

Spring 2000

1999 Survey of Rhode Island Law: Cases: Municipal Law

Helena R. Pacheco

Roger Williams University School of Law

Russell P. Marsella

Roger Williams University School of Law

Ann B. Sheppard

Roger Williams University School of Law

Follow this and additional works at: http://docs.rwu.edu/rwu_LR

Recommended Citation

Pacheco, Helena R.; Marsella, Russell P.; and Sheppard, Ann B. (2000) "1999 Survey of Rhode Island Law: Cases: Municipal Law," *Roger Williams University Law Review*: Vol. 5: Iss. 2, Article 24.
Available at: http://docs.rwu.edu/rwu_LR/vol5/iss2/24

This Survey of Rhode Island Law is brought to you for free and open access by the Journals at DOCS@RWU. It has been accepted for inclusion in Roger Williams University Law Review by an authorized administrator of DOCS@RWU. For more information, please contact mwu@rwu.edu.

Municipal Law. *Maynard v. Beck*, 741 A.2d 866 (R.I. 1999). Where municipal officials are engaged in actions that are legislative in character, the doctrine of legislative immunity bars a lawsuit against the officials, regardless of the actual motives of the officials.

In *Maynard v. Beck*,¹ the Rhode Island Supreme Court held that the doctrine of legislative immunity barred a lawsuit against municipal officials based on their attempts to draft, revise and pass a zoning ordinance.

FACTS AND TRAVEL

In 1991, the General Assembly passed the Rhode Island Zoning Enabling Act (the Act).² The Act mandated that zoning laws be drafted in conformity with a comprehensive plan prepared in accordance with the Rhode Island Comprehensive Planning and Land Use Regulation Act.³ In 1992, the city of Charlestown established a Comprehensive Plan as required by the Act.⁴ Charlestown's plan established objectives and criteria for implementing new zoning laws.⁵ A committee, known as the Zoning Ordinance Coordinating Committee, was then appointed by the town council to create a proposed zoning law.⁶ Once the proposed law was drafted, the planning commission reviewed it.⁷ In October of 1995, the proposed zoning law was certified by the planning commission as being in conformity with Charlestown's Comprehensive Plan.⁸

1. 741 A.2d 866 (R.I. 1999).

2. R.I. Gen. Laws §§ 45-24-27 to 45-24-72 (1956) (1999 Reenactment)

3. R.I. Gen. Laws § 45-24-30 (1956) (1999 Reenactment); *see also* R.I. Gen. Laws §§ 45-22.2-1 to 45-22.2-14 (1956) (1999 Reenactment) (comprising the Rhode Island Comprehensive Planning and Land Use Regulation Act.).

4. *See Maynard*, 741 A.2d at 868.

5. *See id.*

6. *See id.*

7. *See id.*

8. *See id.* *See also* R.I. Gen. Laws § 45-24-52 (1956) (1999 Reenactment). The statute reads, in pertinent part:

Among its findings and recommendations to the city or town council with respect to a proposal for adoption, amendment, or repeal of a zoning ordinance or zoning map, the planning board or commission shall:

(1) Include a statement on the general consistency of the proposal with the comprehensive plan of the city or town, including the goals and policies statement, the implementation program, and all other applicable elements of the comprehensive plan; and

The proposed zoning law was then sent to the town council for its consideration.⁹ The town council found that the proposed zoning law violated the Comprehensive Plan and, thus, refused to approve it.¹⁰

Plaintiffs, property owners and former local public officials in Charlestown, sued defendants, municipal planning and other town officials.¹¹ Plaintiffs asserted that defendants' attempts to create a proposed new zoning law were unlawful.¹² They alleged that defendants changed certain parts of the proposed zoning law for their own benefit, thereby causing it to violate the town's Comprehensive Plan.¹³ Defendants moved to dismiss plaintiffs' complaint.¹⁴ The motion justice treated defendants' dismissal motion "as a motion to dismiss for failure to state a claim upon which relief can be granted."¹⁵ He concluded that the town council rejected the issues raised by the plaintiffs in their complaint and, hence, the issues were not appropriate for review.¹⁶ Furthermore, the town council never enacted the zoning ordinance law drafted by the commission; thus, the "plaintiffs were not aggrieved parties."¹⁷ Moreover, the motion justice concluded that the defendants should be allowed to accomplish their discretionary duties without judicial interference.¹⁸ Finally, he dismissed plaintiffs' claim for legal damages because he found that the defendants' actions were entitled to absolute legislative immunity,¹⁹ pursuant to the recent United States Supreme Court holding in *Bogan v. Scott-Harris*.²⁰

Plaintiffs then initiated a second lawsuit in superior court.²¹ They argued that the trial justice's determination that the defend-

(2) Include a demonstration of recognition and consideration of each of the applicable purposes of zoning

Id.

