

STATE OF RHODE ISLAND

WASHINGTON, Sc.

SUPERIOR COURT

LLOYD ALBERT, et al.)
)
) VS. CASE NO: WC/2024-0027
)
THE BONNET SHORES FIRE)
DISTRICT, et al.)

HEARD BEFORE THE HONORABLE JUSTICE SARAH TAFT-CARTER

ON APRIL 12, 2024

MOTIONS

APPEARANCES:

MATTHEW T. OLIVERIO, ESQUIRE and
GINA RENZULLI LEMAY, ESQUIRE.....FOR THE PLAINTIFFS

THOMAS M. DICKINSON, ESQUIRE.....FOR THE DEFENDANTS

MICHAEL W. GARLAND, ESQUIRE.....FOR THE INTERVENORS

MARY M. GUGLIETTI, RPR
CERTIFIED COURT REPORTER

C E R T I F I C A T I O N

I, Mary M. Guglietti, hereby certify that the
succeeding pages, 1 through 23, inclusive, are a
true and accurate transcript of my stenographic notes.

Mary M. Guglietti

Mary M. Guglietti, RPR
Certified Court Reporter

FRIDAY, APRIL 12, 2024

MORNING SESSION

THE CLERK: In the matter of WC/2024-0027, Lloyd Albert, et al. v. The Bonnet Shores Fire District.

Would the attorneys please identify yourselves for the record.

MR. OLIVERIO: Good morning, Your Honor. Matthew Oliverio for the plaintiffs.

MS. LEMAY: Good morning, Your Honor. Gina Renzulli Lemay for the plaintiffs.

MR. DICKINSON: Thomas Dickinson for respondents, Bonnet Shores Fire District.

MR. GARLAND: Michael Garland for various proposed intervenors.

THE COURT: So we have a motion to intervene, which I think we should take first.

MR. GARLAND: Yes, Your Honor.

THE COURT: And then the petition for the issuance of a writ of mandamus.

MR. DICKINSON: Correct.

THE COURT: And that was continued from January?

MR. DICKINSON: February, I think.

THE COURT: February?

MR. OLIVERIO: February, yes, Your Honor.

THE COURT: All right. So why don't we first

1 address the motion to intervene, along with the
2 objections.

3 MR. GARLAND: Yes, Your Honor. Your Honor, after
4 the last hearing, there were objections raised by the
5 petitioners about, I think, standing, and so I wanted to
6 show to the Court that in fact there were a number of
7 nonresident owners that had an interest in the petition
8 or the writ of mandamus and so those individuals were
9 named. They are representative, Judge, of approximately
10 1700 nonresident owners at the Bonnet Shores Condominium.

11 And, Judge, I also just want to repeat what I said
12 the last time, which is when I filed the original motion
13 to intervene, nothing had been filed on behalf or by the
14 Bonnet Shores Fire District. After the motion to
15 intervene was filed, Attorney Dickinson in fact did file
16 a response to the petition for mandamus or writ of
17 mandamus, and I think, Judge, as he pointed out, what
18 we're really here on, Judge, the only issue, as far as I
19 can determine, is when the meeting should be held of the
20 Bonnet Shores Fire District.

21 THE COURT: So there's a representation that's been
22 made that it will be June 4th, I think, that Thursday in
23 June.

24 MR. DICKINSON: The last Thursday, I think it's the
25 28th, I think, Your Honor.

1 MR. GARLAND: June 27th, Judge.

2 THE COURT: June 27th.

3 MR. GARLAND: Correct. And so, Judge, again, I had
4 filed the motion to intervene out of an abundance of
5 caution because the petitioners have raised the argument
6 that in fact nonresident owners would not be permitted or
7 it was their argument that, as a result of the consent
8 judgment that this Court approved, that nonresident
9 owners could not participate in that special meeting.

10 And I think, Judge, for reasons that have been set
11 forth, perhaps ad nauseam, by the fire district in fact,
12 the charter's very clear that nonresident owners
13 certainly do have a right to vote in that meeting, and my
14 brother, Attorney Dickinson, has pointed out the fact
15 that the legislature has not taken any action to
16 disenfranchise nonresident owners, and I'll leave it at
17 that, Judge.

