STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

[Filed: August 30, 2017]

DAVID CLARK AND JUDITH CLARK,	:	
Plaintiffs,	:	
	:	
v.	:	**C.A. No. KC-2014-0271**
	:	
BUTTONWOODS BEACH ASSOCIATION,	:	
Defendant.	:	

DECISION

LANPHEAR, J. This matter is before the Court for decision following a non-jury trial in an adverse possession and acquiescence action regarding portions of certain waterfront property located at 243 Promenade Avenue in Warwick, Rhode Island (243 Promenade Avenue). That property is in a section of the City of Warwick commonly referred to as Olde Buttonwoods. While Plaintiffs Dr. David Clark and Judith Clark (Dr. and Ms. Clark or the Clarks) seek to establish title to that property, Defendant Buttonwoods Beach Association (the Association) currently holds record title to it. The Clarks assert that they have acquired title to the property through adverse possession and, in the alternative, by acquiescence.

I

Facts and Travel

The facts, as determined from all of the evidence presented at trial, are as follows. In 1882, as land in the section was first being developed into house lots, a plat was recorded with the Warwick Land Evidence Records as plat card 106 (the 1882 plat card) (Ex. M). That plat card indicates that Promenade Avenue is eighty feet wide. Of significance, Peter and Ginger

Weichers took title to the property in 1986. The property was subsequently transferred to Guy and Carolyn Hurley (the Hurleys) in October 1989; to Larry and Nancy Zigerelli (the Zigerellis)—now separated or divorced—on February 16, 1999; to Edward and Laura Freeman (the Freemans) in 2002; and finally, to the Clarks in June 2009.

The deed conveying the property to Dr. and Ms. Clark, as well as deeds to prior owners of record, reference the 1882 plat card. The Clarks' deed, however, does not provide a metes and bounds description. The legal title to the eighty foot wide Promenade Avenue, as shown on the 1882 plat card, is held by the Association.[1] The Association owns many streets of varying widths in the neighborhood, as well as several undeveloped lots. Many are used for open space or recreation such as overlooks, beaches, and a ball field. The community is located on a peninsula in the City of Warwick. There are stone pillars at the entrances with signs that read "Residents and Guests Only." It is clearly a unique, private area.

The 2009 deed to the Clarks conveys two separate lots: one to the north of Promenade Avenue—on which their home is located (the house lot)—and the other to the south of Promenade Avenue and fronting on Narragansett Bay (the waterfront lot). As indicated, the lots are on each side of Promenade Avenue, but they are not built to that width. Therefore, according to the 1882 plat card, the only part of the waterfront included on the Clarks' lots is the seawall and beach—not the grassed area. Also according to the 1882 plat card, the front yard to the Clarks' house ends several feet from the front steps, and it does not include the area that now encompasses the sidewalk, hedges, or much of the front yard. By 1989, much of this area had been improved and landscaped by owners of the house. It is difficult to distinguish the location of the eighty foot platted street from being on the disputed property itself. Exhibit 54 is an aerial

[1] The deeds in the chain of title reference the 1882 plat card, found in the Warwick Land Evidence Records.

photograph of the property which shows the expanse of the landscaping. Contrasted with the 1882 plat card (Ex. M), this photo illustrates the expanse of the disputed area.

Numerous owners and neighbors testified at trial regarding the use of the property, beginning with the Weichers. According to Mr. Weichers' testimony, the Weichers (now divorced) owned the home from 1986 to 1989. Mr. Weichers thought that he owned the entire property, but for the paved street. Mr. Weichers removed some fencing on the waterfront lot, planted some hedges along the street sides of both lots, and put in gates, walkways, sprinkler systems, and new grass. The hedgerows border the grassed areas on both lawns from the paved streets, with the gates facing the street. He rebuilt the entire seawall, presumably at significant expense, as the job required several cement trucks to finish. He asked no one for permission, and he never considered the issue of whether he owned the seawall. He does not recall seeing anyone on the waterfront or house lots, but he was away at work about twelve hours per day.

Mr. Hurley was deposed, and each party accepted his testimony as if it were trial testimony. In his deposition, Mr. Hurley did not discuss the boundaries when he purchased the home, but he thought that all of the grassed area was his. While he maintained the home and put in a brick walkway and a septic system, he never asked for permission, and the Association never complained. The Freemans, who lived nearby, used the waterfront lot. When shown at his deposition a map of the lot lines, Mr. Hurley testified as follows:

> ". . . I just assumed, and I don't have the facts to back it up, because I don't really have the survey in mind, but what I drew out that day, that's what I kind of assumed my property was. Maybe I was wrong, I don't know, but I don't know why they would have done this. I mean, it was - - everybody had use of the property that wanted to use it and, so, I don't know. . . ." Hurley Dep. 29:6-12, Sept. 4, 2015.

He acknowledged that people in the area used the lot for beach access and no one asked for permission to do so. He installed steps and a railing for easier access to the beach.

The Zigerellis owned the home from 1999 until 2002. They renovated the interior of the house extensively when they moved in, and they also completed renovations on the exterior. They added a new septic system and new landscaping, and they also placed a new brick walk, new hedges, and underground sprinklers on the grassed areas on each side of the street. The entire lawn and hedges were maintained. Attached to a 1999 building permit application is a map showing the property lines, as taken from the 1882 plat card. Ms. Zigerelli testified at trial that she knew that the street was wider than it appeared, but she was not sure how wide. She recognized—from the meetings and the handbook—that she needed approval for some of the landscaping, and she accordingly requested approval from the Association. The need for such approval was discussed at a 1999 meeting. Although gates on the waterfront lot were installed by Mr. and Ms. Zigerelli, they never tried to exclude anyone from that lot. To the contrary, each of them appeared to be welcoming and enjoyed the community and their neighbors' company.

Mr. Zigerelli testified that without his objection, the Association's residents would access the waterfront lot to watch fireworks, to sit on the grass, and to access the beach. Mr. Zigerelli also testified that he realized the street was eighty feet wide, that he never had an issue with it, and that he allowed others to go through the gate to fish, go to the beach, or to look at the view. He was concerned only with young children being near the seawall.

