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CASE NO. 2017-0137

TOWN OF GOSHEN

V.

CARL N. CASAGRANDE

APPEAL FROM AN ORDER OF THE
SULLIVAN COUNTY SUPERIOR COURT

BRIEF OF APPELLANT

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QUESTIONS PRESENTED

- I. WHETHER THE TRIAL COURT ERRED IN AWARDING SUMMARY JUDGMENT TO THE PLAINTIFF.

See, e.g., Appendix at 47.

- II. WHETHER THE TRIAL COURT ERRED IN CONSIDERING PAROL EVIDENCE TO DETERMINE THAT THE TOWN OF GOSHEN CONDITIONED THE DISCONTINUANCE OF PAGE HILL ROAD SUBJECT TO A SPECIFIC CONDITION.

See, e.g., Appendix at 51-52.

- III. WHETHER THE TRIAL COURT ERRED IN FINDING THAT THE TOWN OF GOSHEN DISCONTINUED PAGE HILL ROAD SUBJECT TO A SPECIFIC CONDITION WHERE NO SUCH SPECIFIC CONDITION WAS REFERENCED IN THE MEETING MINUTES REFLECTING THE VOTE ON THE ISSUE.

See, e.g., Appendix at 52.

- IV. WHETHER THE TRIAL COURT ERRED IN CONSIDERING NOT JUST THE MINUTES REFLECTING THE VOTE ON THE WARRANT ARTICLE AT ISSUE, BUT ALSO THE WARRANT ARTICLE ITSELF.

See, e.g., Appendix at 54.

- V. WHETHER THE TRIAL COURT ERRED IN INTERPRETING THE TOWN OF GOSHEN'S VOTE ON PAGE HILL ROAD IN 1891 AS BEING SUBJECT TO A CONDITION.

See, e.g., Appendix at 49-55.

STATUTES AND ORDINANCES INVOLVED

RSA 491:8-a, Motions for Summary Judgment.

I. A party seeking to recover upon a claim, counterclaim, or crossclaim, or to obtain a declaratory judgment, may, at any time after the defendant has appeared, move for summary judgment in his favor upon all or any part thereof. A party against whom a claim, counterclaim, or crossclaim is asserted or a declaratory judgment is sought, may, at any time, move for a summary judgment in his favor as to all or any part thereof.

II. Any party seeking summary judgment shall accompany his motion with an affidavit based upon personal knowledge of admissible facts as to which it appears affirmatively that the affiants will be competent to testify. The facts stated in the accompanying affidavits shall be taken to be admitted for the purpose of the motion, unless within 30 days contradictory affidavits based on personal knowledge are filed or the opposing party files an affidavit showing specifically and clearly reasonable grounds for believing that contradictory evidence can be presented at a trial but cannot be furnished by affidavits. Copies of all motions and affidavits shall, upon filing, be furnished to opposing counsel or to the opposing party, if the opposing party is not represented by counsel.

III. Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits filed, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone, although there is a genuine issue as to the amount of damages.

IV. If affidavits are not filed by the party opposing the summary judgment within 30 days, judgment shall be entered on the next judgment day in accordance with the facts. When a motion for summary judgment is made and supported as provided in this section, the adverse party may not rest upon mere allegations or denials of his pleadings, but his response, by affidavits or by reference to depositions, answers to interrogatories, or admissions, must set forth specific facts showing that there is a genuine issue for trial.

V. If it appears to the court at any time that any of the affidavits presented pursuant to this section are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party presenting them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees. Any offending party or attorney may be found guilty of contempt.

STATEMENT OF THE CASE AND FACTS

This case involves a dispute between the Town of Goshen ("Town") and a Goshen landowner, Carl Casagrande, over the legal status of a portion of a travel way identified as Page Hill Road ("Travel Way" or "Page Hill Road") where it runs over Mr. Casagrande's Goshen property. The Town claims that this travel way is a Class VI highway. Mr. Casagrande disagrees. When Mr. Casagrande placed a lock¹ on the gate crossing Page Hill Road where it enters his property, the Town brought a lawsuit seeking injunctive relief. Ruling on the Town's motion for summary judgment, the Trial Court found that the disputed portion of Page Hill Road is a Class VI highway. This appeal follows.

The Travel Way runs from Province Road in Goshen to a driveway on Mr. Casagrande's property, through that property, and onward to the Newport town line where it continues into Newport. Appendix at 12. The Town only maintains the southerly .17-mile portion of the Travel Way nearest to Province Road. Id. The disputed section of the Travel Way begins at the driveway of Mr. Casagrande's property. Id.