18 THE COURT: Thank you.

19 MR. OLIVERIO: Good morning, Your Honor.
20 Matthew Oliverio again for the plaintiffs.

21 Obviously, we object. The motion to intervene is
22 deficient in a number of ways, Your Honor. Mr. Garland
23 failed to comply with the mandate of 24(c). He did not
24 file a pleading setting forth the interests that he's
25 seeking to protect and that's -- that's not optional,

1 that's required under 24(c).

2 Realizing that when he filed his first motion to
3 intervene on behalf of a nonvoting condo association that
4 that was deficient in and of itself, he then attempts to
5 correct that deficiency by naming 32 nonresident unit
6 owners, and he claims that they're representative of
7 1700.

8 Well, Your Honor, as this Court recognized, what I
9 think my brother is attempting to do is seek declaratory
10 relief, and he's failed to join indispensable parties.
11 So he can't have it both ways, claiming, oh, look what
12 the Court's already decided.

13 The 50 resident qualified voters of the district
14 demanded a special meeting, as is their right and as the
15 fire district is mandated to convene under the bylaws.
16 These 32 nonresidents have not identified what their
17 interest is. There's no pleadings. They haven't joined
18 all indispensable parties, and they shouldn't get -- be
19 able to intervene in this action.

20 The fire district is the party at issue here. They
21 are the governing body. The council is the governing
22 body of the fire district. The action is directed toward
23 that entity, not anybody else, and so, you know, I find
24 it rather ironic that Mr. Garland holds up a decision on
25 indispensable parties that this Court issued before a

1 consent judgment was ever entered in this matter and,
2 yet, doesn't join all of the interested parties in the
3 intervention. He hasn't filed a petition for a class
4 action, and maybe that's what he needs to do to intervene
5 in this, but it's deficient for at least those two
6 reasons. Moreover, it's really conjecture and his --
7 what he's seeking is hypothetical. We don't know what's
8 going to happen at that meeting. We want to convene a
9 meeting of the qualified voters.

10 So I think it fails as a matter of law because he
11 hasn't complied with 24(c) but, also, he didn't join
12 indispensable parties, and what he seeks is really
13 conjecture. He hasn't articulated how they are impacted
14 and what their rights are. So I'd rest also on my memo,
15 Your Honor.

16 THE COURT: Thank you. Would you like to be heard?

17 MR. DICKINSON: I have no objection to either of
18 these motions to intervene, Your Honor. I do find some
19 irony in Mr. Oliverio's raising of indispensable parties
20 in light of the issue that was in the original case, but
21 we have no objection to the motions.

22 THE COURT: Thank you. Before the Court is the
23 motion to intervene filed by nonresident Bonnet Shores
24 Beach Club Condominium unit owners, along with
25 objections.

1 The beach club and nonresident beach club unit
2 owners argue that they have a substantial interest in the
3 subject matter. Disposition of this action, they argue,
4 will impair their ability to protect their interests in
5 that they are not adequately represented by any of the
6 existing parties. Specifically, they argue that
7 petitioners' demand for special meeting is an attempt to
8 disenfranchise nonresident property owners.

9 Petitioners argue that the beach club does not have
10 standing to intervene in this action because petitioners
11 have not asked the Court to determine who shall be deemed
12 a qualified voter for the purpose of a district election.

13 Intervention is governed by Rule 24 of the
14 Superior Court Rules of Civil Procedure. With respect
15 to Rule 24(a), an applicant shall be permitted to
16 intervene if they satisfy four criteria: one, the
17 applicant files a timely application; two, the applicant
18 claims an interest related to the property or transaction
19 which is the subject matter of this action; three,
20 disposition of the action may as a practical matter
21 impair or impede the applicant's ability to protect that
22 interest; and, four, the applicant's interest is not
23 adequately represented by current parties to this action.
24 *Tonetti Enterprises, LLC v. Mendon Road Leasing Corp.*,
25 943 A.2d 1063 at 1073 (R.I. 2008).