Mr. and Ms. Freeman purchased the adjacent property at 77 Cooper Road in 1991. They also purchased the subject property from Mr. Zigerelli in 1999 and sold the home in June 2009. Ms. Freeman did not know that the Association had an interest in the land next to 243 Promenade Avenue, as she thought she owned it and never noticed that the Association

improved or maintained the property, though it maintained the paved road. The Freemans maintained the property and cut the grass and hedges. Ms. Freeman recognized that the Association needed to approve of work done to the adjacent waterfront lot, as she assented to it. The Freemans, longtime Buttonwoods residents, went to the Association's meetings in the 1990s. Since the early 1990s, Mr. Freeman fished off the seawall using the property in front of 243 Promenade Avenue, which the Freemans did not own at all such times. They also went to the Fourth of July parties at this location. They did not exclude people from the waterfront lot when they lived on Promenade Avenue, and they let others use the area.

Mr. Freeman revealed that he was unsure if he owned the grassed, waterfront parcel or if he needed permission to alter it. On August 9, 2013, Mr. Freeman signed a written statement[2] which was admitted into evidence and provides, in part, (1) that he "understood that the property [i.e., the grassed area located north of the concrete patio and south of the paved area of Promenade Avenue] was owned by the Fire District or the Beach Association"; (2) that the Zigerellis never prevented him and the other neighbors from crossing the grassed area to the waterfront; (3) that when he purchased 243 Promenade Avenue from the Zigerellis, they did not represent to him that they owned the grassed area adjacent to the concrete patio by the waterfront; (4) that he knew a portion of [Promenade Avenue] included the sidewalk and grass along the western side of the roadway; (5) that he would attend the annual meetings of the Fire District from time to time, at which a member of the Association would remind the community that the Association owned all of the streets and parks and that the actual streets were wider than

[2] This document does not have a title, is not notarized, and is in question-and-answer form. At the top of the document, it states, in part, that the "Subject" is "June 26, 2013 Meeting Memoranda" and that the "Participants" are "Ron Marsella (For the BBA) and Ed Freeman (Former Owner)."

the paved area; and (6) that he never represented to the Clarks that he owned the grassed area and bushes between paved Promenade Avenue and the concrete patio. (Ex. 47 ¶¶ 9, 14, 17, 19, 25.)

As indicated above, Dr. and Ms. Clark are the current owners of the property. Before their purchase, Ms. Clark walked the property and claims she was told by an unidentified realtor that the waterfront lot was included. There was no discussion regarding the size of the house lot, as Ms. Clark concluded that "it's a part of the house." Although Ms. Clark testified that the Clarks did not conduct, and never saw, a survey before or soon after the closing in June 2009, she acknowledged that she never asked the boundaries of the lots before she purchased and "assumed" her attorney was doing a survey. The Clarks closed on the property quickly, paying the full asking price so no other prospective owners would buy it.

The Clarks rented the house to the prior owners until September 1, 2009, at which time they moved into the house. Although Ms. Clark insisted that the grassed waterfront area on the subject property was rarely used, many witnesses established that it was a prominent gathering area for such annual events such as Fourth of July parties, viewing airshows, accessing the beach, and occasional fishing and sightseeing, such that this Court finds that Ms. Clark recognized the site as a prominent area in the plat used frequently by residents. As discussed below, she appears to have only become alarmed when a fisherman, whom she did not recognize, used the front lot to fish. During cross-examination, Ms. Clark testified, in part, that she assume[s the] house is on main lot . . . and that she only take[s] title to what the deed says . . . nothing more or less.

Exhibit Z contains a survey of the house lot, with drill holes and set rods, dated October 2009. Ms. Clark admitted signing the zoning application to which the survey was attached.[3] The survey clearly reflects that Promenade Avenue extends to the middle of the front lawn of the house lot, and the hedges are entirely in the street. The Clarks then renovated the house extensively and landscaped the waterfront parcel. These lots had all been maintained and kept up by all of the interim owners with more plantings, but the gate was never locked. Ms. Clark improved the plantings and the landscape almost immediately upon taking possession. She offered the old plantings to her neighbors through the Buttonwoods email notification system. In the summer of 2010, Ms. Clark went to the annual meeting of the Association. She testified that she recalled no handouts and no maps of the area on the walls.

In July 2011, Ms. Clark noticed an unfamiliar person fishing inside the gate. Several days later, she posted "No Trespassing" signs on the gate. She promptly received an email from Ms. Susan Martins-Phipps, who was then the president of the Association. The email mentioned that the area was the Association's property and that the signs must be removed. Ms. Clark telephoned Ms. Martins-Phipps in disagreement. Attorney McKenney, a former president of the Association, telephoned Ms. Clark about a month later to press for removal of the signs. Ms. Clark testified that she then commissioned a survey.

In July 2011, Alpha Associates prepared a survey for Dr. and Ms. Clark (Ex. O), which is strikingly similar to the same surveyor's survey of 2009, except that it also describes the waterfront lot. It shows Promenade Avenue to extend about eighty feet in width from the front steps of the house, across the lawn, the front hedges, the sidewalks, the paved street, the fence on the waterfront side, and the hedges and grassed area on the waterfront side to the seawall. Drill

[3] The zoning application sought a variance from the minimum front/corner side yard and minimum side yard dimensional regulations.

holes and iron rods look to be the same as those set in 2009. Again, apart from the drill holes and rods, it would be difficult to determine the width of the road by standing on the property itself.

Ms. Martins-Phipps did not own 243 Promenade Avenue individually, but she was active in the leadership of the Association and the Fire District. She has lived on Janice Road since 1983 and, almost every day, she walks her dog on the paved road area of Promenade Avenue. [4] She testified that the Association held open meetings and that at each meeting the Association displayed the plat maps and indicated that the roads were larger than the paved area. To use the grassed areas platted as roads, the Association had a policy that a written application was required with neighbors' consents. Permission was given only in writing by the Association's board. Ms. Martins-Phipps testified that since 2007, the Association would send out a letter to all new listing agents of property in the area when property was placed for sale and the Association would "send the two plat maps that are color coded." Since 2007, meeting minutes are emailed to members, but they were hand-delivered since the 1980s. Ms. Martins-Phipps traversed the grassed area of the lot only to walk her dog, but entered the waterfront lot to go to the beach after the hedges and gates were installed. Several people have fished off this lot, while others watch the air show at Quonset from it. Of course, the roadway and the sidewalks next to the street are routinely used.

In addition to Ms. Martins-Phipps, several past and present officers of the Association also testified—namely, Peter Dorsey, Mark McKenney, and Romolo A Marsella. Together, they established that the Association, in concert with the Fire District, (1) owns legal title to the streets; (2) maintains the streets (e.g., by plowing them and paving them); (3) has negotiated with

[4] That roadway has a striking view of Greenwich and Narragansett Bays. In the exhibits, the hedgerow appears low so that the view of the water is preserved.

the city regarding installation of sewers along the streets (circa 2004); and (4) has repeatedly advised members that the Association owns certain lands with large street widths and that permission needs to be obtained in order to do construction on its property. Each of them also testified that the waterfront lot is an area commonly used by others for Fourth of July celebrations, access to the beach, and other waterfront uses. While the Association attempts to police the practice and, on occasion, give formal approvals, some residents have added fences or plantings without the Association's consent.