Prior to 1891, the Travel Way located in Goshen was a town road. However, in 1891 citizens voted on a number of Warrant

¹ Mr. Casagrande provided the combination for the lock to the Town's police and fire departments. Appendix at 13-14. He was concerned about several things including people using the disputed Travel Way to dump their garbage (including toxic waste that people cannot dispose of at a normal landfill) and travelers being led up this abandoned, unsafe road by their GPS.

Articles at the 1891 Goshen Town Meeting. One of those Warrant Articles (Article 11) was worded as follows:

To see if the Town will vote to discontinue and throw up the highway leading from Willie E. Howe's to Newport town line providing Newport will throw up theirs to meet us.

Appendix at 13. The 1891 meeting minutes indicate that the voters took the various Warrant Articles out of order. Warrant Article 11 was the final Article that the voters voted upon. The minutes record the vote on Article 11 as follows:

"Voted to throw up the road mentioned in this article."

Id. and 44.

The Town presented evidence in summary judgment pleadings that Newport did not discontinue its portion of the Travel Way. Appendix at 13. The 1891 Goshen Town Meeting minutes for the actual vote on Article 11 do not indicate in any manner that the discontinuance of the "highway" referenced in Warrant Article 11 was conditioned upon anything, including a condition that the town of Newport discontinue its portion of the Travel Way. They simply state that the Town voted to "throw up" (i.e., discontinue) that highway.

Based upon these meeting minutes, the Trial Court ruled in the Town's favor on a motion for summary judgment and found that the disputed section of the Travel Way remains a Class VI highway. See Order annexed hereto. The Trial Court ruled that

Page Hill Road was not discontinued in 1891 because the 1891 vote to discontinue it was conditioned upon Newport "throwing up" its portion of the Trail way, which never occurred. Id. This appeal follows.

SUMMARY OF THE ARGUMENT

Mr. Casagrande's argument is very straightforward. The Trial Court erroneously used the language of Warrant Article 11 to "read into" the actual record of the vote on that Article conditions that said vote did not contain. New Hampshire law makes clear that parol evidence may not be introduced to aid in the interpretation of an unambiguous vote. New Hampshire law also makes clear that it is the record of the actual vote that establishes the result of an item acted upon at town meeting. Citizens at town meeting can, and often do, ultimately approve warrant articles in something different than their original form. As a result, and unless the record of the votes specifically incorporates by reference the warrant article in question, the entirety of the warrant article does not become effective. Only what the record reflects the town citizens actually approved does.

Here, the actual record of the vote on Warrant Article 11 is very clear. The Town voted to "throw up" Page Hill Road. In the actual vote, the Town did not condition its decision to

discontinue Page Hill Road upon anything whatsoever, including any condition that the Town of Newport do something similar. Page Hill Road was in fact discontinued in 1891. It therefore no longer is a Class VI highway.

ARGUMENT

Summary judgment should only be rendered ". . . if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits filed, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." RSA 491:8-a. Such evidence, and the reasonable inferences properly drawn therefrom, should be viewed in the light most favorable to the non-moving party. Sandford v. Town of Wolfeboro, 143 N.H. 481, 484 (1999). An issue of fact is "material" for summary judgment purposes, if it affects the outcome of the litigation. Panciocco v. Lawyers Title Insurance Corp., 147 N.H. 610, 613 (2002). While summary judgment affords saving of time, effort and expense by avoiding trial, this value may not be gained at the expense of denying a litigant the right of trial where there is a genuine issue of material fact. Ainelli v. Burger King Corp., 145 N.H. 190, 192 (2000) (internal citation and quotation omitted). "The reviewing court must consider the evidence in the light most favorable to the party

opposing the motion, giving that party the benefit of all favorable inferences that may reasonably be drawn from the evidence." Concord Group Insurance Co. v. Sleeper, 135 N.H. 67, 69 (1991) (citation omitted).

In this case, the Trial Court mistakenly interpreted minutes of a town meeting vote to include a condition that was not specifically stated in the minutes of that vote. Viewed in the light most favorable to the non-moving party, Mr. Casagrande, the minutes of the 1891 Goshen Town Meeting reflect that the citizens voted to discontinue Page Hill Road without subjecting such discontinuance to any conditions whatsoever. It was error for the Trial Court to award the Town summary judgment based upon those minutes and the Trial Court's decision should be reversed.