1 Here, the intervenors have not asserted a readably
2 identifiable interest in this mandamus action which is
3 the subject matter of the litigation that will not be
4 adequately protected. There is no compelling showing of
5 an adequate representation as the intervenors' interest
6 is or appears to this Court to be identical to that of
7 the present parties. *Verizon New England, Inc. v.*
8 *Savage*, 267 A.3d 647 at 654. There is a presumption of
9 adequate representation when either, one, the goals of
10 the applicants are the same as those of the petitioners
11 or respondents, or the government in defending the
12 validity of a statute is presumed to be adequately
13 representing the interests of all citizens who support
14 the statute. *See the Verizon case.*

15 The Bonnet Shores Fire District Council represents
16 all qualified voters, including the nonresident property
17 owners. Moreover, the goal of the Bonnet Shores Fire
18 District and the beach club and nonresident unit owners
19 are the same. Here, it's the issue with the annual
20 meeting.

21 Therefore, the Court finds that the moving party has
22 not met the elements of 24, Rule 24, and the motion to
23 intervene is denied.

24 Next with respect to the mandamus.

25 MR. OLIVERIO: Thank you, Your Honor. I want to

1 first thank the Court for giving me the opportunity to
2 respond to the fire district's memo because Mr. Dickinson
3 raised a lot of additional issues, and so I wanted to
4 address those with the Court.

5 What I'd like to do, Your Honor, is just to
6 highlight the four, the four main points of my argument
7 first before delving into the argument.

8 First, why was it necessary to file a petition for
9 writ of mandamus? Why are we here? What are the
10 elements of the writ of mandamus? And what is the --
11 what is the impact and significance of the May 26, 2022,
12 consent judgment that the parties agreed to and that this
13 Court entered in the *Patterson* litigation? And then,
14 finally, I want to address, Your Honor, the fire
15 district's deliberate undermining of the work of its own
16 charter review commission that was convened under the
17 bylaws and consistent with the consent judgment that
18 entered here and the lack of collaboration between the
19 fire district council and the commission. I think it's
20 important to address those issues.

21 THE COURT: It's been stated that there will be an
22 annual meeting in June. The Court's not going to get in
23 the middle of this consent order. The consent order is a
24 contract between the parties and that's it. You folks
25 chose to negotiate, enter into the consent order. You

1 chose the path to take to, I guess, comply with my
2 decision, for lack of better words. I'm not getting in
3 the middle of it, folks, no.

4 MR. OLIVERIO: But, Your Honor, there were -- and my
5 brother never addressed this issue -- they made judicial
6 admissions that the charter was unconstitutional, that
7 the nonresident members from the beach club debased and
8 diluted the voting rights.

9 THE COURT: We're here for mandamus, counsel. We're
10 here for mandamus, and what is being sought is this
11 meeting, a special meeting to be held, but it's been
12 represented that there will be a meeting, it will be in
13 June. It's also been represented that the parties were
14 working in accordance with the consent order until they
15 weren't. Have your June meeting.

16 MR. OLIVERIO: Well, Your Honor, that's -- see,
17 therein lies the problem. Because if you look at the
18 notice, if you look at the notice that was --

19 THE COURT: I wasn't asked to look at the notice.

20 MR. OLIVERIO: No, there was a -- we attached the
21 minutes from the March 26 meeting. They anticipate
22 holding a meeting for elections.

23 THE COURT: It's been represented today by counsel
24 that there will be a meeting. I'm going to accept that
25 representation.

1 MR. OLIVERIO: And you're going to order that that
2 meeting take place on the 27th?

3 THE COURT: I'm not ordering anything. I'm either
4 going to grant or deny the mandamus.

5 MR. OLIVERIO: Okay. Well, let me -- let me go on
6 with my argument then. As I indicated, Your Honor,
7 before the Court is petitioners' motion for issuance of
8 writ of mandamus. The Bonnet Shores Fire District, whose
9 duties are to the residents and landowners of the fire
10 district, have failed to convene a special meeting for
11 five months now, Your Honor.

