**STATE OF RHODE ISLAND**

**WASHINGTON, SC.** **SUPERIOR COURT**

**(FILED: January 13, 2021)**

| | | |
|---|---|---|
| **ASA S. DAVIS, III** | : | |
| ***Plaintiff*** | : | |
| **v.** | : | **C.A. No. WC-2019-0228** |
| **TOWN OF EXETER,** | : | |
| **MARTINA E. BALIGIAN** | : | |
| **a/k/a MARTINA E. MCKENNA, or her** | : | |
| **Successor, Trustee of the Living** | : | |
| **Trust Agreement of Martina E.** | : | |
| **Baligian-1996, as the same may be amended,** | : | |
| **MARK R. IANNUCCILLI** | : | |
| **and ROSEMARY J. IANNUCCILLI** | : | |
| ***Defendants*** | : | |

## DECISION

**Taft-Carter, J.** Before this Court for decision is the Town of Exeter's Motion to Dismiss Asa S. Davis, III's Second Amended Complaint for lack of subject matter jurisdiction and/or failure to exhaust administrative remedies. The motion was converted and treated as one for summary judgment pursuant to Rule 56 of the Superior Court Rules of Civil Procedure. In the motion, the Town of Exeter (Town) asks this Court to grant summary judgment in their favor on all counts against it in the Second Amended Complaint dated November 8, 2019. Asa S. Davis, III (Plaintiff) objects to the Town's motion. Jurisdiction is pursuant to G.L. 1956 §§ 8-2-13 and 8-2-14, as well as Rule 56.

## I

## Facts and Travel

This case arises from a dispute over the legal status of Estate Drive, a road in the Town of Exeter.

Plaintiff is the owner of a 109.35-acre parcel of real property located in the Town of Exeter and designated as AP 36, Block 2, Lot 2, Ten Rod Road (the Property). (Sec. Am. Compl. ¶ 6.) The Plaintiff has owned the Property since May 23, 1997. *Id*. The Property is zoned RU-4. (Hawkins Aff., Ex. 12). There are no existing buildings on the site. The Plaintiff has previously applied for permits allowing him to construct a house as well as a barn on the Property. (Sec. Am. Compl. ¶ 34.)

The Plaintiff is a member of DuTemple Solar LLC (DuTemple). *Id*. ¶ 7. Plaintiff and DuTemple filed an application with the Town's Planning Board to install a solar voltaic field on Plaintiff's Property. *Id*. ¶ 8. On April 11, 2019, the Town's Planning Board denied the solar field application for failure to provide "proof of adequate, permanent and safe physical vehicular access to a public street as required." (Hawkins Aff., Ex. 12.) The Town's Zoning Board unanimously upheld the Planning Board's decision regarding Plaintiff's solar field application on July 1, 2019. *Id.* at Ex. 15. In the application, Plaintiff alleged that he could access the site of the solar voltaic field by way of Estate Drive. *Id*. at Ex. 12.

Estate Drive is a road that was constructed in connection with a subdivision in the Town known as "Exeter Village." (Sec. Am. Compl. ¶ 10.) It "is an improved, paved road with Cape Cod berms (curbs)" as well as appropriate drainage infrastructure. (Mattscheck Aff. ¶ 15.) The road "runs in a southerly direction from Ten Rod Road (Route 102) to a cul-de-sac, and then from the cul-de-sac to the northern boundary of [Plaintiff's] property." (Sec. Am. Compl. ¶ 12.) "The

land between the Estate Drive cul-de-sac and Plaintiff's property line . . . consist[s] of unimproved woodland" and "has always been covered by trees and other vegetation." (Mattscheck Aff. ¶ 18.)

Estate Drive was accepted and certified as a public road by the Exeter Town Council on November 5, 2001. (Sec. Am. Compl. ¶ 10.) When Estate Drive was being planned and constructed, "it was intended by the developer and the Town that it would end in a 'temporary' cul-de-sac and that a 'paper street' also qualifying as a 'stub street' extending south of the cul-de-sac would be dedicated to the Town and reserved for the possibility of future development." (Def Mem. at 3; *see also* Mattscheck Aff. ¶¶ 17-21, 27-33.) The land between the end of the cul-de-sac and Plaintiff's property line is alleged to be a "paper street" that "has never been improved, . . . has never been maintained by the Town, and . . . has never been certified and accepted *as a public road* by the Town Council." *Id.* at 3; *see also* Mattscheck Aff. ¶¶ 34-35. Furthermore, the "paper street" "has never been amenable to vehicular travel because it has always been covered by trees and other vegetation." (Mattscheck Aff. ¶ 37.)

In 2018 Plaintiff excavated a dirt pathway "through the woodlands from his property line to the Estate Drive cul-de-sac in the approximate location of the 'paper street.'" (Def. Mem. at 3; *see also* Mattscheck Aff. ¶¶ 44-47.) The Plaintiff, before undertaking such excavation, failed to apply "to the Town to improve the paper street to Town standards or to have it certified and accepted by the Town Council as a public road." (Mattscheck Aff. ¶ 43.) The Town became aware of the excavation and creation of a path through the woods at the end of Estate Drive when the Plaintiff called the Public Works Director for the Town to complain about a fallen tree on the pathway. *Id.* ¶ 48.