9. See *Maynard*, 741 A.2d at 868.

10. See *id.*

11. See *id.*

12. See *id.*

13. See *id.*

14. See *id.* at 869.

15. *Id.*; R.I. Super. Ct. R. Civ. P. 12(b)(6).

16. See *Maynard*, 741 A.2d at 869.

17. *Id.*

18. See *id.*

19. See *id.*

20. 523 U.S. 44, 49 (1998) (holding that "local legislators are absolutely immune from suit for their legislative activities").

21. See *Maynard*, 741 A.2d at 869.

ants were entitled to legislative immunity was in error.²² Thus, their legal damages action against defendants should not have been dismissed.²³

BACKGROUND

In *Bogan v. Scott-Harris*, Janet Scott-Harris worked for the Department of Health and Human Services for the city of Fall River, Massachusetts.²⁴ In the course of her employment, Scott-Harris prepared to fire a temporary employee who had supposedly made prejudiced statements against other city employees.²⁵ Using political channels, the employee avoided being fired and even managed to have her punishment reduced.²⁶ As the charges against the employee were pending, the mayor submitted to the city council a budget proposal that would require elimination of 135 city positions.²⁷ Scott-Harris' position was among those included in the budget proposal for elimination.²⁸ The city council approved the mayor's proposal and the mayor signed the budget into law, thereby eliminating Scott-Harris' position.²⁹ Scott-Harris sued the city and numerous city officials, including the mayor and the chairman of the city council ordinance committee.³⁰

The United States Supreme Court held that absolute legislative immunity protected the defendants' actions.³¹ In making a determination as to whether their conduct was legislative, the Court was required to look at the conduct itself, instead of what was motivating the individuals engaging in the conduct.³² The Court determined that defendants' acts were legislative in both form and substance and, thus, legislative immunity applied because "[t]he ordinance reflected a discretionary, policy-making decision implicating the budgetary priorities of the city and the services the city provides to its constituents."³³

22. *See id.*

23. *See id.*

24. *Bogan*, 523 U.S. at 46.

25. *See id.*

26. *See id.* at 46-47.

27. *See id.* at 47.

28. *See id.*

29. *See id.*

30. *See id.*

31. *See id.* at 49.

32. *See id.* at 54.

33. *Id.* at 55-56.

ANALYSIS AND HOLDING

The Rhode Island Supreme Court had to determine whether legislative immunity applied to the actions of the municipal officials in Charlestown.³⁴ If, after removing all considerations of purpose and motivation, defendants' actions were "legislative in character," the doctrine of legislative immunity applied and protected them from lawsuits.³⁵ Thus, even if defendants had been motivated by their own personal and political gain to pursue the chosen course of conduct, their "acts were [nonetheless] committed in the course of performing their discretionary functions or duties as government officials in crafting and then presenting proposed municipal legislation for its potential adoption by the town council."³⁶ The supreme court found that legislative immunity protected such actions.³⁷

Furthermore, the court noted that the doctrine of legislative immunity did not apply solely to legislators.³⁸ All officials warrant legislative immunity when they are engaged in legislative business.³⁹ Courts should use "a 'functional approach to immunity questions' . . . so that even when a judicial body enacts rules 'of general application,' such an action can be considered legislative in nature and entitled to absolute immunity."⁴⁰

The supreme court also considered plaintiffs' argument that "the challenged actions of the planning commission and the town planner [did] not rise to the level of legislative policy-making; therefore . . . the actions of those defendants [should have been] considered administrative, not legislative."⁴¹ Plaintiffs argued that some courts had set up a two-part test to ascertain whether conduct was legislative, rather than merely administrative or executive.⁴² In *Carver v. Foerster*,⁴³ the Third Circuit established such

34. See *Maynard*, 741 A.2d at 868.

35. *Id.* at 870 (citing *Bogan*, 523 U.S. at 44).