12 THE COURT: Can we move on? There's been a
13 representation that there's going to be a June meeting.
14 It's now the middle of April. When do you want the June
15 meeting -- when do you want this special meeting?

16 MR. OLIVERIO: I want the meeting as soon as
17 possible, Your Honor, and it should be of the --

18 THE COURT: Quite frankly, June sounds pretty
19 reasonable.

20 MR. OLIVERIO: Well, what -- are they going to have
21 special elections at that meeting? Are they going to
22 have the elections of the council members and the
23 officers? There's --

24 THE COURT: Don't ask me questions.

25 MR. OLIVERIO: Well, that's what we're seeking,

1 Your Honor, and we're seeking to have those elections
2 consistent with the terms of the consent judgment in
3 which nonresident owners dilute and debase the resident
4 owners' voting rights, and there's been a purposeful
5 attempt by the district council to undermine what's going
6 on at the General Assembly to amend this charter.
7 They've already admitted that they have debased and
8 diluted. They paid attorneys' fees consistent with that,
9 Your Honor.

10 If you look at the consent decree, Your Honor,
11 what they're really doing, what they're asking the Court
12 to do is to vitiate the consent decree with respect to
13 Count IV, right. On Count IV, judgment shall enter.
14 Count IV was a constitutional deprivation of rights and
15 an acknowledgment by these -- by this fire district of
16 a number of allegations. Count IV from the *Patterson*
17 litigation --

18 THE COURT: Count IV or paragraph 4?

19 MR. OLIVERIO: No, Count IV, Your Honor, from the --

20 THE COURT: I'm looking at the consent order,
21 counsel.

22 MR. OLIVERIO: Yes, paragraph 4, Your Honor.

23 THE COURT: Paragraph 4?

24 MR. OLIVERIO: Yes, ma'am.

25 THE COURT: And has judgment entered in favor of the

1 plaintiffs?

2 MR. OLIVERIO: Judgment entered, and the
3 significance of that judgment is an admission that the
4 charter is flawed, that the --

5 THE COURT: Counsel --

6 MR. OLIVERIO: -- nonresidents dilute and debase the
7 voting rights of the resident owners.

8 THE COURT: The name's on the -- on the order.

9 MR. OLIVERIO: Right. And the fire district is
10 bound by that, by that admission, Your Honor. They're
11 bound by that.

12 THE COURT: I don't know as if you're understanding
13 what my feeling is on this. You folks entered into a
14 consent judgment, a consent order. You're bound by it.
15 It's an agreement. It's a contract because it says
16 "consent" on it. I'm not going to vary the terms. I'm
17 not going to make changes to it. And perhaps mandamus is
18 not your remedy, counsel.

19 MR. OLIVERIO: So, Your Honor, respectfully, when
20 the meeting is held and elections are undertaken on
21 June 27th, as these defendants have acknowledged, what's
22 the voting pool? What's the voting pool? Because if
23 they're -- if it includes members of the beach club who
24 are nonresidents, they've engaged in an unconstitutional
25 act. It would be diluting and debasing the resident

1 owners' rights.

2 THE COURT: You're asking me to do something that
3 I believe is beyond mandamus.

4 MR. OLIVERIO: Well, my brother raised that issue
5 in his objection to the writ of mandamus, and all I'm
6 saying, Your Honor, is I addressed it fully in our
7 response, so that's why I was addressing those issues,
8 okay.

9 THE COURT: Uh-hum.

10 MR. OLIVERIO: Because what they really want to do
11 is they want to ignore a portion of the consent decree
12 by convening a meeting, which they haven't done in three
13 years, by the way, convening a meeting and holding
14 elections.

