

STATE OF RHODE ISLAND

WASHINGTON, SC.

SUPERIOR COURT

(FILED: April 9, 2021)

HARRIET KNIFFER, TRUSTEE FOR THE :
HARRIET CHAPPELL MOORE :
FOUNDATION; JACQUELINE ABBERTON; :
ROBERT RUTTER AND PATRICIA RUTTER, :
TRUSTEES FOR THE RUTTER FAMILY :
REVOCABLE LIVING TRUST; and FRANCES :
W. KELLY, TRUSTEE FOR THE FRANCES :
W. KELLY TRUST :

v. :

C.A. No. WC-2016-0121

RHODE ISLAND AIRPORT CORPORATION; :
and STATE OF RHODE ISLAND :
DEPARTMENT OF TRANSPORTATION :

DECISION

TAFT-CARTER, J. This action concerns an avigation easement (Easement) recorded in 2015 by the Rhode Island Department of Transportation (RIDOT) on behalf of the Rhode Island Airport Corporation (RIAC) (collectively Defendants) regarding the Westerly State Airport. (Defs.’ Mem. Supp. Mot. Summ. J. (Defs.’ Mem.) Ex. 1 (Ex. 1).) Before the Court for decision are (1) Plaintiffs’ Jacqueline Abberton; Patricia and Robert Rutter as Trustees for the Rutter Family Revocable Trust; Frances W. Kelly as Trustee for the Frances W. Kelly Trust; and Harriet Kniffer, Trustee for the Harriet Chappell Moore Foundation (collectively Plaintiffs) Motion for Summary Judgment; and (2) the Defendants Motion for Partial Summary Judgment. *See* Pls.’ Mot. Summ. J; Defs.’ Mot. Summ. J. The parties have stipulated that the sole issue for the Court’s determination is whether RIDOT acted within the scope of its authority by exercising condemnation power to claim avigation easements over the Plaintiffs’ properties pursuant to G.L. 1956 §§ 1-2-3 and 37-6-1 *et seq.* *See* Ex. 1; Defs.’ Mem. at 5; Pls.’ Mem. Supp. Mot. Summ. J. (Pls.’ Mem.) at 2. The Court

has jurisdiction pursuant to Rules 56 and 57 of the Superior Court Rules of Civil Procedure and G.L. 1956 § 9-30-1 *et seq.*

I

Facts and Travel

The State of Rhode Island owns six of the eight operating airports within the state, including Westerly State Airport. (Agreed Statement of Facts (Facts) ¶¶ 31-32.) RIDOT leases the land of Westerly State Airport to RIAC. *Id.* ¶ 31. RIAC operates and manages Westerly State Airport, along with the other five state airports in Rhode Island. *Id.* ¶ 32. The Plaintiffs all own property near Westerly State Airport within the Town of Westerly. *Id.* ¶¶ 1-4; 7-10; 15-17; 19-21.

The Rhode Island State Properties Committee approved the Easement’s acquisition of the airspace above the Plaintiffs’ properties on March 17, 2015, and Governor Raimondo signed and RIDOT Director Alviti executed the Easement. *Id.* ¶ 24. On April 15, 2015, Susan M. Howe, on behalf of Colleen M. Kerr, RIDOT’s Chief Real Estate Specialist, executed a “Notice of Condemnation” that each Plaintiff received. *Id.* ¶ 23. On the same day, RIDOT on behalf of RIAC recorded the Easement affecting the Plaintiffs’ properties in the Town of Westerly land evidence records. (Ex. 1; Facts ¶¶ 24; 30.) RIDOT declared the Easement at the request of RIAC pursuant to §§ 1-2 and 37-6. (Facts ¶ 30.)

The purpose of the Easement was to “allow[] for the perpetual right for flight, including the unobstructed use and passage of all types of aircraft[.]” *Id.* ¶ 29. The Easement also allowed for keeping the area “free and clear of any and all objects[.]” *See* Ex. 1. As such, RIDOT sought to trim or remove trees obstructing airspace that were on the Plaintiffs’ properties. (Facts ¶¶ 5; 14.) Westerly State Airport has four runways, identified by numbers 7, 14, 25, and 32. *Id.* ¶ 25. These runways cross the airport in two diagonal lines: Runways 7 and 25 run from the southwest to the

northeast, and Runways 14 and 32 run from the northwest to the southeast. *Id.* ¶ 26. The Easement relevant to the Abberton, Kelly, and Rutter properties relates to Runway 7. *Id.* ¶ 27. The Easement relevant to the Kniffer property relates to Runway 14. *Id.* ¶ 28. A portion of the Abberton property was already encumbered by a 2010 aviation easement. *Id.* ¶ 4. Pursuant to the 2010 easement, RIDOT marked and removed trees on the Abberton property in 2014. *Id.* ¶ 5. RIDOT has not removed any trees pursuant to the 2015 Easement. *Id.* ¶ 14.

