

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

J. Daniel Withers

v.

Middletown School Committee

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DECISION

Held: At the present time, the transportation provided to the Appellant’s children is the most suitable of the available alternatives; however, there is one additional alternative bus stop which would eliminate the safety issues raised by the location of the current bus stop on East Main Road. The availability of this alternative bus stop to students who live on Island Drive is dependent upon the town of Middletown’s exercise of any rights it may have to a path extending from Island Drive to Slate Hill Farm. The School Committee must request that the Town pursue its rights to utilize or establish an easement so that school officials could provide a safer location for a bus stop.

DATE: July 21, 2003

Travel of the Case

On December 13, 2002 J. Daniel Withers wrote to Commissioner Peter McWalters to request a hearing under R.I.G.L. 31-20-10.3 entitled “School bus stops – Routes” which requires the Commissioner to resolve disputes concerning school bus stops and routes. The matter was referred to the undersigned for hearing and decision. Hearing in this matter took place on March 5 and March 19, 2003, and the record closed upon receipt of the transcripts on March 31, 2003. At the hearings, both testimony and documentary evidence was received. The hearing officer took a view of the bus stop and the relevant surrounding area on March 19, 2003 at the time of the morning when the bus stops at the intersection of Island Drive and East Main Road.

Although there was no evidence of any formal action being taken by the Middletown School Committee at the time of the hearing, counsel indicated that the School Committee had in essence rejected Mr. Withers request to change existing transportation arrangements for his children. Counsel for the School Committee also indicated that the issue of whether the town had or could exercise rights to an “easement” which would permit students to access a bus stop in the Slate Hill Farm subdivision was referred to the town for any further action it deemed fit to take.

Jurisdiction to hear this appeal lies under both R.I.G.L. 31-20-10.3 (e) and 16-39-1 and 16-39-2.

ISSUE

Has the Middletown School Committee provided suitable transportation to and from school for the Appellant’s children ?
Does the existing bus stop at the intersection of Island Drive and East Main Road adequately protect the safety of the children utilizing this bus stop?

Findings of Relevant Facts:

- School bus service was established for students residing on Island Drive in Middletown in the fall of 2001. Tr.p.5
- The appellant, J. Daniel Withers, has children who utilize the bus stop established for students who attend the public school in Middletown; the bus stop is located on East Main Road, at the intersection of Island Drive. Letter of Appeal dated December 13, 2002.
- The Island Drive stop is utilized by busses transporting students to elementary, middle and high school in Middletown; a fourth bus goes into Island Drive to pick up and transport a special education student whose IEP calls for door to door pick up. S.C.Ex.C; Tr.p. 22.

- Beginning in October of 2001 concerns of parents of students utilizing this bus stop were brought to the attention of Robert Bucci, Director of Student Services for the Middletown School Department. Tr. pp. 9, 45-46, 52.
- In response to these concerns, Mr. Bucci, together with other school and town officials, and a representative of Laidlaw Transit Company, which provides busses for the Middletown School Department, tested relocating the bus stop from East Main Road to Island Drive. Tr. pp. 53-56.
- School officials concluded after two test runs that although there was merit to the claim of parents that the current bus stop is hazardous, more serious hazards would accompany a relocation of the bus stop to Island Drive because of the risks created when a school bus exits onto East Main Road.¹ Tr. pp. 53-56; Appellant's Ex.1.
- Also in response to parents' concerns² school officials referred the matter to the town council for the review of the town's rights to use an "easement" either to create alternative bus access to Island Drive or to have students use a path from Island Drive to Slate Hill Farm for pick up at a stop on North Drive. Tr.pp.18-20. The referral of this matter to the town occurred on March 21, 2002. Tr.p.44.
- On February 11, 2003 Vernon L. Gorton, town solicitor for the town of Middletown, rendered an opinion to Philip Coen, the town administrator, on the subject of the utilization of an easement over lot 32 of the Slate Hill Farm development for walkway access to Island Drive. His opinion indicated that consent of the landowners was a prerequisite to the town's installation of a walkway over the lot in question. S.C.Ex.A
- Mr. Gorton stated in his opinion that although he was initially optimistic about the possibility of the town utilizing the easement, a prior legal opinion written in 1989 by then-town solicitor Michael Miller had been less optimistic. He went on to say that "whether any other solicitor would have come to the same conclusion based on those facts" was irrelevant because there was a need for consistency in the town's interpretation of the law and its application to particular properties. Mr. Gorton wrote that absent the consent of the landowners, the town could not legally install walkway access over the easement area. S.C.Ex A.
- Since the date of the above-referenced opinion, the Appellant has received no notice of formal action of the Town of Middletown to pursue any rights it may have to utilization of the above-referenced "easement" for walkway access for Island Drive children so that their bus stop can be relocated from East Main Road to North Drive. Tr.p.21.