15 THE COURT: Okay. Can I just stop you? And I don't
16 mean to be a stickler.

17 MR. OLIVERIO: That's okay.

18 THE COURT: But it's been represented that the
19 reason why a meeting has not been held in three years is
20 because the first year, if I remember correctly in the
21 pleadings, that they couldn't certify the voting list,
22 there wasn't enough time. The second and third year was
23 because the parties were working with a charter revision
24 committee and then the General Assembly to pass the
25 appropriate charter and then send it to the voters at

1 an annual or special meeting for their approval, if I
2 remember correctly.

3 MR. OLIVERIO: That's what they represent.

4 THE COURT: Okay.

5 MR. OLIVERIO: I was elaborating on why that process
6 was held up, and why it's still held up, and why
7 nothing's going to change, despite the admissions by the
8 fire district that the charter's unconstitutional, okay.
9 Because what's happening, Your Honor, is that, really,
10 the beach club is an extension of the fire district, and
11 they haven't worked collaboratively with the charter
12 review commission to move the legislation through the
13 General Assembly. And we've been told the General
14 Assembly is not going to act on this, despite the mandate
15 under the consent order that the charter review
16 commission do its work and it go through this process.
17 In fact, the chair of the charter review commission and
18 their counsel openly opposed the work of the charter
19 review commission when they testified last year before
20 the General Assembly.

21 So they're undermining the whole process. That's
22 why nothing's going to change, Your Honor. And what
23 all -- all it's going to do is incentivize further
24 litigation when resident property owners file a 1983
25 action against the fire district, and it's going to

1 continue on and on. So that's why I wanted to highlight
2 those issues before the Court because they were raised
3 by my brother when he mentioned that process.

4 I think that the petitioners, under the statute,
5 have a clear right, if you look at the language in the
6 charter, they have a clear right to the relief sought.
7 They demanded a special meeting for elections. It's a
8 ministerial duty. I don't think, really, there's too
9 much dispute about that. My brother argues time, place,
10 whenever, but that really allows them to delay the demand
11 under the charter by the qualified voters. And there's
12 no adequate remedy at law because they can just delay,
13 delay, delay.

14 THE COURT: Well, I think the adequate remedy at law
15 is the consent judgment you chose.

16 MR. OLIVERIO: Right. And, Your Honor, here's --

17 THE COURT: So that's an adequate remedy at law.

18 MR. OLIVERIO: And here's what, here's what --

19 THE COURT: The problem, the problem is paragraph 5
20 of the consent order, that's the problem, but it's a
21 consent order. You folks agreed to a process. I don't
22 think that process was in my decision.

23 MR. OLIVERIO: No, Your Honor. And the point is
24 that the fire district has intentionally undermined that
25 whole process, that's the point. And so maybe a motion

1 for contempt is more appropriate.

2 THE COURT: Than a motion for mandamus.

3 MR. OLIVERIO: And I will take that under
4 advisement. And that will involve some testimony.

5 THE COURT: That's the way it is. But this is a
6 consent order. You folks agreed to it. I was thinking
7 contempt -- I'm not saying anybody's going to be held in
8 contempt or anything like that --

9 MR. OLIVERIO: Right.

10 THE COURT: -- might be the appropriate remedy.
11 I do not see where mandamus is the remedy, in light of
12 the consent order and the process that the parties
13 elected to proceed and the statement that there will be
14 an annual meeting and it is now --

15 MR. OLIVERIO: April 12, Your Honor.

16 THE COURT: -- April 12.

17 MR. OLIVERIO: So, Your Honor, my clients don't have
18 confidence in the fact that the fire district has said
19 they anticipate calling an annual meeting for elections.
20 I would -- I think we've met the burden of mandamus, at
21 least for purposes of convening a special meeting, if you
22 look at the language of the charter, and I've identified
23 it in my papers. We'd prefer that the Court order that
24 such a meeting be held, whether it's May 1 or June 27th
25 in conjunction with the annual meeting. At least for

1 purposes of the writ of mandamus, that's relief we're
2 seeking, and I suppose that the fire district, however
3 they conduct the meeting, they run the risk that there
4 will be other constitutional challenges by resident
5 property owners if it's determined that the voting
6 diluted or debased their rights.