36. *Id.*

37. See *id.*

38. See *id.* (citing *Bogan*, 523 U.S. at 55).

39. See *id.*

40. *Id.* at 871 (quoting *Forrester v. White*, 484 U.S. 219, 224 (1988); *Supreme Ct. of Va. v. Consumers Union of the United States, Inc.*, 446 U.S. 719, 731 (1980) (respectively)).

41. *Id.*

42. See *id.*

43. 102 F.3d 96 (3d Cir. 1996).

a test, setting forth criteria to determine whether actions were legislative or administrative: "[t]o be legislative, the act must be (1) substantively legislative, such as 'policy-making of a general purpose' or 'line-drawing;' and (2) procedurally legislative, such that it is 'passed by means of established legislative procedures.'"⁴⁴ In *Carver*, the individual defendants, prior to and independent of their statutory roles, had fired several employees for their own personal gain.⁴⁵ As a result, their actions were found to be outside the scope of legislative immunity.

The Rhode Island Supreme Court found that *Maynard* was distinguishable from *Carver* because the defendants' duties in *Maynard* were undertaken as an advisory arm of a legislative body, i.e., the town council.⁴⁶ The town council made the ultimate decision of whether or not to adopt a proposed law.⁴⁷ The planning officials had no actual power to adopt a proposed law themselves.⁴⁸ Instead, "they were required by law to assist and advise a municipal legislative body in their decision-making process by presenting a draft ordinance for its consideration."⁴⁹

The court found that the defendants' actions were an essential part of the legislative process whereby their municipality enacted appropriate zoning laws, stating that "the defendants' actions play[ed] a key role in the eventual enactment or rejection of this municipality's proposed zoning legislation."⁵⁰ Thus, defendant planning officials were protected by legislative immunity "for their legislative-assistance activities," while defendant town councilors were protected by legislative immunity "for their discretionary and policy-making decisions."⁵¹ It was wholly irrelevant "[t]hat the planning commission's activities [were] not the final step in the ordinance-adoption process . . . as long as its members [were] performing legislative functions."⁵²

44. *Id.* at 100 (quoting *Ryan v. Burlington County*, 889 F.2d 1286, 1290-91 (3d Cir. 1989)).

45. *See id.*

46. *See Maynard*, 741 A.2d at 871.

47. *See id.* (citing R.I. Gen. Laws § 45-24-53(a) (1956) (1999 Reenactment) ("No zoning ordinance shall be adopted, repealed, or amended until after a public hearing has been held upon the question before the city or town council.")).

48. *See id.*

49. *Id.* at 871-72.

50. *Id.* at 872.

51. *Id.*

52. *Id.*

CONCLUSION

When municipal officials act in a legislative capacity, such as when they attempt to draft, revise and pass a zoning ordinance, the doctrine of legislative immunity bars actions for legal damages against the officials. It is of no consequence that the officials may have been motivated by purely selfish reasons, such as personal or political gain, or that their actions were only one part of a larger process.

Helena R. Pacheco

Municipal Law. *Munroe v. Town of East Greenwich*, 733 A.2d 703 (R.I. 1999). The Development and Subdivision Review Enabling Act (the Development Review Act) supersedes inconsistent town ordinances adopted pursuant to the home rule charter provision. In addition, land development and zoning statutes supersede local regulations, and procedural requirements for implementation of the Development Review Act do not infringe on town form of government.

FACTS AND TRAVEL

Respondents David and Donna Munroe (the Munroes) are abutting owners to a 35.5 acre parcel of vacant land owned by Philip Ryan Homes, Ltd. (Ryan).¹ Ryan sought to subdivide the property into ten house lots.² Acting in accordance with procedural requirements, Ryan submitted his plans to the East Greenwich town council, which was acting as the Platting and Subdivision Board.³ After the town council conditionally approved Ryan's final plans, the Munroes appealed the town council's decision to the town's zoning board of review, which was acting as a board of appeal.⁴ By unanimous vote, the Munroes' appeal was denied.⁵

Thereafter, the Munroes filed a complaint in the Kent County Superior Court, contending that the board's decision was made "in violation of constitutional, statutory, ordinance or planning board regulation provisions, in excess of the authority granted to the planning board by statute and ordinance, and was made upon unlawful procedures."⁶ The trial court agreed with the Munroes, and held that the board of appeal's decision upholding the town council's approval violated the procedural requirements of the Development Review Act.⁷ The town and town council then filed a petition to the Rhode Island Supreme Court to review this judgment.⁸