The Plaintiffs brought a declaratory judgment action pursuant to § 9-30-1 on March 8, 2016, arguing that a justiciable issue existed as to whether the 2015 Easement and Notices of Condemnation that the Plaintiffs received were valid. *See* Complaint ¶¶ 57-58. The Plaintiffs also moved pursuant to Rule 65 of the Superior Court Rules of Civil Procedure for a Temporary Restraining Order to enjoin the Defendants from exercising rights claimed through the Notices of Condemnation and Easement. *See* Pls.' Mot. TRO of Mar. 8, 2016, ¶¶ 1-2. The Court (Matos, J.) granted the Temporary Restraining Order on May 16, 2017. *See* Order of May 16, 2017.

The Plaintiffs filed an Amended Complaint on October 22, 2018, adding slander of title, intentional interference with property rights, trespass, violation of 42 U.S.C. § 1983, civil conspiracy, and private nuisance counts. *See* Am. Compl. The Defendants responded by moving to dismiss all counts pursuant to Rule 12(b)(6) of the Superior Court Rules of Civil Procedure on November 21, 2018. The Court (McGuirl, J.) converted the motion into one for summary judgment. *See* Order of May 28, 2019. Thereafter, the Defendants filed an Answer and a Counterclaim. *See* Answer at 40-41, ¶¶ 24-27. The Plaintiffs moved for summary judgment on all claims on November 2, 2020. On the same day, the Defendants filed a cross-motion for partial summary judgment. *See* Defs.' Mot. Summ. J. Both parties objected to the other's motion on November 23, 2020.

II

Standard of Review

Under Rule 56, summary judgment shall issue when “[the evidence shows] that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as matter of law.” Super. R. Civ. P. 56(c). As the parties have agreed to a set of facts, “[t]he facts in this case are not in dispute; therefore, we are confronted only with a question of law.” *See Waterman v. Caprio*, 983 A.2d 841, 844 (R.I. 2009) (citation omitted). “The purpose of summary judgment is issue finding, not issue determination.” *Saltzman v. Atlantic Realty Co., Inc.*, 434 A.2d 1343, 1345 (R.I. 1981).

“The issuance of declaratory judgments by courts in Rhode Island is controlled by statute, the Uniform Declaratory Judgments Act.” *Casco Indemnity Company v. O’Connor*, 755 A.2d 779, 781 (R.I. 2000). “In issuing a declaratory judgment, a trial judge makes all findings of fact without a jury.” *Id.* at 782. “The superior . . . court upon petition . . . shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” *See* § 9-30-1. “When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.” *See* § 9-30-11.

When a statute “is clear and unambiguous, [Rhode Island courts] give the words their plain and ordinary meaning.” *See 5750 Post Road Medical Offices, LLC v. East Greenwich Fire District*, 138 A.3d 163, 167 (R.I. 2016) (quotations omitted). When the Court “examine[s] an unambiguous statute, there is no room for statutory construction and [it] must apply the statute as written.” *Id.* (quotations omitted). “The plain meaning approach, however, is not the equivalent of myopic literalism, and it is entirely proper . . . to look to the sense and meaning fairly deducible from the

context.” *Id.* (quotations omitted). “Therefore[, the Court] must consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections.” *Id.* (quotations omitted). “It is generally presumed that the General Assembly intended every word of a statute to have a useful purpose and to have some force and effect[.]” *Id.* (quotations omitted). “This Court’s objective, therefore, is to give effect to the purpose of the act as intended by the Legislature.” *Id.* (quotations omitted). “However, ‘under no circumstances will this Court construe a statute to reach an absurd result.’” *Id.* (quotations omitted).