7 But I understand the Court's comments about
8 paragraph 5, and so I will certainly take that under
9 advisement with my clients. But I rely on the papers and
10 for the support of the writ of mandamus.

11 THE COURT: Thank you.

12 MR. OLIVERIO: Thank you, Your Honor.

13 THE COURT: I'll hear the objection.

14 MR. DICKINSON: Thank you, Your Honor. I will just
15 add briefly that, you know, mandamus is discretionary,
16 and whatever argument the petitioners make, there is a
17 meeting scheduled in June.

18 THE COURT: What's on the agenda?

19 MR. DICKINSON: Well, it's a -- it's a statutory
20 agenda, I mean I can't recite it word for word, but
21 election of officers, election of certain other positions
22 in the fire district, I think they have to -- land trust
23 members maybe. There are a few items that are on there,
24 that are -- that are automatically on there, and those
25 will all -- those will all be on there.

1 And I'm just going to say, with regard to
2 paragraph 5 of the consent judgment, paragraph 4
3 contained an issue about, you know, Count IV.
4 Paragraph 5 provided the remedy. The remedy that they
5 agreed to was to go through this process, and the process
6 that they agreed to was a democratic process that went
7 to, you go to -- you, you know, propose something to the
8 General Assembly. And the General Assembly isn't bound
9 by the consent judgment. The General Assembly can do
10 what the General Assembly does. They certainly have a
11 separation of powers, authority to legislate.

12 THE COURT: Right, I'm not getting involved in that.

13 MR. DICKINSON: And the way that the charter is set
14 up, you know, the original charter is set up, it goes to
15 the General Assembly first, any amendment, and then comes
16 back to the voters in the fire district. And if you
17 didn't present something to the General Assembly that the
18 General Assembly could accept -- and individuals did go
19 there and exercise their rights under the constitution to
20 petition or to speak to the General Assembly during the
21 hearings, including myself. That's a democratic process.
22 That's the remedy they agreed to, and anyone who knows
23 the democratic process says -- understands that's not a
24 certainty how that's going to come out. That's what they
25 agreed to in the judgment.

1 So, I mean, we may have further litigation on that.
2 I don't know what the petitioners plan to do. But I
3 would just suggest that Your Honor, you know, was clear
4 in addressing -- in addressing the intervention about,
5 you know, whose rights are being protected so far and
6 that there is no basis for mandamus here.

7 THE COURT: Thank you.

8 MR. DICKINSON: Thank you, Your Honor.

9 THE COURT: Do you want to respond?

10 MR. OLIVERIO: That wasn't the only remedy,
11 Your Honor. Under Count IV, the fire district paid
12 damages in the form of attorneys' fees, acknowledgment
13 of that. It wasn't -- five wasn't the exclusive remedy.
14 They paid \$40,000 in recognition of the violation, not
15 insignificant, okay. And -- and to have Mr. Dickinson
16 stand up here and say, well, we agreed to this, wink,
17 wink, but I'm going to go to the General Assembly and
18 testify against the work of its own charter review
19 commission is really, you know, untoward. I think it's
20 a sad statement of affairs.

21 THE COURT: Well, that's not for today, and that is
22 the process that everyone agreed to. That was an
23 agreement. And when parties settle their litigation in
24 good faith, and here it was by consent order, courts
25 will enforce the compromised settlement without regard

1 to what result might, or would have been, had the parties
2 chosen not do so. *Mansolillo v. Employee Retirement*
3 *Board of the City of Providence*, 668 A.2d 313.

4 You know, you're really asking me to open up this
5 consent order. And an order consented to by the parties
6 cannot be opened, changed or set aside without assent
7 of the parties in absence of fraud, mistake, mutual
8 mistake or actual absence of consent. *In re McBurney*,
9 798 A.2d 877 at 883; quoting *Douglas Construction and*
10 *Supply Corporation v. Wholesale Center of North Main*
11 *Street*, 119 R.I. 449.