A. The Trial Court Erred in Using the Language of Warrant Article 11 to "Read Into" the Actual Record of the Vote a Condition Not Referenced in that Record.

Town meetings, particularly in the 1800's, were not necessarily an exact science. They certainly did not lend themselves to a consistent recollection of the events that transpired by those in attendance:

The votes may be so nearly equally divided that, with or without polling, it is difficult to determine with certainty what is the voice of the town, and the party declared defeated may honestly believe the declarations erroneous, as it possibly may be in fact. Motions and resolutions are not always presented in

writing, and they may be amended in various particulars before their final adoption. The exact language in which they are expressed is generally material and important. If, whenever the action of the town is put in issue, it were left to be determined on the testimony on those present at the meeting, in many cases it could never be ascertained with reasonable certainty: the transaction of business dependent upon it would be impracticable, and in all cases the inconvenience would be intolerable.

Sawyer v. Manchester & Keene Railroad, 62 N.H. 135, 153 (1982).

Because of this, our Supreme Court long ago recognized that:

For this reason, among others, the law provides that in every town meeting there shall be two officers sworn to the faithful discharge of their duties - a moderator, who is required to make a public declaration of all votes passed and a town-clerk, who is required to record all votes passed by the town. The record made by the clerk is conclusive of the facts therein stated, not only upon the town, but upon all the world so long as it stands on the record. Its accuracy cannot be drawn into question collaterally. It can be contradicted or impeached only in proceedings instituted directly for the purpose, and to that end, it may be corrected. So long as it is in existence, and can be produced, it is the only competent evidence of the action of the town.

Id. (internal citations and quotations omitted) (emphasis added).

Warrant articles are not records of a town vote. ". . . [T]he purpose of the warrant and the articles contained therein is merely to inform the residents of the town of the time and place of the meeting and subjects that will be discussed and acted on." Bragdon v. Town of Fairhaven, 2012 WL 6146651; Wolf v. Town of Mansfield, 67 Mass. App. Ct. 56, 59 (2006).

"Articles are the mere abstracts of heads of the propositions which are to be laid before the inhabitants for their actions; and matters incidental to and connected with such propositions are alike proper for their consideration and action. If it were otherwise, and the articles were to be the subject of a very critical analysis, much confusion and delay might ensue, and towns would be as often employed in discussing the construction of articles in the warrant, as in the consideration of the subjects embraced in them." Wolf v. Town of Mansfield, 67 Mass. App. Ct. at 59-60. As a result, the language of a warrant article is parol evidence, and should only be considered in the event the record of a vote is unclear or ambiguous. See Zaskey v. Town of Whately, 61 Mass. App. Ct. 609, 619 (2004) (treating text of warrant article as extrinsic or parol evidence to be used to interpret a record of an ambiguous 1888 town meeting vote).

This Court does not appear to have addressed the question of whether warrant articles are parol evidence in the context of a case such as this. However, warrant articles in New Hampshire serve the same limited purpose that they do in Massachusetts. "The object of specific articles in a warrant is, to give information to the voters of the subject-matters to be acted on in town-meeting, that the voters may be enabled to act deliberately and intelligently; and that the will of individuals

may not be subjected to the will of a majority any further than it is subjected by law." McKinney v. Riley, 105 N.H. 249, 252 (1964). As in Massachusetts, a final vote at a town meeting in New Hampshire can, and often does, approve something different than what the original warrant article states. See generally Cady v. Town of Deerfield, 169 N.H. 575 (2017). A Court should not ". . . conflate warrant articles and ballots." Lower Bartlett Water Precinct v. Murnik, 150 N.H. 690, 693 (2004).

Here, the actual record of Goshen's vote on Page Hill Road is clear and straightforward: "to throw up the road mentioned in this article." The record of the vote says nothing whatsoever about imposing any conditions upon "throwing up" Page Hill Road. The record of the vote does not incorporate any condition mentioned in Article 11 by reference. The record of the vote does not incorporate Article 11 itself by reference. The only reason the record of the vote refers to Article 11 is as a means to identify the specific road the vote concerned - nothing further. Without reference to Article 11, and with no language on the record of the actual vote reflecting that the discontinuance of Page Hill Road was in any manner conditional, it cannot be said that the Town of Goshen's vote to discontinue Page Hill Road was conditioned upon anything, including a requirement that the Town of Newport discontinue its section of the road.