Mr. Dorsey added that ten to twelve years ago, he and his son fished from the waterfront lot, as he thought it was common land. In addition, he testified that he viewed a hurricane from the lot about ten years ago and that he used the stairs on the lot to get to the common beach more than fifteen years ago. He distinctly recalled Fourth of July parties when the Zigerellis resided in the home.

Harry Miller, a land surveyor, testified regarding the legal title of the Clarks' property and the road. He noted how it would be difficult to ascertain the boundaries of each by merely standing on the site. Further, Ron Phipps, Ms. Martins-Phipps' husband and a prominent realtor for many properties in the area, also testified. He testified that he gave brochures routinely since the 1970s and that at least since 1989, they included plat maps. He also testified that the Freemans normally kept the gate to the waterfront area open and that people were on the grassed area "regularly." According to Mr. Phipps, the gate was never locked during the Zigerellis' ownership of 243 Promenade Avenue.

On March 19, 2014, the Clarks filed a two-count complaint, alleging adverse possession and acquiescence as to the waterfront lot. On April 20, 2012, the Association filed a Notice of

Intent to Dispute Interrupting Adverse Possession, as provided by G.L. 1956 § 34-7-6.[5] This Court, sitting with a jury, held a bench trial, from which the above facts are gleaned.

A

Witness Credibility

In State v. Forbes, 925 A.2d 929, 935 (R.I. 2007), our Supreme Court encouraged lower courts to articulate their assessment of witnesses' credibility. Except as stated below, this Court finds each witness's testimony to be credible. Although each was confident of his or her property rights, this Court notes that most of the witnesses were not in conflict with one another and were well-spoken and reasonable in their demeanor.

First, as indicated above, Mr. Freeman claimed at trial that at the request of Mr. Marsella, his neighbor, he "hastily signed" the above-referenced August 9, 2013 written statement. That document is significant because Mr. Freeman disagreed at trial with some important provisions therein—namely Paragraph 9, which provides that Mr. Freeman "understood that the property [i.e., the grassed area located north of the concrete patio and south of the paved area of

[5] This statute, entitled "Notice of intent to dispute interrupting adverse possession," provides, in part, as follows:

> "Whenever the legal owner of any lands anticipates that any other person or persons may obtain the title to those lands, or any way, easement or privilege therein, by possession under the provisions of this chapter, he or she may give notice in writing to the person claiming or using the lands, way, easement, or privilege, of his or her intention to dispute any right arising from that claim or use; and the notice, served and recorded as hereinafter provided, shall be deemed an interruption of the use and prevent the acquiring of any right thereto by the continuance of the use for any length of time thereafter. . . ." Sec. 34-7-6.

Our Supreme Court has recognized that by enacting that statute, "the General Assembly has provided landowners of record with a statutory mechanism to interrupt potential claims of adverse possession." Beauregard v. Gouin, 66 A.3d 489, 494 (R.I. 2013).

Promenade Avenue] was owned by the Fire District or the Beach Association." While this Court finds Mr. Freeman to be a pleasant man caught in a dispute between his friends and neighbors, it seriously questions his credibility. Specifically, this Court is not convinced by Mr. Freeman's testimony that he "hastily" signed the written statement and that he now disagrees with Paragraph 9 therein. Mr. Freeman is intelligent, professional, formal, and seemed very concerned about the accuracy of what he stated, as he carefully selected his words throughout his testimony. He has owned businesses and often uses written contracts. His precision and demeanor leave this Court to believe that he would be the type of person to be precise when presented with a document requiring his signature. This Court thus finds incredible Mr. Freeman's testimony, and it finds further that he read the August 9, 2013 document and found the facts and statements therein to be accurate at the time that he signed it.

Moreover, this Court notes that at the time of trial, it had been many years since the Weichers and Mr. Hurley had occupied the property. While this Court recognizes that they each believed that they owned both the house lot and the waterfront lot outright (but for the paved road itself), they had no reason to focus on many of the issues presented at trial because no one had challenged their interests at the time.

In addition, this Court notes that because Mr. Zigerelli knows the Association well, it does not find credible his testimony that he knew before closing that the width of Promenade Avenue was eighty feet wide and that he recognized the road was larger than it appears, but had no issue with it. His testimony was also not forthcoming on cross-examination, where he provided limited answers and limited his recollection. On the other hand, this Court finds credible Ms. Zigerelli's testimony. She was prepared, firm, well-spoken, and sharp.

Further, Ms. Clark's credibility was damaged several times. On one occasion, she indicated that she had not seen a survey, even though early home improvements were surveyed by the same person who prepared the Clarks' survey for this title dispute. It is difficult to accept her surprised reaction when she learned, much later, that so much of her property was in the Association's title. As indicated above, Ms. Clark also recounted going to the 2010 summer meeting of the Association. Many other witnesses recounted how maps were posted on walls, and ownership of the roads and common land was described. Accordingly, the Court finds her testimony less than credible on these points, and questions the weight of her testimony.

II

Standard of Review

Rule 52(a) of the Rhode Island Superior Court Rules of Civil Procedure 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). In such a case, "[t]he trial justice sits as a trier of fact as well as of law." 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 witnesses, and draws proper inferences." Id.; see also Rodriques v. Santos, 466 A.2d 306, 312 (R.I. 1983) (noting that the question of who is to be believed is one for the trier of fact). When rendering a decision in a non-jury trial, "[t]he trial justice need not engage in extensive analysis to comply with this requirement." White v. LeClerc, 468 A.2d 289, 290 (R.I. 1983). Thus, "[e]ven brief findings will suffice as long as they address and resolve the controlling factual and legal issues." Id.

III

Analysis

A

Adverse Possession

1

Elements

In an adverse possession case, "[t]he party claiming adverse possession must establish each of [the adverse possession] elements by 'strict proof, that is, proof by clear and convincing evidence.'" Tavares v. Beck, 814 A.2d 346, 350 (R.I. 2003) (quoting Carnevale v. Dupee, 783 A.2d 404, 409 (R.I. 2001)). Clear and convincing evidence is evidence sufficient to persuade the factfinder that a proposition is "highly probable" or that "produce[s] . . . a firm belief or conviction that the allegations in question are true." Cahill v. Morrow, 11 A.3d 82, 87 n.7 (R.I. 2011) (internal citations omitted).