III

Parties’ Arguments

The Plaintiffs argue that the texts of §§ 1-3-10; 1-2-3; or 37-6-5 do not allow the Defendants to condemn their properties. *See* Pls.’ Mem. 11-12. They argue that RIDOT is not a “political subdivision” under § 1-3-2(6); their properties do not constitute part of an “airport,” “landing area,” or “runway” under §§ 1-2-3 or 1-2-3.1; and RIDOT did not take the Easements by purchase, lease, gift, or devise under § 37-6-5.¹ *Id.* at 13-20.

¹ The Plaintiffs also request the Court to consider proposed changes to § 1-2-3 from the 2020 legislative year and previous 1999 amendments to § 1-3-2(6) as evidence that DOT knew that it lacked condemnation via easement powers and of the General Assembly’s intent. *See* Pls.’ Mem. Exs. B-C. However, these proposed and previous changes are not relevant to the statute’s interpretation because the 2020 legislative session resulted in no changes having been made, and the prior versions of the statutes do not reflect the General Assembly’s present legislative intent. *See Solas v. Emergency Hiring Council of Rhode Island*, 774 A.2d 820, 826 (R.I. 2001) (“a trial court should apply the law in effect at the time it makes its decision if such application would implement the legislative intent.” (quotations omitted)).

The Plaintiffs further argue that the Defendants may not receive sovereign or public duty immunity and that the FAA is not a party to this action; however, the issue of sovereign or public duty immunity was previously analyzed by the court in *Coleman v. Windham Aviation, Inc.*, No. KC-2004-0985, 2006 WL 3004071 (Oct. 19, 2006) (Thompson, J.), and the parties here have stipulated that the only issue for the Court to resolve in these cross-motions is whether RIDOT acted within

The Defendants argue that §§ 1-3-10(3); 1-2-3; and 37-6-5(a) permit RIDOT to take avigation rights via easement. *See* Defs.’ Mem. 12. The Defendants further claim that they constitute a political subdivision under § 1-3-2(6); the Plaintiffs’ properties consist of approach zones to the airport’s runways and the trees thereon are hazards that they must remove; and the language of § 37-6-5(a) permits condemnation via easement. *Id.* at 13-17.

IV

Analysis

A

Easement

“There are essentially two types of avigation easements: clearance easements and flight easements.” *See Melillo v. City of New Haven*, 732 A.2d 133, 137 & n.11 (Conn. 1999) (quotations omitted). “A clearance easement is acquired to assure that no structure exceeds a maximum height, if structures are allowed at all.” *Id.* (quotations omitted). “This will give aircraft an unobstructed view and provide a safety margin for flights that may have to descend due to pilot error, poor weather conditions, etc.” *Id.* (quotations omitted). “The flight easement allows the frequent overflight of aircraft over the encumbered land and constitutes a separate and distinct easement from the clearance easement.” *Id.* (quotations omitted). A flight easement “may or may not contain provisions dealing with obstructions, but, unlike a clearance easement, in express terms it permits free flights over the land in question” and “provides for flights that may be so low and so frequent as to amount to a taking of the property.” *See United States v. Brondum*, 272 F.2d 642, 645 (5th Cir. 1959) (*Brondum*).

the scope of its authority by exercising its condemnation power to claim avigation easements over the Plaintiffs’ properties. *See* Pls.’ Mem. 2; Defs.’ Mem. 5.

Here, the Easement provides for “perpetual right for flight, including the unobstructed use and passage of all types of aircraft, whether now in existence or hereafter manufactured and developed, in and through the airspace at any height or altitude above the surface[.]” (Facts ¶ 29; Ex. 1 at 2.) The Easement also allows for maintaining the area “free and clear of any and all objects.” *See* Ex. 1 at 3. The purpose of the Easement is not only to allow for the clearing of obstructions from airspace but also to allow perpetual flight over the Plaintiffs’ properties. *See id.* Therefore, the Easement in question constitutes a flight easement. *See Brondum*, 272 F.2d at 645.

B

Title 1, Chapter 3, the “Airport Zoning Act”

The Defendants did not employ Title 1, Chapter 3 when exercising their condemnation power. (Facts ¶ 30.) Notwithstanding, both parties argue whether the Defendants had authorization to condemn interests in land pursuant to § 1-3-10. (Pls.’ Mem. 3; Defs.’ Mem. 12.) Condemnation pursuant to § 1-3-10 is limited to “political subdivisions.” *See* § 1-3-10. “Political subdivision[s]” are defined as “any city or town or any other public corporation, authority or district, or any combination of two (2) or more, which is currently empowered to adopt, administer and enforce municipal zoning regulations.” *See* § 1-3-2(6).

