

STATE OF VERMONT
WINDSOR COUNTY, SS.

WHITE RIVER VALLEY TRAILS	:	WINDSOR SUPERIOR COURT
ASSOCIATION, <i>et al.</i> ,	:	
Plaintiffs	:	DOCKET NO. S184-96 WrCa
	:	
v.	:	
	:	
TOWN OF STOCKBRIDGE,	:	
Defendant	:	

DECISION AND ORDER:

PETITION TO APPOINT COMMISSIONERS

INTRODUCTION

The plaintiffs in this case appeal a decision by the Town of Stockbridge, Vermont (Town), to discontinue town highway #30, town highway #47, and the so-called "Rutland Turnpike." The Town filed a Motion to Dismiss on May 16, 1996, arguing (1) that this court lacks statutory authority under V.S.A. Title 19 to entertain an appeal of the Town's actions, and (2) that the plaintiffs' pleadings do not meet the requirements for a "Review of Governmental Action" under V.R.C.P. 75. This court denied the Town's motion by means of an Entry Order dated August 31, 1996.

The matter is now before the court for consideration of a Petition to Appoint Commissioners, filed by plaintiff White River Valley Trails Association on July 5, 1996. The Town has not filed any response to this motion.

DISCUSSION

The petition raises the issue of whether or not the court has statutory authority to appoint commissioners for a review of the Town's discontinuance of the three highways.

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This issue was left open by the court's decision dated August 31, 1996.

The issue is one of statutory construction. The court's duties and powers with respect to the laying out and discontinuing of highways derives from the statutes. However, "[t]his duty and power is of such character that it should be performed and exercised in a practical manner, not by technical rules." Ferguson v. Town of Sheffield, 52 Vt. 77, 81 (1879). The selectboard's jurisdiction is limited by statute, and any proceedings in this court, as the appellate tribunal, "are but a continuation of the proceedings commenced before the selectmen under the statute." Town of Shrewsbury v. Davis, 101 Vt. 181, 192 (1928).

The goal of statutory construction is to give effect to the intent of the legislature. Kellogg-Hubbard Library v. VLRB, 162 Vt. 571, 575 (1994) (primary goal is to give effect to intent of legislature); State v. Ben-Mont Corp., 163 Vt. 53, 57 (1994) (court's task is to give effect to legislative intent, and to further fair, rational results). According to a rule of construction that applies with particular relevance to highway law, statutes relating to the same subject matter must be construed together and read *in pari materia*. Munson v. City of South Burlington, 162 Vt. 506, 509 (1994). To give effect to legislative intent, courts "look to the whole statute, the subject matter, its effects and consequences, and the reason and spirit of the law." Id. (quoting In re Shepard, 155 Vt. 356, 357-58 (1990) (further citations omitted)).

The statutes involved in the instant case are lengthy and detailed, but they are not a model of clarity with regard to the issue currently before this court. See 19 V.S.A.

Chapter 7: Laying Out, Discontinuing and Reclassifying Highways. Subchapter 1

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contains general provisions such as "Definitions" under § 701, and "Duties of commissioners appointed by the supreme or superior court" under § 706. Subchapter 2 contains provisions concerning laying out, altering, reclassifying or discontinuing highways by petition to selectmen. Subchapter 4 contains provisions concerning petition to superior court. Subchapter 7 contains provisions concerning discontinuance of highways.

A "discontinued" highway means "a previously designated town highway which through the process of discontinuance all public rights are reconveyed to the adjoining landowners." § 701(4). "Discontinuing" a highway differs from "laying out," "altering," or "reclassifying" a highway. One clear difference is that a discontinuance can never result in money damages to the adjoining landowners, because it always involves a legal benefit to the abutting owners, not any diminution of existing rights. For this reason, no hearing on damages is required for a discontinuance. Whitcomb v. Town of Springfield, 123 Vt. 395, 397 (1963).