Section 34-7-1 sets forth the elements necessary to establish a claim for adverse possession:

> "Where any person or persons, or others from whom he, she, or they derive their title . . . shall have been for the space of ten (10) years in the uninterrupted, quiet, peaceful and actual seisin and possession of any lands . . . claiming the same as his, her or their proper, sole and rightful estate in fee simple, the actual seisin and possession shall be allowed to give and make a good and rightful title to the person or persons, their heirs and assigns forever . . . ." Sec. 34-7-1.

Under this statute, a party who does not hold record title to property thus may obtain title by occupying the land in a manner consistent with the statute for a period of ten years. Id. The owner may also tack on the period of possession of his predecessor from whom he derived title.

Sec. 34-7-1. Our Supreme Court "has long held that to establish adverse possession, a claimant's possession must be 'actual, open, notorious, hostile, under claim of right, continuous, and exclusive' for at least ten years."' Tavares, 814 A.2d at 350 (quoting Sherman v. Goloskie, 95 R.I. 457, 465, 188 A.2d 79, 83 (1963)). As mentioned above, the party asserting adverse possession must prove each element thereof by clear and convincing evidence. Id.

As to the first element of adverse possession, "actual" possession, the term "actual" is quite literal in its definition; it has been defined as the "use and occupation of the property, or as possession in fact, effected by actual entry on, and actual occupancy of, the premises." 3 Am. Jur. 2d Adverse Possession § 18 at 101-102 (2009). "The elements of 'actual' and 'continuous' possession are successfully established when the claimant shows that 'the use to which the land has been put is similar to that which would ordinarily be made of like land by the owners thereof.'" Anthony v. Searle, 681 A.2d 892, 897 (R.I. 1996) (quoting Lee v. Raymond, 456 A.2d 1179, 1183 (R.I. 1983)); see also Sherman, 95 R.I. 457, 188 A.2d. at 84 (noting that to determine whether a person claiming a land through adverse possession actually possesses the property, the court must consider the "character and locality, and the uses and purposes" of the disputed land) (citation omitted).

Our Supreme Court has held that '"[i]t is necessary that [the use] be continuous only in the sense that the claimant exercised a claim of right without interference at such times as it was reasonable to make a proper use of the land."' See Russo v. Stearns Farms Realty, Inc., 117 R.I. 387, 392, 367 A.2d 714, 717 (R.I. 1977) (quoting LaFreniere v. Sprague, 108 R.I. 43, 52-53, 271 A.2d 819, 824 (1970) Reargument Denied (Jan. 12, 1971)). "[T]he ultimate fact to be proved in adverse possession is that the claimant has acted toward the land in question 'as would an average owner, taking properly into account the geophysical nature of this land.'" Gammons v.

Caswell, 447 A.2d 361, 368 (R.I. 1982) (quoting 7 Powell The Law of Real Property § 1018 at 740 (1981)). "Cultivating land, planting trees, and making other improvements in such a manner as is usual for comparable land have been successfully relied on as proof of the required possession." Id.; see also Acampora v. Pearson, 899 A.2d 459, 467 (R.I. 2006) (finding claimant's mowing of grass, maintaining property and holding outdoor activities was consistent with the actions of a true owner of a side yard). Of note, year-round occupation is not required to prove actual and continuous possession. See Lee, 456 A.2d at 1183 (finding summer camping in disputed parcel sufficiently continuous where such use was consistent with the use of neighboring owners with like properties).

The next elements required for a claimant to establish adverse possession are "open and notorious." Specifically, "claimants must show that their use of the land was sufficiently open and notorious to put a reasonable property owner on notice of their hostile claim." Tavares, 814 A.2d at 352. Our Supreme Court has repeatedly held that "'no particular act to establish an intention to claim ownership is required to give notice to the world of the claim,' and that '[i]t is sufficient for the claimant to go upon the disputed land and use it adversely to the true owner.'" McGarry v. Coletti, 33 A.3d 140, 145 (R.I. 2011) (quoting Lee, 456 A.2d at 1183 (R.I. 1983)). At the same time, "the requisite act must 'put a reasonable property owner on notice' that his property is being claimed." Id. (citation omitted). The owner then "becomes chargeable with knowledge of whatever occurs on the land in an open manner," id., "whether or not it could be observed from the road or from the boundary of the property." Tavares, 814 A.2d at 352.

In Carnevale v. Dupee, 853 A.2d 1197, 1201 (R.I. 2004), our Supreme Court explained that for purposes of establishing open and notorious use, "[t]he proper inquiry [is] whether the party claiming ownership by adverse possession used the property in a manner consistent with

how owners of similar property would use such land and whether these uses [are] inclined to attract attention sufficient to place the world on constructive notice." The Court also stated that "the fact that a portion of land is inaccessible and not easily visible to the record owner is not conclusive evidence that the claimant's use was not 'open and notorious.'" Id. at 1200. The Court ultimately found that an adverse possessor had met the "open and notorious" elements of adverse possession because he frequently mowed the disputed land and maintained a fence that surrounded the property. Id.; see also Acampora, 899 A.2d at 467 (holding that the adverse possessors proved "open and notorious" use of the disputed land by showing that they used it "as any owner of [that] residential land would—they cut the lawn, maintained the property, and used it for outdoor activities"); Gammons, 447 A.2d at 367, 368 (R.I. 1982) (affirming finding that clearing away underbrush, planting lawns, establishing gardens, and planting trees was enough for the landowner to assert claim of ownership as to particular parcel of property); contra McGarry, 33 A.3d at 146, 147 (affirming finding that purported adverse possessor did not establish open and notorious use over a thirty-three year period because—although he "laid crushed stone on the disputed parcel on two occasions" and "planted several trees on the disputed property"—(1) he "did not [regularly] maintain a lawn on the disputed parcel, nor did he erect a fence or any other structure"; and (2) his maintenance of the disputed property, through a landscaper, "comprised primarily of 'pick[ing] up debris' and clearing away 'weeds and anything that was dead or broken,'" which was "insufficient to constitute 'open and notorious' use").[6]

[6] As an aside, our Supreme Court has noted that it was "hard-pressed to find any significant distinction in [] case law between an open use and a notorious use." Caluori v. Dexter Credit Union, 79 A.3d 823, 830 (R.I. 2013).