¹ A driver of a bus has difficulty seeing oncoming traffic on East Main Road because of the curve and the rise of the road, and when the turn onto East Main Road is made, the bus blocks both lanes of travel of southbound traffic for fifteen to twenty seconds. Mr. Bucci testified that there was a greater likelihood that a bus exiting Island Drive would be struck, since oncoming traffic would have no empty lane to move into to avert a collision. A lane of travel is still open when the bus is stopped on East Main Road and students are boarding the bus. He further stated that when a bus is broadsided as it could be when making the turn from Island Drive on to East Main Road, this would cause more injuries than if it were struck from the rear, as would be the case if the stop is retained on East Main Road.

² as well as their own assessment of the situation, we would assume

- On October 29, 2002, the Appellant requested³ that the town consider an alternative to the current bus stop and relocate the stop to a point on Island Drive, using a smaller-size bus that could negotiate a turn in the cul de sac area without backing up, and more safely exit on to East Main Road after picking up the children on Island Drive. Appellant's Ex.2.
- The above-referenced alternative was formally communicated to school officials at the hearing on March 5, 2003.Tr.pp.21-23.
- On March 12, 2003 the Chief of Police, along with school officials and a representative of Laidlaw Transit, tested a thirty (30) passenger bus turning into and out of the Island Drive development. While the smaller bus could successfully negotiate the turn in the cul de sac without backing up,⁴on exiting onto East Main Road the nose of the smaller bus extended well into the second lane of the two lanes going south on East Main Road.Tr. pp.22-24; S.C.Ex.D.
- After doing the test run for a bus stop on Island Drive with a smaller bus, the Chief of Police testified he would not approve such a stop, and continued to be of the opinion that, unless a walkway to Slate Hill Farm can be used and a stop for Island Drive children established there, the safest place for the bus stop for Island Drive students is its present location on East Main Road. Tr. Vol. I, pp. 85-88; Tr. Vol. II, p.24; S.C.Ex.D.
- The physical approach to the present bus stop at East Main Road and Island Drive involves proceeding south on East Main Road from the Portsmouth/Middletown town line, up a small rise and around a "significant" curve on East Main Road about three hundred feet⁵ before the stop. Tr. pp.16,86.
- The visibility of a bus when it is stopped at the East Main Road/Island Drive bus stop is diminished and it is obscured from view by the road's configuration until approaching drivers are a short distance from the bus. Tr.pp. 67,84. The busses have just turned left on to East Main Road from Mitchell's Lane, again about three hundred feet from the stop, a situation which, considered together with the configuration of East Main Road at this point, creates an element of surprise for drivers traveling South toward the bus stop in the morning and results in a hazard to public school children boarding the bus at this location. Tr. pp.56,85.
- At the time children are picked up at this stop in the morning, traffic is heavy and, although the speed limit for this area is 35 miles per hour, cars travel at an average speed of 42 to 43 miles per hour. Tr. p.85.
- A "bus stop ahead" sign was recently posted to alert drivers approaching the bus stop from the north on East Main Road that they may encounter a stopped school bus

³ in a written communication to Michael Embury who at that time was the Town Administrator for Middletown.