The Trial Court relied heavily upon the language of Warrant Article 11 in concluding that the Town's vote to discontinue Page Hill Road was contingent upon a requirement that Newport do the same. Consideration of this parol evidence was clear error under New Hampshire law and the Trial Court's decision should be reversed.

B. New Hampshire Case Law Demonstrates that Warrant Articles Should Not Be Used to Interpret an Unequivocal and Unambiguous Record of a Vote at Town Meeting.

Sawyer v. Manchester & Keene Railroad, 62 N.H. 135 (1882) involved a vote upon a warrant article that differed from the action proposed in that article. The trial court amended the record of the vote to conform with the warrant article. This Court reversed. The aggrieved party urged that the language of the article in question ". . . was of itself sufficient to put the defendants upon inquiry, and that they are therefore chargeable with notice of the error in the record." Sawyer, 62 N.H. at 158. In effect, the Sawyer plaintiff was arguing that the position taken by the Trial Court here - that a court or a party must assume that the entirety of a warrant article in question is included in any vote thereon, even though the record of that vote does not state as much. In response to this argument, the Sawyer Court states:

It is not perceived how anything contained in the article could naturally or legitimately tend to show,

or lead to a suspicion, that the record of a vote which could lawfully and properly be taken under it was erroneous; how the absence in the record of a clause in the article, which for good reasons might properly be rejected, is calculated to lead to the inference that it was erroneously omitted.

Id. (emphasis added). In other words, where the record of a vote on a warrant article omits conditions contained in that warrant article, a court cannot assume the conditions were erroneously omitted in the record of the vote. The mere fact that conditions are contained in a warrant article does not cause them to be a part of what was voted on and approved. Indeed, per Sawyer the opposite is true - where there is a failure in the record of the vote to mention conditions contained in an article, those conditions cannot be "read into" the vote. Yet that is exactly what the Trial Court did in this case.

The case of New London v. Davis, 73 N.H. 72 (1904) demonstrates the circumstances under which a court can look to the language of a warrant article to shed light on the meaning of a vote: When the record of the vote specifically incorporates the warrant article by reference. In Davis, Warrant Article 2 stated as follows:

To see if the town will vote to instruct the selectmen to lay out and build a new highway, beginning at a stake and stones on the east side of the highway leading from Newbury to New London (on the County Road, so called) said stake and stones being 80-5 feet northeast of a willow tree near a stone monument in

the wall between the field and pasture belonging to Mrs. Jane A. Tracy; thence in a southeasterly direction to the road leading from New London to Soonipi Park, to a maple tree standing on the westerly side of said road, 80-5 feet from the bound between land of Nathaniel Knowlton and Mrs. Jane A. Tracy. Said highway to be built in accordance with the offer made by Mrs. Jane A. Tracy.

New London v. Davis, 73 N.H. at 78. The record of the vote was as follows:

Art. No. 2. Voted, to instruct the selectmen to lay out and build a new highway, as per Article 2 of the Warrant.

Id. (emphasis added). As can be plainly seen, in Davis, the town record of the vote specifically included the warrant article by reference.

Here, no such reference was made. In fact, the opposite is true - the record of the Goshen vote did not specifically incorporate Article 11 by reference or mention it in any other fashion other than as a means to identify the road at issue. Under the circumstances, and where Article 11 was in no manner incorporated by reference into the record of the vote, that warrant article should not have been used as an aid to interpret an otherwise unequivocal and unambiguous record of the actual vote.

The record of Goshen's 1891 vote to discontinue Page Hill Road does not contain, on its face, any conditions. It does not incorporate any conditions by reference. The record of this

vote does not in any manner incorporate by reference any conditions or the language of Warrant Article 11. Generally, and certainly when inferred in a light most favorable to the plaintiff, this creates a dispute of material fact when the issue of whether Goshen discontinued Page Hill Road subject to a condition. Given this, the Court's award of summary judgment to the Town of Goshen was error and must be reversed.

C. The Trial Court's Reliance Upon New Hampshire's Disfavoring Discontinuance Was Misplaced.

The Trial Court used the fact that New Hampshire law discourages findings of discontinuance as a basis for its decision. However, the fact that discontinuance is disfavored does not alter the law discussed above. Courts cannot and should not apply different rules of construction in interpreting records of town meeting (or any type of legislation for that matter) based upon subject matter. The fact that interpreting the results of a town meeting vote involved discontinuance of a road should not trigger a different rule of construction than had the town been voting to purchase a new snowplow. The law is clear that the language of warrant articles should not be used to interpret unambiguous votes and it was error for the Trial Court to do so.

