

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: November 29, 2023)

LANCE SHEFFIELD and
HOLLY SLATER SHEFFIELD
Plaintiffs/Appellants,

v.

COASTAL RESOURCES
MANAGEMENT COUNCIL
Defendant/Appellee.

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C.A. No. PC-2023-01199

DECISION

LANPHEAR, J. This matter is before the Court on Lance Sheffield and Holly Slater Sheffield’s (Appellants) Complaint appealing the constructive denial, by virtue of non-response, of their petition before the Coastal Resources Management Council (CRMC). Jurisdiction is pursuant to G.L. 1956 §§ 42-35-8(d) and 42-35-15, the Administrative Procedures Act (APA).

I

Facts and Travel

This case arises from an unanswered petition submitted to CRMC by the Sheffields.

The Sheffields allege the following facts. In May 2021, they purchased 85 Nayatt Road in Barrington, Rhode Island. (Appellants’ Br. in Supp. of their Administrative Appeal (Appellants’ Br.) Procaccini Aff. Ex. 4.) A concrete seawall abutting Narragansett Bay runs along the southern edge of the property. Appellants’ Br. at 1; *see also* L. Sheffield Aff. ¶ 2. The seawall spans approximately 430 feet, with control of the

seawall split between the Sheffields and the owners of 56 Elm Lane based on property lines. *Id.* Ex. B at 41; Ex. H. Once they purchased 85 Nayatt Road, the Sheffields noticed members of the public using their seawall for walking and fishing along the water. *Id.* H. Sheffield Aff. ¶ 3. The Sheffields built a wire fence and posted no trespassing signs along their portion of the seawall. *Id.* Ex. C.

CRMC issued a Cease and Desist Order against the Sheffields on September 23, 2021, directing them to remove the fences and signs because they blocked public access and altered the seawall without CRMC assent. *Id.* Ex. I. The Cease and Desist Order referenced the “1982 Assent,” an application submitted to CRMC by prior owners of 56 Elm Lane, Robert and Mary Kilmarx, requesting repair of the seawall. *Id.* Ex. A. The 1982 Assent authorized a two-foot-wide public access walkway on top of a riprap retaining wall, as well as repairing and protecting “285+” feet of existing concrete seawall. *Id.* Ex. B.

The Sheffields maintain they had no notice concerning public access to the seawall because the 1982 Assent had not been recorded. *Id.* H. Sheffield Aff. ¶ 4; L. Sheffield Aff. ¶ 4. The deed conveying the property to the Sheffields from their predecessor-in-title did not refer to the 1982 Assent or a public right of access. *Id.* Procaccini Aff. Ex. 4. The Sheffields claim they did not learn of the 1982 Assent or a public right of access when they conducted a title search as part of the purchase. *Id.* H. Sheffield Aff. ¶ 5; L. Sheffield Aff. ¶ 5.

On May 2, 2022, a citizen e-mailed CRMC reporting that the Sheffields posted a security guard on the seawall and a siren was placed to sound an alarm whenever people attempted to walk on the wall. (CRMC’s Br. Ex. C.) On May 27, 2022, CRMC issued a

second Cease and Desist Order, informing the Sheffields that they were violating the 1982 Assent and regulations of the Rhode Island Coastal Resources Management Program by preventing lateral public access along the seawall. (Appellants' Br. Ex. J.) The second Cease and Desist Order also informed the Sheffields that the seawall was improperly constructed because it did not have the required two-foot-wide access path along the top of the riprap. *Id.*

On December 12, 2022, the Sheffields filed a Petition for Declaratory Ruling with CRMC pursuant to § 42-35-8. (Complaint herein, Ex. 1.) The petition alleges that the 1982 Assent is unenforceable against them and their property. *Id.* The Sheffields argued the 1982 Assent never was recorded and therefore is unenforceable against them as a matter of law because they are bona fide purchasers for value. *Id.* The petition also requested CRMC vacate the Cease and Desist Orders issued against the Sheffields on September 21, 2021 and May 27, 2022. *Id.*

CRMC did not respond to the petition within the sixty-day statutorily required period provided by § 42-35-8(c). Appellants' Br. Ex. K. Counsel for the Sheffields contacted CRMC on February 13, 2023, sixty-four days after the Sheffields submitted the petition. *Id.* Ex. K. CRMC's legal counsel responded, acknowledging CRMC did not meet the statutory requirement to respond to the petition due to "two very significant matters that have taken up its time in December[.]" *Id.* The Sheffields' counsel followed up on March 8, 2023 and informed CRMC's counsel that ninety days had passed since the petition was filed and the lack of a formal response from CRMC had caused the Sheffields significant prejudice. *Id.* Ex. L.