12 I think the law's pretty clear with respect to the
13 consent order.

14 Did you want to address something?

15 MR. DICKINSON: I just wanted to put on the record
16 two points that Mr. Oliverio made or respond to them.

17 In paragraph 6 of the consent judgment, there was a
18 specific -- the claim for attorneys' fees was dismissed.
19 There was an agreement between the parties, but the
20 judgment is that the claim for attorneys' fees was
21 dismissed, and the Court declined to award money damages.
22 So any claim that there were damages in this case is not
23 consistent with the consent judgment.

24 THE COURT: In paragraph 8, the parties waived
25 their rights of appeal, also, with respect to this.

1 So, really, you're trying to set it aside in another
2 way, which is incorrect, in my view.

3 Before the Court is a motion for the issuance of a
4 writ of mandamus filed by petitioners in this case, which
5 is WC/2024-0027.

6 A writ of mandamus is an extreme remedy. *Jenkins v.*
7 *City of East Providence*, 293 A.3d 1267. Our courts will
8 only issue a writ when: one, the petitioner has a clear
9 legal right to relief sought; two, the respondent has a
10 ministerial duty to perform the requested act without
11 discretion to refuse; and, three, the petitioner has no
12 adequate remedy at law.

13 A ministerial function is one that is to be
14 performed by an official in a prescribed manner based
15 on a particular set of facts without regard to or the
16 exercise of his own judgment upon the propriety of the
17 act being done. *New England Development v. Berg*,
18 913 A.2d 363 at 368 through 369.

19 A writ of mandamus will not be issued to compel a
20 public officer to perform an act, the performance of
21 which rests within his or her discretion. *Nerney*,
22 269 A.3d 753.

23 Petitioners argue that Article I, Section 1;
24 Article I, Section 2 of the Bonnet Shores Fire District
25 bylaws provides a clear legal right that requires either

1 an annual meeting or a special meeting when requested by
2 the qualified voters. With respect to whether or not a
3 clear legal right to have a meeting has been set forth,
4 it's clear that, under the bylaws, they have a right to
5 have either a special meeting or an annual meeting.

6 Petitioners also argue that the Bonnet Shores
7 Fire District bylaws do not provide the council with
8 any discretion and there is a ministerial duty to call
9 a special meeting and hold an election. Bonnet Shores
10 Fire District argues that Article I, Section 2 of
11 the bylaws requires a special meeting. The council
12 has discretion as to time, place, and agenda for the
13 meeting.

14 The bylaws state that the failure to hold an annual
15 meeting provides that the agenda that will be heard may
16 be heard at a succeeding special or annual meeting.
17 Additionally, the bylaws state that the special meeting
18 may be held at a time and at a place whenever or wherever
19 and the general nature of the business shall be stated in
20 a notice for the meeting. While the requirement for
21 calling a meeting is not discretionary, the exercise of
22 judgment as to what, where, and when of that meeting lies
23 within -- what, when, or where lies within the Bonnet
24 Shores Fire District Council. There is clearly a fair
25 amount of discretion.

1 Therefore, the Court finds that with respect to the
2 second prong, the petitioners have failed.

3 With respect to adequate remedy at law, the Court
4 again will point to the fact that the parties entered
5 into a consent order in WC-2020-0130. They were
6 proceeding under the consent order until they weren't,
7 and the annual meeting is to be scheduled in June,
8 it's been represented, and the Court accepts that
9 representation. I've said enough about the consent order
10 a couple of minutes ago, and I'm not going to repeat
11 myself. But, for that reason, the Court finds that they
12 do have an adequate remedy at law, which is what they
13 agreed to.

14 Therefore, the request for a writ of replevin --
15 writ of replevin -- writ of mandamus is denied.
16 Thank you. If you need any other dates, contact Chris
17 and she'll give them to you.

18 MR. OLIVERIO: Thank you, Your Honor.

19 MR. DICKINSON: Thank you. We'll prepare an order,
20 Your Honor.

21 MR. GARLAND: Thank you, Your Honor.

22 (A D J O U R N E D)

23
24 * * * * *

25