CONCLUSION

For all the foregoing reasons, Mr. Casagrande requests that this Court reverse the Trial Court's decision.

ORAL ARGUMENT

William B. Pribis will argue the case for the appellant and fifteen minutes are requested for this purpose.


CERTIFICATION PURSUANT TO RULE 16(3)(i)

Pursuant to Supreme Court Rule 16(3)(i), I hereby certify that the decision being appealed was in writing, and that a true and accurate copy of the same is appended to this brief.

Respectfully submitted,
CARL CASAGRANDE

By and through his Attorneys,
CLEVELAND, WATERS AND BASS, P.A.

Date: 6/9/2017

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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Brief of the Appellant have been furnished via first-class mail, postage prepaid to C. Christine Fillmore, Esq., Gardner Fulton & Waugh PLLC, 78 Bank Street, Lebanon, NH 03766-1727. I further certify that the foregoing Brief of the Appellant conforms with Supreme Court Rule 16(3).


William B. Pribis, Esq.

The State of New Hampshire

SULLIVAN, SS.

SUPERIOR COURT

No. 220-2016-CV-28

TOWN OF GOSHEN

v.

CARL N. CASAGRANDE

ORDER

The Town of Goshen filed a complaint against Carl N. Casagrande in which it seeks an order enjoining him from continuing to maintain a locked gate across a portion of Page Hill Road. The Town says the road is an unmaintained Class VI highway on which locked gates are prohibited. Mr. Casagrande contends the section of road is private, because at a town meeting in 1891 residents of Goshen voted to discontinue it as a public road. The Town disagrees and moves for summary judgment on the question.

The facts are not disputed. Carl Casagrande owns property on Page Hill Road in Goshen. The entirety of Page Hill Road was a public highway until at least the time of the Goshen town meeting in 1891. The road runs from Province Road at its southerly end, to the Newport town line where it becomes a Newport town highway. Goshen maintains the southerly 0.17 mile portion of Page Hill Road at the Province Road end, but not the remainder of the road heading toward Newport. In the absence of other action (for example, a vote for discontinuance), the lack of maintenance and repair would qualify this

section as a Class VI highway. RSA 229:5, VII.

The road's unmaintained portion begins at the driveway to Casagrande's property, where he blocks the road with a locked gate. Goshen police and fire officials have the combination to the lock, as do abutters who request it, but the general public is not able to pass. The Town contends (and Casagrande does not disagree) that if the contested section of Page Hill Road is public, it is a Class VI highway. Gates and bars may be kept along or across Class VI highways, but may not be locked and must be capable of being opened by any member of the public who wishes to use the road. RSA 231:21-a, I. *See Glick v. Ossipee*, 130 N.H. 643, 646 (1988) (Class VI highways are "full public highways that the public has the right to pass over," and "[o]nly a formal discontinuance can legally terminate the public's right to travel on any public way.") (internal citations omitted). The issue for summary judgment is whether the 1891 town meeting voted for formal discontinuance of the unmaintained portion of the road as a public highway.

The Warrant for the meeting included the following Article 11.

To see if the Town will vote to discontinue and throw up the highway leading from Willie E. Howe's to Newport town line providing Newport will throw up theirs to meet us.

Motion for Summary Judgment, Appendix A, Affidavit of Cindy L. Williams, ¶ 3. The parties agree the "the highway leading from Willie E. Howe's to Newport town line," is the unmaintained section. There is no dispute that Goshen could condition discontinuance on some other event. *See New London v. Davis*, 73 N.H. 72, 75 (1904).

According to the town meeting minutes pertaining to Article 11, residents “voted to throw up the road mentioned in this article.” Williams Aff., ¶ 4. As recently as 1998, the Town of Newport took up the issue of discontinuing its portion of Page Hill Road, but voted against doing so. Mot. Summ. J., Appendix B, Affidavit of Liselle Dufort, ¶¶ 2-4. Goshen says that Newport’s lack of reciprocity left the status of Page Hill Road in Goshen unchanged. Casagrande says the residents’ decision is reflected in the minutes, which say simply that the town voted to “throw up the road mentioned in this article,” without reference to requiring action by Newport.