Next,

> "the term 'hostile' does not connote a communicated emotion but, rather, action inconsistent with the claims of others. A person is a hostile occupant of the land when he mistakes his boundary but continuously asserts dominion over the property for the statutory period." Lee, 456 A.2d at 1183.

A possessor's use is hostile if it is "a use 'inconsistent with the right of the owner, without permission asked or given . . . such as would entitle the owner to a cause of action against the intruder [for trespass].'" DiPippo v. Sperling, 63 A.3d 503, 508 (R.I. 2013) (citations omitted); Of note, our Supreme Court has noted that requiring "adverse possession under a claim of right is the same as requiring hostility, in that both terms simply indicate that the claimant is holding the property with an intent that is adverse to the interests of the true owner." Id. at 508 (internal quotations and citations omitted). A claim of right "will arise by implication through objective acts of ownership that are adverse to the true owner's rights, one of which is to exclude or to prevent such use." Reitsma v. Pascoag Reservoir & Dam, LLC, 774 A.2d 826, 826 (R.I. 2001); see also Carnevale, 853 A.2d at 1201 (finding evidence that claimant mowed grass, maintained vegetation and constructed a fence suggested claimant was acting under a claim of right); DeCosta v. DeCosta, 819 A.2d 1261, 1264 (R.I. 2003) (finding fence erected approximately one foot beyond the hedgerow was a further encroachment onto plaintiffs' property and clearly adverse to plaintiffs' ownership interests).

Finally, to establish that a purported adverse possessor's use of the land was not exclusive, there must be evidence to show that "others had made improvements to the land or, at the very least, had used the land in a more significant fashion than merely walking across it." Gammons, 447 A.2d at 368. For example, "a record owner who merely surveys the land and

informs the adverse claimant of the survey" does not constitute a sufficient interruption to break the continuity and exclusivity of the adverse claimant's possession. Carnevale, 783 A.2d at 411.

2

Application of Law to Facts

Here, the Clarks must establish that their or their predecessors' possession of the waterfront lot was "actual, open, notorious, hostile, under claim of right, continuous, and exclusive" for at least ten years. See id. at 412 (noting that "an adverse claimant may 'tack on the period of possession of his predecessor from whom he derived title'") (citation omitted). Because the Association filed its Notice of Interruption on April 20, 2012, the relevant ten-year statutory window for adverse possession purposes would be from April 20, 2002 until April 20, 2012. When the trial concluded, however, the Clarks argued that there are two relevant ten-year periods for purposes of adverse possession: first, the ten years from 1986 until 1996—i.e., during the Weichers' and the Hurleys' ownership of 243 Promenade Avenue—and, second, from April 20, 2002 until April 20, 2012—i.e., during the Zigerellis', Freemans', and the Clarks' ownership of 243 Promenade Avenue. This Court will first start with the ten-year period from April 20, 2002 until April 20, 2012, and, if necessary, it will then consider any prior ten-year period, starting in 1986 with the Weichers.

a

The Ten-Year Period from April 20, 2002 until April 20, 2012

Given that the Zigerellis occupied 243 Promenade Avenue in April 2002, this Court will first consider whether, during the Zigerellis' ownership of 243 Promenade Avenue, the Clarks have established by clear and convincing evidence each element of adverse possession as to the waterfront lot. First, as to the actual and continuous element, this Court notes that the Zigerellis

testified that during their ownership of 243 Promenade Avenue, they not only maintained the entire lawn and hedges on the waterfront lot, but they also installed a new brick walk, hedges, and underground sprinklers on the grassed areas on each side of Promenade Avenue. This Court finds that the first element of adverse possession is met as to the Zigerellis. See Gammons, 447 A.2d at 368 (acknowledging that "'[c]ultivating land, planting trees, and making other improvements in such a manner as is usual for comparable land [has] been successfully relied on as proof of the required possession'") (citation omitted).

As to open and notorious possession of the waterfront lot, this Court finds that the Zigerellis' outdoor improvements and maintenance of that lot, as discussed above, were visible to the Association. See Reitsma, 774 A.2d at 834-35 (finding that placing a permanent physical structure on another's property without the owner's permission and maintaining it for ten years is "so inconsistent with the true ownership of that property that it is therefore notorious, adverse, hostile, and under claim of right as a matter of law") (emphasis removed). Thus, though there was a preexisting lawn and fence, the open and notorious elements of adverse possession are likewise met as to the Zigerellis. Carnevale, 853 A.2d at 1201; contra McGarry, 33 A.3d at 147 (agreeing with finding that defendant did not satisfy the "open and notorious" element of adverse possession because the maintenance and improvements made thereon—e.g., laying crushed stone on the disputed parcel on two occasions over a 30-year period, planting trees that he did not prove were dissimilar than the ones already growing on the property, and clearing the area of debris and dead branches and trees—were "'less than obvious'").

The Zigerellis interrupt the claim by the Clarks for adverse possession to the waterfront lot because their actions were not hostile to the Association's interest during their ownership of 243 Promenade Avenue. For example, Ms. Zigerelli—who, as stated above, has been found

quite credible—testified (1) that she recognized from the Association's handbook and by attending the Association's meetings that she needed approval or permission for some of the landscaping on the waterfront lot; and that (2) she submitted a written request to the Association to improve that property. Ms. Zigerelli testified that she received the Association's approval in 1999 when the Zigerellis landscaped the waterfront lot and installed the two gates and walkway thereon. Indeed, it is axiomatic that permission defeats a claim of adverse possession. See Tavares, 814 A.2d at 351 (quoting 16 Powell on Real Property § 91.05[1] at 91–23 (2000)) (noting that "to constitute a hostile use, the adverse possessor need only establish a use inconsistent with the right of the owner, *without permission asked or given* . . ."") (emphasis added); see also Air Stream Corp. v. 3300 Lawson Corp., 952 N.Y.S.2d 608, 612 (2012) (noting in an adverse possession case that "hostility is negated by seeking permission for use from the record owner"). Although Ms. Zigerelli could not locate a copy of any writings and, in fact, stated that she was unsure if she received the Association's approval in writing, this Court nonetheless finds Ms. Zigerelli's testimony credible not only as to her knowledge that she needed the Association's approval for any improvements to the property, but also as to the fact that she indeed sought the Association's permission for the improvements. Cf. Barrow v. D & B Valley Assocs., LLC, 22 A.3d 1131, 1135 (R.I. 2011) ("Because [the plaintiffs' predecessors] had permission from [a neighbor] to make use of the strip of land between lot No. 255 and the stone wall located on lot No. 4–A, the permissive nature of that use could only become hostile when that permission was withdrawn or when the nature of the use changed.").