Here, RIAC is a public corporation and RIDOT is an agency of the State of Rhode Island, therefore satisfying the first element of the definition. (Compl. ¶¶ 5-6.) However, neither RIAC nor RIDOT has the authority to adopt, administer, and enforce municipal zoning regulations. *See* Pls.’ Mem. Ex. D at 8:10-14; 9:8-9; 66:9-19; Ex. E at 7:24-8:4; 122:16-123:10. Therefore, neither RIDOT nor RIAC constitute a political subdivision, as defined by § 1-3-2(6), and are not authorized to condemn property pursuant to § 1-3-10.

C

Title 1, Chapter 2, “Airports and Landing Fields”

The condemnation of the Plaintiffs’ properties was accomplished pursuant to Title 1, Chapter 2 and Title 37, Chapter 6. (Ex. 1; Facts ¶ 30.) Condemnation pursuant to Title 1, Chapter 2 requires that the property qualify as an “airport” or “landing field.” *See* § 1-2-3(a). Title 1, Chapter 2 defines “airport” and “landing field” as “any area of land designed and set aside for the landing and taking off of aircraft and utilized or to be utilized in the interest of the public for those purposes.” *See* § 1-2-3.1(1). A “runway” is defined as “that portion of an airport or landing field designed or set aside for use by aircraft in landing, taking off, or taxiing or moving of aircraft on the ground.” *See* § 1-2-3.1(2). In addition, “[a] runway shall be construed to include any projection or extension for use as an approach zone, and approaches as set forth in § 1-3-7.” *Id.*

Here, the parties agree that the Plaintiffs’ properties are within the airport’s approach zones; thus, the Plaintiffs’ properties fall within the statutory definition of a “runway” under § 1-2-3.1(2). (Pls.’ Obj. at 8; Defs.’ Mem. at 3.) *See* Pls.’ Mem. Ex. G (Ex. G) at 80:1-84:13; 86:4-90:22; Defs.’ Mem. Ex. 6 (Ex. 6); Defs.’ Mem. Ex. 7 (Ex. 7) at 7; Defs.’ Mem. Ex. 10 (Ex. 10). The condemnation clearly “set aside” the Plaintiffs’ properties, which were previously included as part of the airport’s approach zones. *See* Ex. 1. The rationale for condemning the Easement was to ensure safe approach zones to the airport by removing or trimming the trees on the Plaintiffs’ properties. *Id.* The language of § 1-2-3.1(2) clearly and unambiguously defines runways “to include any projection or extension for use as an approach zone[.]” *See* § 1-2-3.1(2). Thus, the Plaintiffs’ properties, as approach zones set aside for takeoff and landing, constitute part of the airport’s “runway,” as defined by § 1-2-3.1(2).

The Plaintiffs argue in favor of a disjunct reading of §§ 1-2-3 and 1-2-3.1 (Pls.’ Mem. 14-15.) Specifically, the Plaintiffs argue that approach zones, which constitute part of a runway as defined by § 1-2-3.1(2), are not constituent parts of an “airport.” *Id.* However, this argument ignores the plain text of that subsection, which provides that a “runway” “means *that portion of an airport or landing field. . .*” *See* § 1-2-3.1(2) (emphasis added). The definition of “runway” explicitly states that a “runway” is a portion of an “airport” or “landing field.” *See id.* Thus, under a plain and unambiguous reading of § 1-2-3.1(2), “runways,” which include “approach zones,” are constituent portions of “airports,” for which RIDOT may condemn an interest in land under § 1-2-3(a). *See* § 1-2-3.1; *see also* § 1-2-3(a) (granting RIDOT the authority to “purchase or condemn[], any land or any estate or interest in land within this state that it may deem necessary for a suitable airport”).