⁴ a problem experienced with a larger bus

⁵ although no precise measurement of this distance was placed on the record, the Appellant estimates it at two hundred (200) feet (Tr.p.14) and the Chief of Police recalls the distance from the crest of the hill to the stop as four hundred (400) feet (Tr. p.84). According to the Tax Assessor's map, the total frontage measurement of the two lots which border on East Main Road at this spot is approximately three hundred (300) feet. Joint Ex. A.

approximately three hundred (300) feet down the road. This sign is presently somewhat obscured by tree branches blocking it from view. Tr. pp.61-62.

- Flashing lights on the school bus are activated when the bus turns on to East Main Road from Mitchell's Lane and continue while the bus is stopped to pick up children at the intersection of East Main Road and Island Drive.Tr.p.48.
- Placement of a flashing sign before the approach to this bus stop and in advance of the curve in the road would increase the safety of those students who presently utilize the bus stop. Tr.Vol.II pp.45-47.
- The Chief of Police of the town of Middletown has approved the present bus stop on East Main Road at the intersection of Island Drive. Tr. pp.60, 80.

Positions of the Parties

J. Daniel Withers

Mr. Withers took the position that the children who utilize the present bus stop on East Main Road at the intersection of Island Drive are exposed to unacceptable hazards that could be avoided if the school department chose another option for their transportation to school. The configuration of East Main Road as oncoming drivers approach the bus stop in the morning, the speed and volume of traffic combine to create a situation of undisputed vulnerability for the bus and its passengers. At the outset of the hearing he argued for the relocation of the bus stop to a point on Island Drive and the utilization of a smaller bus that could navigate the cul de sac and more easily and safely make the turn from Island Drive back on to East Main Road. In response to the testimony of the Chief of Police and information presented with respect to the hazards encountered on a test run for the smaller bus⁶, Mr. Withers identified the safer option as utilization of an easement half way down Island Drive to connect Island Drive to Slate Hill Farm.

The easement could be for establishment of a street so that a bus servicing Island Drive children could access this area through Slate Hill Farm and reenter East Main Road from North Drive, a point further down on East Main Road which does not pose the same hazards as a point of entry from Island Drive. Another alternative the appellant argued should be explored is the use of the easement to establish a public walkway which Island Drive children could use to access a bus stop in the Slate Hill Farm development. Either of these alternatives would provide safe transportation for students residing in the Island Drive neighborhood. The present location of the bus stop poses unacceptable hazards, he argues. Although the appellant recognizes that there presently are legal obstacles to the town's (and therefore the school department's) utilization of the easement, he takes the position that the town is under an obligation to pursue this option more vigorously than it has to date. He argues the given the potential consequences associated with the continuing use of the present bus stop, school and town officials must proceed to pursue use of the easement "with the greatest amount of zeal and vigor" that they possibly can.

⁶ particularly the information that even the smaller bus could not turn from Island Drive on to East Main Road without taking up two lanes of travel

Middletown School Committee

Although the school department recognizes the risks inherent in the bus stop's present location, this is the safest alternative presently available for providing transportation for the students residing in the Island Drive neighborhood. Counsel for the School Committee notes that while all agree that the safer alternative would be utilization of a walkway or street from Island Drive to Slate Hill Farm so that a school bus would not have to exit onto East Main Road at such a dangerous point, this option is not available. When school officials referred the matter to the town for its conclusions on the viability of a public easement, the town solicitor determined that the town could not install walkway access between Island Farm and Slate Hill Farm without the consent of the landowners or exercise of the power of eminent domain. Given that acquisition of the property by eminent domain is totally within the control of the town of Middletown, school officials are without power or authority to act. Therefore, while the school committee may support the appellant if he chooses to petition the town of Middletown to pursue this option and the committee would like to see it available, they are constrained to utilize the present bus stop. This stop has been approved, as is required under state law, by the Chief of Police who has identified it as the safest of the transportation arrangements presently available. For these reasons, the School Committee asks that the appeal of Mr. Withers be denied.

