

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 22-CV-02101

John Echeverria et al v. Town of Tunbridge
ENTRY REGARDING MOTION

Title: Motion to Dismiss (Motion: 1)
Filer: Michael John Tarrant, II
Filed Date: August 24, 2022

In this action, Plaintiffs John Echeverria and Carin Pratt, represented by Geoffrey J. Vitt, Esq. and Sarah Merlo, Esq., seek a declaratory judgment that “the Tunbridge Selectboard does not have the authority to conduct or authorize maintenance or repair activities on trails in the Town of Tunbridge.” Complaint, Request for Relief, ¶ A. The Town, represented by Michael John Tarrant, II, Esq. and Alexandra J. Spring, Esq., moves to dismiss, arguing that Plaintiffs seek an advisory opinion concerning a matter that is not ripe, and in the alternative, that the Town has the power to maintain its trails. For the reasons stated below, the Court grants the Town’s motion to dismiss.

Background

The Court recounts the following facts from the Complaint strictly for purposes of resolving the pending motion to dismiss. Plaintiffs own approximately 325 acres, known as “Dodge Farm,” in Tunbridge, Vermont. Two trails, former Class 4 highways that the Town discontinued, cross the Dodge Farm. The Town currently permits walking on the trails. Several years ago, bicycle advocates allegedly “launched a campaign” to encourage the Town to allow bicycling on at least one of the trails. The Town’s Planning Commission has made recommendations that the trails be limited to pedestrian use and that a Trails Committee evaluate potential new routes for the trail. The Planning Commission engaged in discussion with Plaintiffs and has made further recommendations to the Town’s Selectboard, which has not taken any steps to implement the recommendations.¹

Discussion

“A motion to dismiss for failure to state a claim upon which relief can be granted should not be granted unless it is beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief.” *Doe v. Dep’t for Child. & Fams.*, 2020 VT 79, ¶ 7, 213 Vt. 151 (quoting *Richards v. Town of Norwich*, 169 Vt. 44, 48 (1999)). This Court may issue a declaratory judgment to “provide a

¹ Plaintiffs’ proffer, in the context of opposing the pending motion, a form that the Town recently approved, titled “Miscellaneous Improvements Application for Improvements Requiring Town Administration Approval.” Exh. A. The form states that it “can be used to gain approval from the Selectboard for Class 4 Road, Legal Trail improvements or changes and any other miscellaneous improvement deemed acceptable.” *Id.*

declaration of rights, status, and other legal relations of parties to an actual or justiciable controversy.” *Doria v. Univ. of Vermont*, 156 Vt. 114, 117 (1991) (quoting *Robtoy v. City of St. Albans*, 132 Vt. 503, 504 (1974); see 12 V.S.A. § 4711. In the absence of an actual or justiciable controversy, a declaratory judgment amounts to nothing more than an unauthorized, advisory opinion. *Id.* “In a suit for declaratory judgment, an injury in fact must be reasonably expected and not based on fear or anticipation.” *Brod v. Agency of Nat. Res.*, 2007 VT 87, ¶ 9, 182 Vt. 234 (citing *Robtoy v. City of St. Albans*, 132 Vt. 503, 504 (1974).

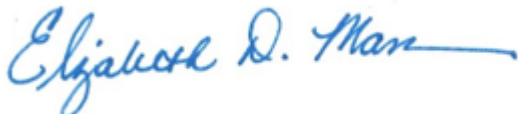
It is apparent from the parties’ arguments in their filings and at oral arguments (December 19, 2022) that the parties disagree about the extent of Vermont towns’ powers with regard to maintenance of public trails. Disagreement and debate alone are not sufficient to meet the requirement that the complaint present an actual or justiciable controversy. The desires of “bicycle advocates” and even the recommendations of the Planning Commission focus on expanding the permitted uses of the trails in question but do not, according to the Complaint, focus on maintenance of the trail. Even if they did, there is no allegation that anything more than discussion about the trails has occurred. The Selectboard has reached no decision to perform maintenance on the trails, nor has the Town delegated the authority to maintain the trails to a third party. Plaintiffs admit that the Selectboard has not taken any further steps to implement the Planning Commission’s recommendations. Even if the Court were to consider the recently approved application form for “miscellaneous improvements” (Exh. A), which appears to relate to Town approval for improvements to Town trails such as might be pursued by trail users or the owners of the property on which the trail rights of way lie, there is no allegation that anyone has sought such approval let alone that the Town has granted such approval. Although in some instances a plaintiff may seek declaratory relief when an injury in fact can reasonably be expected, Plaintiffs’ mere fears that the Town may one day seek to maintain the trails on the Dodge Farm property are not sufficient to elevate the Complaint to the articulation of an actual controversy. Therefore, any declaratory judgment would amount to an impermissible advisory opinion.

Having decided to dismiss the complaint for lack of an actual, justiciable controversy, the Court does not reach the substance of Plaintiffs’ claim that the Town lacks the authority to maintain trails.

Order

The Town’s motion to dismiss is hereby *granted*.

Electronically signed at Chelsea, Vermont this December 21, 2022 at 12:29 PM pursuant to V.R.E.F.



9(d).

Elizabeth D. Mann
Vermont Superior Court Judge