Undeterred, on March 10, 2023, the Sheffields filed a Complaint in the Superior Court pursuant to §§ 45-35-8(d) and 42-35-15. *See* Complaint. The Sheffields seek a declaration by the Court that CRMC violated § 42-35-8(c) by failing to respond to their petition within sixty days and that this prejudiced the Sheffields’ substantial rights; that administrative review by CRMC would be futile because the petition presents questions of law; that the 1982 Assent is unenforceable as to them and their property; and to vacate the two Cease and Desist Orders. *Id.*

II

Standard of Review

When the Court reviews administrative appeals brought under the Administrative Procedures Act, “review is limited to questions of law.” *Blais v. Rhode Island Airport Corporation*, 212 A.3d 604, 611 (R.I. 2019). The scope of the Superior Court’s review of administrative decisions is confined by § 42-35-15(g):

“The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

“(1) In violation of constitutional or statutory provisions;

“(2) In excess of the statutory authority of the agency;

“(3) Made upon unlawful procedure;

“(4) Affected by other errors of law;

“(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

“(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” Section 42-35-15(g).

While the Court affords “great deference to the factual findings of the administrative agency, ‘questions of law—including statutory interpretation—are reviewed *de novo*.’” *Banki v. Fine*, 224 A.3d 88, 93 (R.I. 2020) (quoting *Blais*, 212 A.3d at 611).

III

Analysis

A. Petition for Declaratory Order

“Not later than sixty (60) days after receipt of a petition under subsection (a), an agency *shall* issue a declaratory order in response to the petition, decline to issue the order, or schedule the matter for further consideration.” Section 42-35-8(c) (emphasis added). “An agency failure to act within the applicable time under subsection (c) is subject to judicial action under § 42-35-15.” Section 42-35-8(d).

CRMC failed to adhere to the mandate in § 42-35-8(c). It did not issue a declaratory order, decline to issue an order, or schedule the matter for further consideration within sixty days of receiving Appellants’ petition. Appellants’ Br. Ex. K. In its brief, CRMC states it was “unable to hear the petition within 60 days.” CRMC’s Br. at 7. The language of § 42-35-8(c) is clear: “shall” creates a mandated deadline for agencies to respond using one of the three options outlined in the statute. CRMC must review the petition and respond in one of the three ways mandated by statute.

It is not disputed that CRMC failed to comply by responding timely to the request.¹

B. Declaratory Judgments

The Sheffields argue exhaustion of administrative remedies would be futile, there are no factual issues in dispute, and any contrary ruling by CRMC would be appealed to this Court for *de novo* review. (Appellants' Br. at 12.) The Sheffields request a declaration regarding the undisputed facts of the case, namely that the stipulations in the unrecorded CRMC 1982 Assent should not be enforced against them as bona fide purchasers without notice. *Id.* at 1, 14. CRMC argues a Government Permit does not need to be recorded to be valid. (CRMC's Br. at 8.) It also asserts that the Sheffields did not conduct adequate due diligence, and the Sheffields had adequate constructive notice of the 1982 Assent. *Id.*

The Court declines to issue a declaratory judgment while this matter is before the Court on administrative appeal. CRMC is required to hear such matters pursuant to § 42-35-8(c) and shall do so here. *See, e.g., Greenwich Bay Yacht Basin Associates v. Brown*, 537 A.2d 988, 993 (R.I. 1988) ("The petition shall be heard expeditiously by CRMC as § 42-35-8 requires."). At this time, this Court addresses solely the administrative appeal and CRMC's failure to respond. *See* § 42-35-8(d) (agency's failure to act reviewable under § 42-35-15).

The Rhode Island Supreme Court described § 45-35-8 as "an administrative counterpart of the Declaratory Judgments Act." *Liguori v. Aetna Casualty and Surety Co.*, 119 R.I. 875, 882-83, 384 A.2d 308, 312 (1978). "It is well-settled that the decision

¹ *See* CRMC's Answer to Complaint, ¶ 16.

to grant or deny declaratory judgment rests within the sound discretion of the trial justice.” *Faella v. Town of Johnston*, 274 A.3d 798, 803 (R.I. 2022) (discussing declaratory relief under the Uniform Declaratory Judgments Act, G.L. 1956 § 9-30-1); *see also* § 9-30-6 (stating the Superior Court may “refuse to render or enter a declaratory judgment or decree”). This Court declines to issue a decision that would amount to an advisory opinion regarding issues of law. *See Benson v. McKee*, 273 A.3d 121, 129 (R.I. 2022) (“A declaratory-judgment action may not be used for the determination of abstract questions or the rendering of advisory opinions[.]”) (quoting *Sullivan v. Chafee*, 703 A.2d 748, 751 (R.I. 1997)).

The matter belongs before CRMC, which has yet to make any findings of fact or law regarding the Sheffields’ petition. The Complaint contains only one Count, an administrative appeal pursuant to §§ 42-35-8(d) and 42-35-15. *See* Complaint. The administrative appeal is separate from further requests for declaratory judgment in the Sheffields’ brief about property rights, Cease and Desist Orders, or any other issues. This Court compels CRMC to issue an administrative order in compliance with § 42-35-8(c), but it will not issue a declaratory judgment on remaining issues of law.

IV

Conclusion

For the reasons stated herein, the appeal is granted in part and denied in part. CRMC shall respond to Appellants’ petition within twenty days in writing. The Court will schedule a status conference for the parties in forty days to ensure CRMC complies. The Court declines to issue a declaratory judgment.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Lance Sheffield, et al. v. Coastal Resources Management Council

CASE NO: PC-2023-01199

COURT: Providence County Superior Court

DATE DECISION FILED: November 29, 2023

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

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For Defendant: Anthony Desisto, Esq.