Moreover, there is no evidence that the Zigerellis ever claimed ownership of the waterfront lot. In fact, Mr. Freeman's August 9, 2013 statement reveals that upon the Freemans' purchase of 243 Promenade Avenue from the Zigerellis, the Zigerellis never represented to the

Freemans that they owned the waterfront lot. (Freeman Statement ¶ 17.) The Zigerellis' behavior in this respect is an objective recognition of the Association's superior interest in that lot. See DiPippo, 63 A.3d at 509 (agreeing with finding that plaintiff did not establish the hostility element because "[w]hen [defendants] became the owners of the property[, plaintiffs] asked for permission to anchor the hammock in the disputed area," which served as an acknowledgment that plaintiffs did not have superior title over the disputed property); cf. Cahill, 11 A.3d at 93 (While "an offer to purchase does not automatically invalidate a claim already vested by statute . . . the objective manifestations that another has superior title, made after the statutory period and not made to settle an ongoing dispute, are poignantly relevant to the ultimate determination of claim of right and hostile possession during the statutory period.").

Further still, the Zigerellis did not use the waterfront lot exclusively. Again, while there is no evidence that the Association made improvements on that lot during the Zigerellis' ownership of 243 Promenade Avenue, credible testimony by the Zigerellis, Mr. Dorsey, and Mr. Phipps establishes that the Zigerellis welcomed everyone onto the waterfront lot. They allowed and encouraged the Association's residents to gather thereon for Fourth of July celebrations, viewing the airshow, and other waterfront uses. Contra Gammons, 447 A.2d at 368 (finding nothing in the record suggesting that defendants used the land in a significant fashion and acknowledging that purported adverse possessor met the exclusivity element because he "posted a sign on [the street] to keep people out and verbally disputed any claim of a right of way"). Just as the Freemans' actions, the Zigerellis' actions likewise suggest that "at the very least . . . the land [was used by others] in a more significant fashion than merely walking across it." Id.

Even assuming that each element of adverse possession has been met as to the Zigerellis, who owned 243 Promenade Avenue during April 2002, this Court must still find that those

elements are met as to the Freemans, who owned 243 Promenade Avenue after the Zigerellis until June 2009. First, as to the Freemans' actual and continuous possession of the waterfront lot, it is true that the evidence at trial established that the Freemans maintained that property in a way that one would expect a rightful owner to make—i.e., by cutting the grass and hedges. See, e.g., Ex. 47 ¶ 20 ("I [Mr. Freeman] mowed the lawn and trimmed the bushes" on the waterfront lot). That use would thus establish actual and continuous possession of the waterfront lot. Acampora, 899 A.2d at 467; see also Sherman, 95 R.I. at 463,188 A.2d. at 84 (acknowledging that by hunting, fishing, wood cutting, picking berries and fruits, and renting campsites on the rural and unimproved disputed land, the purported adverse possessor established "actual" possession because he used it in a manner in which owners of like land make use thereof).

Second, in terms of the Freemans' open and notorious use of the waterfront lot, the Freemans cut the grass and maintained the hedges thereon. Of course, these outdoor activities were visible to the Association, and the Association thus "becomes chargeable with knowledge of whatever occurs on the land in an open manner." McGarry, 33 A.3d at 145 (citation omitted). Indeed, there was no evidence that the Association—in lieu of, or in addition to, the Freemans—maintained or erected any structure on the waterfront lot. Accordingly, this Court finds that the Freemans' actions within the waterfront lot were sufficiently open and notorious to give the Association either actual or constructive knowledge of the Freemans' use of the subject land. Carnevale, 853 A.2d at 1201 (finding that an adverse possessor had met the "open and notorious" elements of adverse possession because he frequently mowed the disputed land and maintained a fence that surrounded the property).

Further, the Freemans' use of the waterfront lot was hostile to the Association's interest therein, as the evidence establishes that "without permission asked or given," the Freemans

mowed the lawn and maintained the waterfront lot without interference from the Association. DiPippo, 63 A.3d at 508; Ex. 47 ¶ 20. This use of the land would thus "'entitle the owner [here, the Association] to a cause of action against the intruder [here, the Freemans] [for trespass].'" Id. (citations omitted); see Acampora, 899 A.2d at 467 (noting that adverse possessors acted with the requisite hostility and "maintained the land in a manner that is usual for the owners of residential property" because, in part, they "regularly mow[ed] and fertilize[d] the grass up to, around, and beyond the tress" that marked the property's boundary); Carnevale, 853 A.2d at 1201.

It is true that (1) Ms. Freeman recognized that the Association needed to approve work done to the waterfront lot, and (2) Mr. Freeman's written statement provides that even though he maintained the lot, he understood the Fire District or the Association to own "the grassed area and bushes" on it. That there is evidence to establish that the Freemans knew that the Association owned the waterfront lot is not, however, relevant to the analysis regarding the hostility element. See Tavares, 814 A.2d at 351 (noting that an adverse possessor "'need not be under a good faith mistake that he or she had legal title to the land'") (citation omitted); Anthony, 681 A.2d at 898 ("[T]he ultimate fact to be proved in adverse possession is that the claimant has acted toward the land in question 'as would an average owner, taking into account the geophysical nature of this land.'") (citation omitted).[7]

[7] At the same time, this Court notes that the mere mowing of grass in a developed residential area seems contrary to a claim for adverse possession. That is, while mowing another's lawn is technically hostile to that owner's interest, it is doubtful that such an owner would complain of such an action. See, e.g., Twp. of Jubilee v. State, 937 N.E.2d 769, 777 (2010), aff'd, 2011 IL 111447, 960 N.E.2d 550 ("We begin by noting that the mere mowing of grass alone is generally insufficient to support a finding of adverse possession."); Blaylock v. Holland, 396 S.W.3d 720, 723 (Tex. App. 2013) ("Mowing the grass, planting flowers, and maintaining a hedge are not sufficient hostile acts to give notice of an exclusive adverse possession.") (citations omitted); Rosa v. Obar, No. CV000156932, 2004 WL 113625, at *3 (Conn. Super. Ct. Jan. 9, 2004)