DECISION

The record in this case demonstrates that Middletown school officials and the staff at Laidlaw Transit have responded as best they can to date to provide safe transportation to and from school for Island Drive students. Even up to the time of the hearing, school and town officials were receptive to suggestions for additional measures to increase the safety of children using the current bus stop.⁷ The alternate transportation proposed by the Appellant, i.e. the use of a smaller bus picking up children at a stop on Island Drive, was thoroughly explored. It was found to present the risk of a "broadside collision" and was clearly demonstrated on this record to be a less safe alternative than the current bus stop's location on East Main Road.

Yet, the parties agree that if a right of way could be utilized so that children could walk from Island Drive into Slate Hill Farm and be picked up by a school bus there, this would be a much safer alternative. The school committee views the pursuit of rights to an easement at the location indicated in this record to be an issue that goes beyond school transportation in that the use of any easement would not be limited to providing children with a safer bus stop location. Thus, while the committee would support any petition to the town council presented by the Appellant or the residents of Island Drive, the School Committee takes the position that it lacks standing to petition the town council to take action to enforce rights to an existing easement, or to request that the town acquire such rights by eminent domain.

⁷ The chief of police agreed that safety would be increased if a flashing sign were placed sufficiently ahead of the stop so as not to distract drivers approaching a stopped school bus. The sign could also indicate a requirement for reduced speed during school hours. Chief Burns indicated that he would request this type of sign from the State Department of Transportation, which has authority over traffic controls on East Main Road.

Although the issue of standing and responsibility of the School Committee to submit its own request to the town council is a matter which does not arise exclusively under school law, it is our opinion that R.I.G.L. 16-21-1 requires a school committee to take whatever reasonable steps it can to ensure its ability to fulfill its statutory obligation to provide suitable transportation to public and private school students. In this case, the school committee takes the position that it has provided the safest transportation possible at this time, and that the pursuit of a safer option is the responsibility of the appellant. In a situation such as this in which school officials recognize the dangers inherent in the present location of the bus stop, we see a legal duty for the school committee to make a formal request to Town officials to pursue the safer option which has been identified on the record. There is no information concerning an impediment to the Middletown School Committee's submission of a formal request to the town council to pursue any rights the town may have to use of an easement between Island Drive and Slate Hill Farm. This is a situation in which another public entity, i.e. the town, has the authority to attempt to alter the situation encountered by the School Committee as it endeavors to provide more suitable school transportation to its students.⁸

Thus, the appeal of Mr. Withers is granted to the extent that, although the present bus stop has been shown to be the safest alternative available and may therefore be "suitable" as that term is used in 16-21-1, the School Committee is directed to formally request the town of Middletown to pursue use/acquisition of an easement to relocate the bus stop to a safer location in Slate Hill Farm. Whether the town of Middletown will see fit to do so is a matter beyond our jurisdiction, however such action may be deemed necessary by the town to protect the its best interests.⁹

For the Commissioner

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

July 21, 2003

Date

⁸ This case therefore differs from the situation in which the conditions of a private road undermine the ability of a school committee to provide suitable transportation. See *Krupka v. Chariho Regional School District*, decision of the Commissioner dated February 24, 1995.

⁹ We would note here the case of *Houle v. Galloway School Lines, Inc.* 643 A2d 822 (1994) in which our Supreme Court dealt with a claim alleging negligent design of a bus route in North Smithfield. The court found that the knowledge of circumstances that force an individual into a position of peril and the subsequent choice not to remedy the situation presented a jury question as to whether the egregious conduct exception to the public duty doctrine applied. An analysis of whether an unreasonable risk of harm is created at the current bus stop would probably take into account the extent to which the public entities pursued other reasonable and safer options.