 town meeting voted for formal discontinuance of the unmaintained portion of the road as a public highway.

The Warrant for the meeting included the following Article 11.

To see if the Town will vote to discontinue and throw up the highway leading from Willie E. Howe's to Newport town line providing Newport will throw up theirs to meet us.

Motion for Summary Judgment, Appendix A, Affidavit of Cindy L. Williams, ¶ 3. The parties agree the "the highway leading from Willie E. Howe's to Newport town line," is the unmaintained section. There is no dispute that Goshen could condition discontinuance on some other event. *See New London v. Davis*, 73 N.H. 72, 75 (1904).

According to the town meeting minutes pertaining to Article 11, residents “voted to throw up the road mentioned in this article.” Williams Aff., ¶ 4. As recently as 1998, the Town of Newport took up the issue of discontinuing its portion of Page Hill Road, but voted against doing so. Mot. Summ. J., Appendix B, Affidavit of Liselle Dufort, ¶¶ 2-4. Goshen says that Newport’s lack of reciprocity left the status of Page Hill Road in Goshen unchanged. Casagrande says the residents’ decision is reflected in the minutes, which say simply that the town voted to “throw up the road mentioned in this article,” without reference to requiring action by Newport.

To obtain summary judgment, the Town must “establish[] the absence of a dispute over any material fact and the right to judgment as a matter of law,” even after considering evidence offered on the motion in the light most favorable to Mr. Casagrande. *Panciocco v. Lawyers Title Ins. Corp.*, 147 N.H. 610, 613 (2002). A “material fact” is one that “affect[s] the outcome of the litigation.” *Id.* Casagrande says his inference of what the minutes mean is reasonable, so there is a material issue of fact that precludes summary judgment.

What the minutes reflect about the intention of the town’s voters is not a factual issue in this context, since what the minutes say is known and not in dispute. Warrant articles “are the equivalent of legislation,” *Green Mountain Realty Corp. v. Fifth Estate Tower, LLC*, 161 N.H. 78, 87 (2010), so interpreting action on a warrant article is much like construing a statute. The focus is on the intent of the legislature (here the voters at town

meeting), and is based on the words used and the legislative record. *See Petition of Carrier*, 165 N.H. 719, 720–21 (2013).

An example is the review of a zoning ordinance adopted at a town meeting.

Interpreting the ordinance presents a question of law, which requires a court “to determine the intent of the enacting body.” *Hurley v. Town of Hollis*, 143 N.H. 567, 569–70 (1999). As the State Supreme Court said,

When, as here, key terms are not specifically defined in the ordinance, we review it in its entirety to determine the intended meaning. When, however, plain and unambiguous language is not available to discern intent, we look beyond the language of the ordinance itself for further indications of legislative intent. When we do so, the entire record underlying the ballot question presented to the voters must be considered in ascertaining voter intent at the time the ordinance was adopted.

Id., (citations, quotations, and brackets omitted). Since the review is one of law, summary judgment isn’t barred because the parties have conflicting views on what the minutes say about voter intent.

As with the interpretation of a law, it is necessary to read not just the minutes reflecting the vote on the warrant article, but also the warrant article itself and the other minutes to the extent they are relevant in deciding how the voters went about deciding the question. Also a rule of construction applies. In *McMahon v. Town of Salem* – a case in which the Supreme Court resolved a dispute over whether a warrant article passed at town meeting did or did not give the town manager discretion to appoint a committee – the Court noted,

It has long been recognized that town meetings do not consistently express their purposes with legal precision and that votes adopted by such meetings will be liberally construed to give a legal effect to language inartificially employed to express the corporate purpose.

104 N.H. 219, 220 (1962) (quotation omitted). Therefore, the description of the vote as one “to throw up the road mentioned in this article,” must be read in the context of the Article, which was the question before the town’s residents.

The subject of the vote – discontinuance of a public highway – is another factor.

Once it is shown that a road is a public highway, the highway is presumed to exist until it is discontinued, and discontinuance is not favored in the law. *Davenhall v. Cameron*, 116 N.H. 695, 696–97, 366 A.2d 499 (1976). Discontinuance is a fact that must be proved and the burden is upon the party who asserts discontinuance to prove it by clear and satisfactory evidence. Because public roads are discontinued by town vote, and such actions are recorded, the best evidence of discontinuance is the official record.” *Id.* (citations omitted).

Blagbrough Family Realty Trust v. A & T Forest Products, Inc., 155 N.H. 29, 36–37 (2007). See *Marrone v. Town of Hampton*, 123 N.H. 729, 734 (1983).


Article 11 was “[t]o see if the Town will vote to discontinue and throw up the highway ... providing Newport will throw up theirs to meet us.” Nothing in the minutes (which are attached to the Williams Affidavit) suggests the article was modified by motion or otherwise. In contrast, Article 14 was “to see if the town will vote to layout” a highway (*id.*, p. 1), but was modified on motion to include further instructions to the selectmen. *Id.*, p. 5. The minutes identify no motion to remove the proviso from Article 11.

Nothing in the minutes suggests the vote on Article 11 was on anything other than the Article as stated. The absence of evidence that the voters decided something else, combined with the evidence that Newport did not meet the condition for discontinuance, the presumption that the voters did not approve discontinuance, and the fact that Mr. Casagrande bears the burden of showing they did so by a clear vote, operates to establish the Town's position that the section of Page Hill Road at issue remains a Class VI highway. So on this question the Town is entitled to judgment as a matter of law.

The motion for summary judgment (document no. 7) is GRANTED. The Town shall prepare a proposed decree. In view of the ruling, the Town's motion to deny Mr. Casagrande's request for a jury trial (document no. 10) is DENIED as moot.

SO ORDERED.

DATE: JANUARY 24, 2017



BRIAN T. TUCKER
PRESIDING JUSTICE