1. See *Munroe v. Town of East Greenwich*, 733 A.2d 703, 704 (R.I. 1999).

2. See *id.*

3. See *id.* at 704-05.

4. See *id.* at 705.

5. See *id.*

6. *Id.*

7. See *id.*

8. See *id.*

ANALYSIS AND HOLDING

At trial, the superior court relied in part upon the Rhode Island Zoning Enabling Act of 1991, which states that zoning districts "shall require that any land development project be referred to the city or town planning board or commission for approval."⁹ East Greenwich's town charter provides that the town council shall act as the Platting and Subdivision Board.¹⁰ The superior court concluded that the town usurped the decision-making authority provided by the Development Review Act, which vests that authority "upon [a town's] planning board in favor of a town council acting as a platting board."¹¹

In its appeal to the Rhode Island Supreme Court, the town argued that the trial court misapplied the law of statutory construction in relying on the Development Review Act, misapplied the law and improperly attacked the validity of the town council's authority as established by charter, and violated the Home Rule Charter Amendment of the Rhode Island Constitution.¹²

The Rhode Island Supreme Court began its analysis by noting that the town may permit the town council to exercise power over land development.¹³ However, the legislature may require a planning board to perform duties as assigned by any act of the General Assembly.¹⁴ The court then stated that "[t]he Development Review Act is such an act and supersedes inconsistent ordinances adopted pursuant to the charter."¹⁵

The Development Review Act is an act of general application that would supersede an inconsistent home rule charter provision directing a town council to act as a planning board.¹⁶ This follows the general rule that state laws of statewide application pre-empt municipal ordinances if the legislature intended for the state laws to occupy the field.¹⁷

9. *Id.* at 706 (quoting R.I. Gen. Laws § 45-24-47(B) (1956) (1999 Reenactment)).

10. *See id.*

11. *Id.*

12. *See id.* at 703; R.I. Const. art. XIII.

13. *See Munroe*, 733 A.2d at 707.

14. *See id.* (citing R.I. Gen. Laws § 45-22-7(d) (1956) (1995 Reenactment)).

15. *Id.*

16. *See id.* at 708.

17. *See id.* at 710.

The Rhode Island Supreme Court concluded that the town's charter provision authorizing the town council to control land development and subdivision projects was superseded by the Development Review Act.¹⁸ The court also stated that "the comprehensive land development and zoning statutes adopted by the General Assembly require uniform mechanisms and functions for their enforcement," and that as "essential elements in the uniform enforcement of statutes of statewide concern" the statutes do not affect municipal government structures.¹⁹ Therefore, the court affirmed the judgment of the superior court, holding that the town council, acting as the platting board, violated the Development Review Act.²⁰

CONCLUSION

In *Munroe v. Town of East Greenwich*, the Rhode Island Supreme Court held that the Development and Subdivision Review Act supersedes inconsistent ordinances adopted pursuant to a town's charter provisions. The legislature clearly intended to establish uniform procedures for land development throughout the state and in explicit terms superseded local regulations.

Russell P. Marsella

18. See *id.* at 709.

19. *Id.*

20. See *id.*

Municipal Law. *Town of Warren v. Thornton-Whitehouse*, 740 A.2d 1255 (R.I. 1999). The Coastal Resources Management Council (CRMC) has exclusive regulatory control over all construction of residential, noncommercial wharves on tidal lands. Local municipalities do not share concurrent control with the CRMC over such construction.

FACTS AND TRAVEL

In January 1995, Kirk Dexter (Dexter) filed an application with the CRMC to build a boating dock adjacent to his property in Warren, Rhode Island.¹ The Kickemuit River, on which he planned to construct his dock, was classified as such that certain conditions were required in order to get approval.² The dock he planned to build extended twelve feet beyond what was allowed under the CRMC regulations and a variance was required.³

Between June of 1995 and February of 1996, members of the CRMC met to discuss the application.⁴ The CRMC reviewed the application, received staff reports and heard testimony of interested members of the community.⁵ The agency found no engineering or biological objection to the proposed project from its own staff.⁶ However, the Kickemuit River Council objected on the basis that the dock would limit public access for swimming, small boating and shellfishing and would cause congestion.⁷ Furthermore, the Warren Harbor Management Committee objected on similar grounds, in addition to concerns for water quality preservation of the river.⁸ The Warren Conservation Commission echoed the concerns of both the Kickemuit River Council and the Warren Harbor Management Committee.⁹