The stumbling point for the Clarks is their need to establish that the Freemans used the waterfront lot exclusively. As indicated above, Mr. Hurley's testimony, coupled with Mr. Freeman's written statement, establishes that since the early 1990s—even before the Freemans owned 243 Promenade Avenue—Mr. Freeman, as well as others, fished off the seawall via the waterfront lot. Moreover, the testimony of Mr. Dorsey, Mr. Phipps, and Ms. Martins-Phipps also established the regular use of the waterfront lot for Fourth of July celebrations and for watching airshows. In addition, the Freemans testified at trial that even before having title to 243 Promenade Avenue, they would join other neighbors on the waterfront lot and have Fourth of July parties, or watch the Fourth of July fireworks thereon. Mr. Freeman's written statement also establishes that during the Freemans' ownership of 243 Promenade Avenue, they allowed their neighbors (the Association's residents) to access the waterfront lot. Thus, this Court is not persuaded that the Clarks established the element of exclusivity by clear and convincing evidence. See Tracy v. The Norwich & Worcester R.R. Co., 39 Conn. 382, 392 (1872) (rejecting a plaintiff's adverse possession claim to an island based on activities such as fishing, mowing, and clearing land on that island because, in part, others besides that plaintiff routinely used the island for fishing and for the storage of boats, thus negating the exclusive possession requirement).

While there is no evidence to establish that the Association made improvements to that land, there is compelling evidence that members of the community openly fished off the seawall via the waterfront lot, used that parcel to have Fourth of July parties, and watched airshows and fireworks thereon, all of which satisfies this Court that "at the very least . . . the land [was used]

(noting that "[n]ormally, one tolerates intrusions such as lawn mowing in the interests of neighborhood harmony and friendship"). Thus, here, the mowing of land owned by a beach association—the title owner to many small lots in the development—was likely welcomed by all.

in a more significant fashion than merely walking across it." Gammons, 447 A.2d at 368; see also First Mendon Assocs., LLC v. Dumas, No. Civ.A. PC 99-2144, 2003 WL 21018276, at *4 (R.I. Super. Apr. 23, 2003) (Indeglia, J.) (concluding at the Superior Court that defendant's use of gravel driveway and parking area was exclusive, in light of (1) defendant's testimony that he maintained the land so "everybody" could use it; and (2) other testimony that others used that land to avoid backing out onto another street and parking off street); contra Taffinder v. Thomas, 119 R.I. 545, 551, 381 A.2d 519, 522 (1977) (affirming finding that plaintiffs established dominion over the parcel to the exclusion of others because their predecessor in interest (1) parked his car continuously on the disputed parcel; (2) frequently asked the owners of other vehicles, including the defendants' tenants, to remove their cars from the area; (3) placed no parking signs; and (4) shoveled snow, raked leaves, and trimmed the grass on part of the parcel, all of which duties plaintiffs assumed when they bought the property).

In sum, and even assuming that the Clarks have met each element of adverse possession during their ownership of 243 Promenade Avenue—i.e., from June 2009 until April 2012—their adverse possession claim for the period beginning on April 20, 2002 and ending on April 20, 2012 fails because this Court does not find that there is clear and convincing evidence to establish each element of adverse possession during the Zigerellis' and the Freemans' possession of that property.

b

The Ten-Year Period from 1986 to 1996

The Clarks also suggest that adverse possession was established for the period of 1986 to 1996. Therefore, this Court must determine whether the Clarks' predecessors in interest have

satisfied by clear and convincing evidence each element of adverse possession from January 1986 until 1996.[8]

First, there is little dispute that from January 1986 until October 1989, the Weichers' use of the waterfront lot was actual, open, notorious, hostile, under claim of right, continuous, and exclusive. As indicated above, Mr. Weichers testified not only that he removed some fencing on the waterfront lot, planted hedges along the street sides of both lots, and put in gates, walkways, sprinkler systems, and new grass, but also that he asked no one for permission and does not recall seeing anyone on the waterfront or house lots. See Acampora, 899 A.2d at 466-67 (finding that plaintiff established title to the land at issue by adverse possession because, in pertinent part, (1) she regularly mowed and fertilized the lawn past her boundary line; (2) she maintained the property; (3) she and her family used the area for recreational activities; (4) she used the disputed area without permission and for her own purposes, "in a manner that was inconsistent with [the] neighbor's record ownership of the land"; and (5) "[t]here were no claims to the land by any other parties and no evidence that anyone besides [plaintiff] and her family used the property").

The Hurleys possessed 243 Promenade Avenue from October 1989 to February 1999. Mr. Hurley testified at trial that he maintained the waterfront lot and never asked for permission to do so. This Court finds that the Hurleys used the waterfront lot in an actual, open, and notorious manner. Given, however, Mr. Hurley's testimony that (1) everybody had use of the

[8] Parenthetically, the Court questions whether it is appropriate to look back to an older period at this late date. There is no proof that the Clarks had any knowledge of the use of the property in the 1980s. It is obviously more challenging to defend one's property when an alleged taking occurred nearly thirty years prior to the filing of the complaint, and to look back at distant prior owners' use of the lots. Here, the property had been conveyed some four times since the Weichers were owners. Since then, any adversity seems to have been curtailed by the Zigerellis, and others, who allowed open and nonexclusive use of the waterfront area.

property that wanted to; (2) people in the neighborhood used the waterfront lot for beach access without asking for permission; and (3) he installed steps and a railing for easier access to the beach, this Court does not find that there is clear and convincing evidence that the Hurleys' possession of the waterfront lot was hostile to the Association's interest or exclusive. Contra Taffinder, 119 R.I. at 545, 381 A.2d at 522 (finding, in part, that plaintiffs exercised dominion over the subject property to the exclusion of others because their predecessor in interest continuously parked on that property, frequently asked people to get off that property, and placed a "No Parking Private" sign in front of the building). Indeed, when coupled with Mr. Hurley's testimony, the testimony of Mr. Freeman—e.g., that (1) since the early 1990s he fished off the seawall on the waterfront lot without asking anyone for permission; and (2) the community had parties on the waterfront lot—as well as that of Ms. Martins-Phipps—e.g., that people have fished off the waterfront lot and others have watched the nearby air shows therefrom—further refutes the possibility that the Hurleys used the waterfront lot exclusively. Cf. Lee, 456 A.2d at 1184 (determining that the exclusivity element to adverse possession was met because "[d]uring the statutory period, the [defendants], unlike the [purported adverse possessors], neither improved the parcel nor made any use of it other than to pass through it to visit neighbors on social calls, as is the custom on Block Island").

Thus, when this Court assesses the credibility and weight of all of the evidence, it finds that the Clarks fall far short of establishing by clear and convincing proof that they and their predecessors in interest—beginning with the Weichers—had continuous possession of the waterfront lot that was active, open, notorious, under claim of right, exclusive and hostile to the Association. The Clarks' claim to the waterfront lot under the theory of adverse possession must thus fail, and the Association is entitled to judgment as to such claim.

