

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-265

FEBRUARY TERM, 2004

	} APPEALED FROM:
	}
Allen Whitehead, Ann R.	} Essex Superior Court
Whitehead and James Fay	}
	}
v.	} DOCKET NO. 65-12-01 Excv
	}
Town of Maidstone	} Trial Judge: M. Kathleen Manley
	}
	}

In the above-entitled cause, the Clerk will enter:

Plaintiffs appeal from a superior court order affirming a decision of the County Road Commissioners that defendant Town of Maidstone was not required to maintain the class 4 road on which plaintiffs reside. Plaintiffs contend the court erred in concluding that the Town was not responsible for maintaining the road and that the Town did not act in an arbitrary or discriminatory fashion in declining to repair the road. We affirm.

Plaintiffs Allen and Ann Whitehead reside on Masters Road, a class 4 highway in the Town of Maidstone. In September 2000, plaintiffs sent a letter to the Town selectboard requesting repair of the road. The Town declined to make the repairs, and plaintiffs appealed to the County Road Commissioners, who concluded that the Town was not responsible for the repairs. Plaintiffs then appealed to the superior court. An evidentiary hearing before the court disclosed the following. Masters Road is approximately 6/10ths of a mile long and has two homes on it, including that of the Whiteheads. Allen Whitehead testified that when he purchased the property in 1993, there was no house on the site and the road was in such poor condition that it was almost impassable. The Whiteheads placed a mobile home on the lot, and undertook to improve the road by spreading gravel and constructing two culverts. Allen Whitehead testified that one of the two culverts did not work properly and needed to be replaced, and that the road required additional ditching and drainage work. Another resident testified that within the last several years the Town had replaced certain existing culverts on another class 4 highway located within the Town, Bear Hill Road.

Bradley McVetty, a selectman and road commissioner for the Town, testified that following plaintiffs' request to have the Town repair and maintain Masters Road, the Town selectboard adopted a formal policy codifying its longstanding practice with respect to class 4 roads. That policy provides that the Town shall only assume maintenance of existing culverts and bridges on Class IV Town Highways, as has been the case historically. McVetty testified that, consistent with this policy, the Town had replaced certain existing culverts on Bear Hill Road, at a cost of approximately \$1400. McVetty stated that the Town budgets about \$4200 per year for road maintenance, and estimated that the cost of repairing the considerable problems related to Masters Road would total about \$20,000 to \$25,000.

The court concluded that the Town acted within its statutory discretion in declining to repair Masters Road, and rejected plaintiffs' claim that the Town had acted in an arbitrary or discriminatory fashion, noting that the Town's repair of the culverts on Bear Hill Road was consistent with its policy of maintaining pre-existing culverts, but not assuming responsibility for culverts recently added by homeowners. This appeal followed.

In Town of Calais v. County Road Comm=rs, 173 Vt. 620, 621 (2002) (mem.), we held that, under 19 V.S.A. ' 310(b), towns enjoy broad discretion in determining whether to maintain and repair class 4 highways.* Thus, we upheld a

general town policy that maintenance of class 4 roads was the responsibility of adjacent landowners except with respect to A minimal [summer] maintenance. @ Id. at 620. A citizen challenging such policies could prevail only A if the citizen shows that the town has not acted pursuant to its policy or has acted in an arbitrary and discriminatory fashion. @ Id. at 624. Applying these standards, the court here concluded that the Town= s policy was reasonably necessary for the public good and convenience of the Town in light of its limited budget and the relatively few residents on class 4 roads. The record evidenced supports these findings. Accordingly, there is no basis for a finding that the policy is arbitrary or outside the scope of the Town= s broad discretion. The court= s additional finding that the Town acted consistently with its longstanding policy by repairing the existing culverts on Bear Hill Road, but declining to repair or replace those added by plaintiffs, is also supported by the record evidence. Therefore, there is no basis for a finding that the Town acted in a discriminatory fashion. We thus discern no basis to disturb the judgment.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

Denise R. Johnson, Associate Justice

Paul L. Reiber, Associate Justice

Footnote

* This section provides: “Class 4 highways may be maintained to the extent required by the necessity of the town, the public good and the convenience of the inhabitants of the town, or may be reclassified using the same procedures as for laying out highways and meeting the standards set forth in section 302 of this title.”