Under subchapter 4 (petition to superior court), § 740 provides for application to the superior court by an interested person who is dissatisfied with the "laying out, altering or resurveying of [a] highway, or with the compensation for damages." The superior court may appoint commissioners under § 741, and the commissioners are to investigate the matter and provide a report, § 742. The Town of Stockbridge has pointed out that § 740 does not provide for applications to superior court by persons dissatisfied with a *discontinuance*. However, § 771 of subchapter 7 (discontinuance of highways) refers to "commissioners appointed to discontinue a highway," and it also refers to review by the superior court "under the same conditions and the same proceedings as are

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provided for the laying out of highways" (*reference § 740 et seq.*). In addition, § 706 refers to commissioners who may be appointed "to build or repair a bridge, or lay out, alter or *discontinue* a highway." (emphasis added). Reading these statutes *in pari materia*, it appears that interested persons who are dissatisfied with a selectboard's decision to discontinue a highway may have the same avenue of appeal to the superior court as persons dissatisfied with a selectboard's decision to lay out a highway, except that a discontinuance of a highway cannot result in monetary compensation.

The Town of Stockbridge has argued for a different construction of § 771, based on a strict reading of that section, and the lack of any specific prescription for petitioning the superior court (in contrast to § 740). According to the Town's view, the only proper appointment of commissioners under § 771 occurs when the selectmen of two or more towns appoint commissioners to investigate the discontinuance of a highway that connects two or more towns. Under this view, only a decree or order made by those commissioners may be reviewed by the superior court under the provisions of § 740. The Town's proposed construction is awkward for at least two reasons: First, it draws an odd distinction between appellate procedures for discontinuing highways wholly within one town and highways connecting two or more towns, all within a statutory scheme that generally permits broad superior court review of the selectboard's exercise of quasi-judicial power. The language of § 771 does not compel this result. On the contrary, the title and first section of the provision clearly signify an intent to establish procedure for all discontinuances, not just those involving two towns. After specific directions relating to the two-town situation, the provision continues with language and terms applicable to

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all discontinuances: "The commissioners appointed to discontinue a highway . . . shall be disinterested landowners . . . "

Second, the Town's proposed construction is based on a literal reading of the words "a decree or order made by the commissioners under the provisions of this section," whereas the section does not otherwise authorize the commissioners to make decrees or orders. Under the statutory scheme, the commissioners generally play an advisory role by investigating matters and issuing reports to aid, and not limit, the trial court in its decisionmaking. Hansen v. Town of Charleston, 157 Vt. 329, 333 (1991). For these reasons, the court favors the plaintiffs' view that the legislature was imprecise in its use of the words "decree or order" in the last sentence of § 771, and was referring to the "report" of the commissioners as described in § 742. This interpretation is the one that provides for parallel procedures for laying out and discontinuing highways, which appears to be an expressed legislative purpose since the statute provides that a "decree or order" concerning discontinuance may be "reviewed by the superior court under the same conditions and the same proceedings as are provided for the laying out of highways." § 771. In contrast, the Town's view of the statute is strained and illogical.

The court also notes that the Vermont Reports include cases involving superior court review of highway discontinuances as well as appointment of commissioners. See Town of Shrewsbury v. Davis, 101 Vt. 181 (1928); Ferguson v. Town of Sheffield, 52 Vt. 77 (1879). These old cases do not provide conclusive evidence concerning the proper procedures under current statutes, but they do suggest that, at least historically, superior courts have provided the appellate procedures that are requested by the petitioner in the

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instant case.

For all of the above reasons, the court concludes that the statute provides for review by the superior court, including appointment of commissioners.

ORDER

Plaintiffs' Motion to Appoint Commissioners is GRANTED. The court respectfully requests the parties to submit proposals, within 30 days, concerning the selection of commissioners and the instructions they are to be given.

Dated this 2nd day of January, 1997.

Mary Miles Teachout
Hon. Mary Miles Teachout,
Presiding Superior Court Judge

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