B

Acquiescence

The Clarks next claim title to the waterfront lot pursuant to the doctrine of acquiescence. At trial, the Clarks did not press their claim for acquiescence. They nonetheless argue in their post-trial papers that Exhibit 46, which is a photograph taken in or around 1986, depicts that the north hedge (adjacent to Promenade Avenue and in front of the house) marks the southerly boundary of the house lot, while the fence marks the northern boundary of the waterfront lot. The Clarks contend that Mr. Weichers removed that fence and replaced it—without permission and uninterrupted—with the hedges. Those hedges, the Clarks argue, have served as a boundary marker until, at the earliest, August 2012, at which time the Association filed a Notice of Interruption.

"The doctrine of acquiescence permits a claimant to 'gain title to a defendant's property . . . despite the fact that [the] defendant had record title.'" Banville v. Brennan, 84 A.3d 424, 430 (R.I. 2014) (quoting DelSesto v. Lewis, 754 A.2d 91, 95 (R.I. 2000) (quoting Locke v. O'Brien, 610 A.2d 552, 555 (R.I. 1992))). "'[A] party alleging acquiescence must show that a boundary marker existed and that the parties recognized that boundary for a period equal to that prescribed in the statute of limitations to bar a reentry, or ten years.'" Acampora, 899 A.2d at 464-65 (quoting Locke, 610 A.2d at 556). Significantly, "the element of recognition may be inferred from the silence of one party (or that party's predecessors in title) . . . as well as by affirmative acts." Pucino v. Uttley, 785 A.2d 183, 187 (R.I. 2001). "[T]he claimant must prove that the purported boundary has been obvious to the allegedly acquiescing party[,]" and such boundary may be a man-made object, such as a fence, or even plants or hedgerows. Acampora, 899 A.2d

at 465 n.6. "Generally, 'the [boundary] line must be marked in a manner that customarily marks a division of ownership' and the marker must have been used for boundary purposes." Id. at 465.

"A determination of acquiescence is a mixed question of law and fact." Id. at 462. That is, "'the issue of what constitute[s] the boundaries of a parcel of land is a question of law, [but] the determination of where such boundaries are is a question of fact.'" Nye v. Brousseau, 992 A.2d 1002, 1009 (R.I. 2010) (quoting Norton v. Courtemanche, 798 A.2d 925, 932 (R.I. 2002)). Finally, "whether the boundary is sufficiently obvious to command notice is a question of fact." Acampora, 899 A.2d at 465. Unlike the standard of proof in an adverse possession claim, our Supreme Court has commented fairly recently that there is no case law "that the standard of proof required to establish acquiescence is clear and convincing evidence." Acampora, 899 A.2d at 465 n.8.

This Court notes that acquiescence is a doctrine meant to preclude owners of adjoining estates from denying a boundary line recognized by both owners. Locke, 610 A.2d at 556 (emphasis added); Acampora, 899 A.2d at 461 (noting that the dispute concerned "abutting waterfront lots"). This Court questions the applicability of that doctrine here, inasmuch as this case does not concern a boundary dispute between two neighbors. Moreover, although our Supreme Court has recognized that "homeowners often plant shrubs or bushes to mark a division of property in an aesthetically pleasing manner," see Acampora, 899 A.2d at 465, this Court finds no evidence suggesting that the hedges on the waterfront lot were used to mark a boundary between land owned by the owners of 243 Promenade Avenue and the Association. See id. ("Generally, 'the [boundary] line must be marked in a manner that customarily marks a division of ownership,' *and the marker must have been used for boundary purposes*.") (Emphasis added).

Instead, the aesthetic nature of the area, coupled with the repetitive, nonexclusive use of

the waterfront lot by many residents of the community, satisfies this Court that the hedges along the waterfront lot were placed purely for aesthetic reasons. Ms. Zigerelli, who planted the present hedges, made no reference to excluding anyone from the property—they seemed to welcome all visitors. Ms. Zigerelli's concern was to create a beautiful waterfront while limiting the wanderings of her young children. Compare id. at 461, 463 (holding that plaintiff established acquiescence in a boundary line between two adjoining lots where the plaintiff had "planted a row of thirteen or fourteen arborvitae" along the purported boundary) and DeCosta, 819 A.2d at 1262-63, 1265 (finding that the placement of hedgerows served as the line of demarcation between two parcels, in light of testimony that the parties planted those shrubs to "keep[] with the harmony and fellowship that existed between the families" and considered them the boundary line of the parcels), with Banville, 84 A.3d at 431 (noting, in part, that the row of trees at issue "was not specifically planted by either party in order to serve as a boundary maker nor is there any allegation that they consist of either arborvitae or a hedgerow that may be commonly understood to denote a boundary) and Chandler v. Hibberd, 165 Cal. App. 2d 39, 332 P.2d 133, 138 (1958) Hr'g Denied (Jan. 7, 1959) ("The evidence being undisputed does not support the finding of agreed boundary, for the simple reason that the fence was neither agreed upon nor intended as a boundary but was considered and understood as only a cattle barrier."). This Court thus finds that the Clarks have not established—by clear and convincing evidence or otherwise—that the hedges and/or the fence surrounding the waterfront lot have served as a boundary marker from the Weichers' possession of the property until August 2012. It accordingly rejects the Clarks' acquiescence claim.

IV

Conclusion

Based on the evidence before it, and after a careful review of the record, this Court finds that the Clarks have not established, by clear and convincing evidence, that they (and their predecessors in interest) have occupied the waterfront lot under a claim of right, and that they have done so in an actual, open, notorious, hostile, continuous, and exclusive manner. In addition, after carefully considering the Clarks' acquiescence argument as discussed above, this Court finds no evidence that the Clarks and their predecessors in interest intended that the hedges and/or the fence surrounding the waterfront lot serve as a boundary marker for that lot. For the foregoing reasons, this Court denies the Clarks' adverse possession and acquiescence claims. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	David Clark and Judith Clark v. Buttonwoods Beach Association
CASE NO:	KC-2014-0271
COURT:	Kent County Superior Court
DATE DECISION FILED:	August 30, 2017
JUSTICE/MAGISTRATE:	Lanphear, J.

ATTORNEYS:

For Plaintiff:	Stephen A. Rodio, Esq.
For Defendant:	John P. McCoy, Esq.; Todd J. Romano, Esq.