To obtain summary judgment, the Town must “establish[] the absence of a dispute over any material fact and the right to judgment as a matter of law,” even after considering evidence offered on the motion in the light most favorable to Mr. Casagrande. *Panciocco v. Lawyers Title Ins. Corp.*, 147 N.H. 610, 613 (2002). A “material fact” is one that “affect[s] the outcome of the litigation.” *Id.* Casagrande says his inference of what the minutes mean is reasonable, so there is a material issue of fact that precludes summary judgment.

What the minutes reflect about the intention of the town’s voters is not a factual issue in this context, since what the minutes say is known and not in dispute. Warrant articles “are the equivalent of legislation,” *Green Mountain Realty Corp. v. Fifth Estate Tower, LLC*, 161 N.H. 78, 87 (2010), so interpreting action on a warrant article is much like construing a statute. The focus is on the intent of the legislature (here the voters at town

meeting), and is based on the words used and the legislative record. *See Petition of Carrier*, 165 N.H. 719, 720–21 (2013).

An example is the review of a zoning ordinance adopted at a town meeting. Interpreting the ordinance presents a question of law, which requires a court “to determine the intent of the enacting body.” *Hurley v. Town of Hollis*, 143 N.H. 567, 569–70 (1999). As the State Supreme Court said,

When, as here, key terms are not specifically defined in the ordinance, we review it in its entirety to determine the intended meaning. When, however, plain and unambiguous language is not available to discern intent, we look beyond the language of the ordinance itself for further indications of legislative intent. When we do so, the entire record underlying the ballot question presented to the voters must be considered in ascertaining voter intent at the time the ordinance was adopted.

Id., (citations, quotations, and brackets omitted). Since the review is one of law, summary judgment isn’t barred because the parties have conflicting views on what the minutes say about voter intent.

As with the interpretation of a law, it is necessary to read not just the minutes reflecting the vote on the warrant article, but also the warrant article itself and the other minutes to the extent they are relevant in deciding how the voters went about deciding the question. Also a rule of construction applies. In *McMahon v. Town of Salem* – a case in which the Supreme Court resolved a dispute over whether a warrant article passed at town meeting did or did not give the town manager discretion to appoint a committee – the Court noted,

It has long been recognized that town meetings do not consistently express their purposes with legal precision and that votes adopted by such meetings will be liberally construed to give a legal effect to language inartificially employed to express the corporate purpose.

104 N.H. 219, 220 (1962) (quotation omitted). Therefore, the description of the vote as one "to throw up the road mentioned in this article," must be read in the context of the Article, which was the question before the town's residents.

The subject of the vote – discontinuance of a public highway – is another factor.

Once it is shown that a road is a public highway, the highway is presumed to exist until it is discontinued, and discontinuance is not favored in the law. *Davenhall v. Cameron*, 116 N.H. 695, 696–97, 366 A.2d 499 (1976). Discontinuance is a fact that must be proved and the burden is upon the party who asserts discontinuance to prove it by clear and satisfactory evidence. Because public roads are discontinued by town vote, and such actions are recorded, the best evidence of discontinuance is the official record." *Id.* (citations omitted).

Blagbrough Family Realty Trust v. A & T Forest Products, Inc., 155 N.H. 29, 36–37 (2007). See *Marrone v. Town of Hampton*, 123 N.H. 729, 734 (1983).

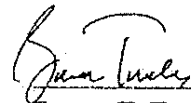
Article 11 was "[t]o see if the Town will vote to discontinue and throw up the highway ... providing Newport will throw up theirs to meet us." Nothing in the minutes (which are attached to the Williams Affidavit) suggests the article was modified by motion or otherwise. In contrast, Article 14 was "to see if the town will vote to layout" a highway (*id.*, p. 1), but was modified on motion to include further instructions to the selectmen. *Id.*, p. 5. The minutes identify no motion to remove the proviso from Article 11.

Nothing in the minutes suggests the vote on Article 11 was on anything other than the Article as stated. The absence of evidence that the voters decided something else, combined with the evidence that Newport did not meet the condition for discontinuance, the presumption that the voters did not approve discontinuance, and the fact that Mr. Casagrande bears the burden of showing they did so by a clear vote, operates to establish the Town's position that the section of Page Hill Road at issue remains a Class VI highway. So on this question the Town is entitled to judgment as a matter of law.

The motion for summary judgment (document no. 7) is GRANTED. The Town shall prepare a proposed decree. In view of the ruling, the Town's motion to deny Mr. Casagrande's request for a jury trial (document no. 10) is DENIED as moot.

SO ORDERED.

DATE: JANUARY 24, 2017



BRIAN T. TUCKER
PRESIDING JUSTICE