The Town of Warren (Warren) also objected.¹⁰ The basis of the objection was that Dexter's property was located in a residential

1. See *Town of Warren v. Thornton-Whitehouse*, 740 A.2d 1255, 1257 (R.I. 1999).

2. See *id.*

3. See *id.*

4. See *id.*

5. See *id.*

6. See *id.*

7. See *id.*

8. See *id.*

9. See *id.*

10. See *id.*

zoning district in which a special-use permit was required in order to build a residential boat dock.¹¹ Dexter had neither applied for nor received that permit.¹² Warren's solicitor informed Dexter that it would issue a stop-work order on any construction if commenced.¹³ Furthermore, the town informed the CRMC that the agency could not approve Dexter's application if he was not in compliance with local zoning requirements.¹⁴ The CRMC nonetheless approved Dexter's application. In April 1996, the CRMC issued a statement that "local approval is not required for the construction and maintenance of dock facilities located within the State of Rhode Island's tidal waters."¹⁵

In May of 1996, Warren filed a complaint seeking judicial review and reversal of CRMC's decision,¹⁶ pursuant to the Administrative Procedures Act,¹⁷ and a declaratory judgment preventing the CRMC from issuing a permit to an applicant who had not met local zoning regulations.¹⁸ The judgment was entered in December of 1997. The court remanded on the issue of CRMC's decision due to a lack of substantial evidence, but determined that the CRMC "possesses 'exclusive jurisdiction over recreational boating facilities.'"¹⁹ Warren filed a timely appeal, and requested review and reversal by the supreme court.²⁰ A number of amicus briefs were then filed in support of the Town of Warren and the CRMC.²¹

Warren's argument on appeal was that the legislature intended to give municipal governments authority to regulate the construction of residential docks in tidal waters under the Rhode Island Zoning Enabling Act of 1991²² and the Comprehensive Planning and Land Use Act.²³ Therefore, the CRMC could not grant approval unless the applicant received approval under the

11. *See id.*

12. *See id.* at 1257.

13. *See id.* at 1258.

14. *See id.*

15. *Id.*

16. *See id.*

17. *See* R.I. Gen. Laws § 42-35-15 (1956) (1993 Reenactment).

18. *See Town of Warren*, 740 A.2d at 1258.

19. *Id.*

20. *See id.*

21. *See id.*

22. *See* R.I. Gen. Laws §§ 45-24-27 through 45-24-72 (1956) (1999 Reenactment).

23. *See* R.I. Gen. Laws § 45-22.2 (1956) (1999 Reenactment).

local zoning regulations.²⁴ The CRMC argued on appeal that the CRMC enabling act²⁵ granted exclusive jurisdiction to the agency over residential boating facilities.²⁶ They further argued that the legislature intended a "uniform" approach to regulation of coastal resources at the state level rather than a "fragmented" approach at the local level.²⁷ The CRMC then cited *Easton's Point Association, Inc. v. Coastal Resources Management Council*,²⁸ where the court held that the CRMC may waive local approval at its discretion.²⁹

ANALYSIS AND HOLDING

The Rhode Island Supreme Court noted that the sole issue on appeal was whether the legislature granted concurrent jurisdiction over residential boating facilities to municipal governments and the CRMC or whether the CRMC had exclusive jurisdiction.³⁰ As the decision is a matter of statutory interpretation, the court reviewed de novo.³¹ In making its determination, it addressed two ancient doctrines of law essential to an understanding of regulation of tidal lands in Rhode Island: the public-trust doctrine and riparian rights.³²

Public-Trust Doctrine

Pursuant to the public-trust doctrine, "the state holds title to all land below the high water mark in a proprietary capacity for the benefit of the public."³³ In *Greater Providence Chamber of Commerce v. State*,³⁴ the court held that the state may grant tidal land to another and that the state may also delegate land regulation authority to another.³⁵ The issue here is whether an express intention to delegate this authority was made by the legislature.³⁶

24. See *Town of Warren*, 740 A.2d at 1258.

25. See R.I. Gen. Laws § 46-23 (1956) (1996 Reenactment).

26. See *Town of Warren*, 740 A.2d at 1258-59.

27. See *id.*

28. 559 A.2d 633 (R.I. 1989).