Because the Plaintiffs’ properties constitute approach zones that are a portion of the airport’s runways and the airport itself, the Court must now examine whether RIDOT complied with the requirements of § 1-2-3(a) prior to condemnation. *See* Ex. G at 80:1-84:13; 86:4-90:22; Ex. 6; Ex. 7 at 7; Ex. 10. The Defendants had the approval of both the State Properties Committee and Governor prior to condemning the Easement. (Facts ¶ 24.) Further, an easement is an interest in land. *See Easement*, Black’s Law Dictionary (11th ed. 2019) (defining “easement” as an “interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose”). Finally, as stated previously, the Plaintiffs’ properties constituted approach zones to the airport’s runways, meeting the statutory definitions of “runway” and “airport” under § 1-2-3.1. *See* Ex. G at 80:1-84:13; 86:4-90:22; Ex. 6; Ex. 7 at 7; Ex. 10. Therefore, for the reasons set forth herein, the Court concludes that RIDOT acted within

the scope of its authority when exercising its condemnation power to claim avigation easements over the Plaintiffs' properties.

D

Title 37, Chapter 6, "Acquisition of Land" by RIDOT

Regarding Title 37, Chapter 6, the Plaintiffs argue that the General Assembly only granted condemnation power to RIDOT for road purposes. *See* § 37-6-13. The Plaintiffs are correct that § 37-6-13 contains a specific grant of condemnation powers to RIDOT for road purposes. *See id.* However, § 37-6-13 does not apply here because RIDOT did not take the Easement for road purposes, but rather avigation. *See* Ex. 1. Instead, as stated above, § 1-2-3(a) contains a specific grant of condemnation power by the General Assembly to RIDOT to take interests in land for approach zones to runways of airports. *See* § 1-2-3(a). Thus, the Plaintiffs' argument that § 37-6-13 applies is unpersuasive.

The Plaintiffs also argue that RIDOT does not have the authority to condemn property for avigation purposes pursuant to § 37-6-5(a). (Pls.' Mem. 19-20.) However, the plain and unambiguous text of § 37-6-5(a) makes no such limitation but rather enables RIDOT "to take in fee simple or otherwise . . . by purchase . . . lands and other real property and rights, interests, estates, easements, and privileges therein . . . for the public use within the state of Rhode Island." *See Berthiaume v. DeSimone*, No. 1985-3823, 1986 WL 716014 (Feb. 12, 1986) (Cochran, J.) (finding that condemnation via easement is proper if RIDOT pays fair market value for the condemned property); *see also Ronci Manufacturing Co., Inc. v. State*, 121 R.I. 903, 911, 403 A.2d 1094, 1098 (1979) (state condemned a parcel of land that received back-flow water from a dam network under § 37-6-5(a)).

The Plaintiffs’ argument ignores the widely-understood legal definition of “take,” which Black’s Law Dictionary defines as including the ability “[t]o acquire (property) for public use by eminent domain; (of a governmental entity) *to seize or condemn property*” and “[t]o acquire possession by virtue of a grant of title, the use of eminent domain, or other legal means[.]” *See Take*, Black’s Law Dictionary (11th ed. 2019) (emphasis added). Therefore, the plain language of § 37-6-5(a) clearly enables RIDOT to condemn easements for public use. *See* § 37-6-5(a).

To condemn property, the statute also requires that RIDOT receive the State Properties Committee and the Governor’s approval and that RIDOT provide fair market value compensation for the property condemned. *See Berthiaume, supra*. Here, RIDOT took the Plaintiffs’ properties by recording the Easement and providing Notices of Condemnation to each Plaintiff. *See* Facts ¶¶ 23-24. The Rhode Island State Properties Committee approved the taking, which Governor Raimondo signed and Director Alviti executed. *Id.* ¶ 24. Thus, RIDOT acted within the scope of its authority when exercising condemnation power to claim avigation easements over the Plaintiffs’ properties, pursuant to § 37-6-5(a), provided it pays fair market value for the Easement. *See Berthiaume, supra*.

V

Conclusion

For the reasons stated herein, RIDOT acted within its scope of authority when it exercised its condemnation power to claim avigation easements over the Plaintiffs’ properties pursuant to §§ 1-2-3 and 37-6-1. Therefore, the Defendants’ Motion for Partial Summary Judgment is granted. Counsel shall prepare the appropriate order.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: Harriet Kniffer, Trustee for the Harriet Chappell Moore Foundation, et al. v. Rhode Island Airport Corporation and State of Rhode Island Department of Transportation

CASE NO: WC-2016-0121

COURT: Washington County Superior Court

DATE DECISION FILED: April 9, 2021

JUSTICE/MAGISTRATE: Taft-Carter, J.

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