29. See *Town of Warren*, 740 A.2d at 1259.

30. See *id.*

31. See *id.*

32. See *id.*

33. *Id.* (quoting *Greater Providence Chamber of Commerce v. State*, 657 A.2d 1038, 1041 (R.I. 1995)).

34. 657 A.2d 1038 (R.I. 1995).

35. See *Town of Warren*, 740 A.2d at 1259-60.

36. See *id.* at 1260.

The enabling act of the CRMC provides that the "CRMC is 'authorized to approve, modify, set conditions for, or reject' any proposed 'development or operation within, above, or beneath the tidal water below the mean high water mark,' within certain limits set forth in the statute."³⁷ Therefore, there is an express intention of the legislature that the agency regulate state lands held under the public-trust doctrine.³⁸ The Zoning Enabling Act and Comprehensive Planning and Land Use Act, however, do not reveal an express intent of the legislature to grant authority to municipal governments with respect to regulation of state held tidal waters.³⁹ Unlike the CRMC, Warren has not received an express statement of legislative intent to be granted authority over state held tidal waters.⁴⁰

Riparian Rights

Under the riparian rights doctrine, a riparian land owner has a right to construct a dock to gain access to navigable waters, as long as that dock does not obstruct the rights of other riparian land owners.⁴¹ Over time, that doctrine has been limited by legislative enactments, including the requirement that the CRMC approve construction of any dock in tidal waters.⁴² It is the opinion of the court that absent an explicit statement that it intends to limit this traditional right, the legislature cannot have intended additional limits.⁴³ Therefore, since the legislature has not expressly granted municipalities jurisdiction over tidal lands and the construction of docks and wharves, the CRMC must have exclusive jurisdiction over docks in tidal waters beginning at the mean high-water mark.⁴⁴

The court's holding limits the CRMC's exclusive jurisdiction over tidal waters.⁴⁵ Municipalities still have zoning power and share jurisdiction with the CRMC over projects that extend above

37. *Id.* (quoting R.I. Gen. Laws § 46-23-6(2) (1956) (1996 Reenactment)).

38. *See id.*

39. *See id.*

40. *See id.*

41. *See id.*

42. *See id.* (citing *Nugent v. Vallone*, 161 A.2d 802, 805 (R.I. 1960)).

43. *See id.*

44. *See id.*

45. *See id.*

the mean high-water mark.⁴⁶ Local municipalities have zoning authority over the land appurtenant to the dock and towns are still able to limit the way in which the land is used through zoning regulations.⁴⁷

In this case, the parties framed the issue as involving state preemption of local municipality control.⁴⁸ There are two ways in which a local regulation may be preempted by state law.⁴⁹ One situation is when a municipal ordinance is in conflict with a state ordinance focusing on the same issue, and the other is when the legislature intended that a particular subject be entirely covered by the statute.⁵⁰ Here, Warren would not have authority to regulate tidal lands even if the CRMC did not exist.⁵¹ Therefore, the court found that the case was not one of preemption.⁵² Nonetheless, it found that arguments usually relied upon in cases of preemption applied in this case.⁵³ Specifically, the court addressed policy considerations regarding the importance of protecting and preserving Rhode Island's coastal resources.⁵⁴ The supreme court stated that if it allowed local municipalities to create their own standards regarding wharves, the legislative intent to protect and preserve coastal resources would be undermined.⁵⁵

CONCLUSION

In *Town of Warren v. Thorton-Whitehouse*, the Rhode Island Supreme Court held that the CRMC has "exclusive jurisdiction over residential, noncommercial boat wharves that are constructed on tidal land."⁵⁶ With respect to areas above the mean high-water mark, there is some overlap in jurisdiction between local municipalities and the CRMC. However, with respect to tidal areas, beginning at the mean high-water mark, the CRMC has exclusive jurisdiction. The legislature could have granted the regulation of

46. *See id.*

47. *See id.* at 1260.

48. *See id.* at 1261.

49. *See id.*

50. *See id.*

51. *See id.*

52. *See id.*

53. *See id.*

54. *See id.* at 1261-62.

55. *See id.* at 1262.

56. *Id.*

tidal lands to local municipalities, but because it did not expressly do so, municipalities are without authority to regulate these areas.

Ann B. Sheppard