Upon discovery of the excavated path, the Town, on March 1, 2019, facilitated and placed a concrete barrier across Estate Drive. (Sec. Am. Compl. ¶ 22.) The barrier was erected just south

of the cul-de-sac and completely prevented the Plaintiff from using Estate Drive for access to and from his Property. *Id*. ¶¶ 22-23. On March 7, 2019, the Plaintiff attempted to move the concrete barrier in order to "re-establish" his use of Estate Drive. *Id*. ¶ 24. While the Plaintiff was trying to remove the concrete barriers, the Town served him with "correspondence from Francis P. DiGregorio, the Vice President of the Exeter Town Council, ordering [Plaintiff] to 'cease and desist your operations on Town of Exeter property.'" *Id*. ¶ 25.

The Plaintiff then brought this action against the Town seeking a declaration that Estate Drive is a public road that runs to the boundary of Plaintiff's Property, that Plaintiff has the right to use the full length of Estate Drive, and that Plaintiff has a right of access from his Property to Estate Drive. (Sec. Am. Compl. at 1.) Plaintiff is also seeking injunctive relief to prevent the Town from denying the Plaintiff the use of Estate Drive for development applications, enjoining the Town from blocking Estate Drive so that it cannot be used as a road, and enjoining the Town from blocking Plaintiff's access to his Property from Estate Drive. *Id*.

In response, the Town filed this motion to dismiss for failure to exhaust administrative remedies and/or lack of subject matter jurisdiction. The Court converted the Town's motion to a summary judgment motion.[1]

On September 1, 2020, a hearing was held by this Court via WebEx to consider the Town's converted summary judgment motion for failure to exhaust administrative remedies and/or lack of

[1] "Under Rule 12(b)(6), when 'matters outside the pleading are presented to and not excluded by the' hearing justice, a motion to dismiss will automatically be converted to a motion for summary judgment." *Multi-State Restoration, Inc. v. DWS Properties, LLC*, 61 A.3d 414, 417 (R.I. 2013) (quoting *DeSantis v. Prelle*, 891 A.2d 873, 876 (R.I. 2006)). The Town, in its motion to dismiss, presented materials to the Court that were not contained within the four corners of Plaintiff's complaint. Since the Court relied on these materials in its decision, the Court was required to convert Defendant's motion to dismiss to a motion for summary judgment.

subject matter jurisdiction. Prior to the hearing, the parties filed supplemental memoranda in support of their respective positions. The Court now renders its decision.

## II

## Standard of Review

When deciding a motion for summary judgment, the trial justice must keep in mind that it "'is a drastic remedy and should be cautiously applied.'" *Steinberg v. State*, 427 A.2d 338, 339-40 (R.I. 1981) (quoting *Ardente v. Horan*, 117 R.I. 254, 256-57, 366 A.2d 162, 164 (1976)). "Thus, '[s]ummary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the [C]ourt determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law.'" *Quest Diagnostics, LLC v. Pinnacle Consortium of Higher Education*, 93 A.3d 949, 951 (R.I. 2014) (quoting *Peloquin v. Haven Health Center of Greenville, LLC*, 61 A.3d 419, 424-25 (R.I. 2013)). However, only when the facts reliably and indisputably point to a single permissible inference can this process be treated as a matter of law. *Steinberg*, 427 A.2d at 340.

During a summary judgment proceeding, the Court does not pass upon the weight or credibility of the evidence. *See DeMaio v. Ciccone*, 59 A.3d 125, 130 (R.I. 2013). When determining whether a genuine issue of material fact exists, the Court reviews "pleadings, affidavits, … and other similar matters … in the light most favorable" to the nonmoving party. *Saltzman v. Atlantic Realty Co., Inc.*, 434 A.2d 1343, 1345 (R.I. 1981). In order to show it is entitled to judgment as a matter of law, the "'nonmoving party bears the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions.'" *Mruk v.*

*Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 532 (R.I. 2013) (quoting *Daniels v. Fluette*, 64 A.3d 302, 304 (R.I. 2013)).

## III

## Analysis

The Town argues that Plaintiff's Second Amended Complaint should be dismissed in its entirety because the Plaintiff has "fail[ed] to comply with the local administrative process and exhaust his administrative remedies prior to filing suit." (Def. Mem. at 10.) The Town specifically argues that the undeveloped portion of Estate Drive is not a public road and that Plaintiff has failed to apply for the proper permits—road opening permit or curb cut permit—that would allow him to gain access to his Property from the undeveloped portion of Estate Drive. *Id*. at 11-12. Consequently, the Town is contending that the Plaintiff is using this "action to short-circuit the administrative appellate remedies provided by ordinance and state enabling statutes." *Id*. at 12.

In response, Plaintiff argues that he does not need "to apply for a road opening permit as [the undeveloped portion of] Estate Drive has already been established as a public road, pursuant to the Town's regulations and Rhode Island law." (Pl. Suppl. Mem. at 6.) Accordingly, Plaintiff argues that this Court has subject matter jurisdiction in this matter because there are no administrative remedies to exhaust. *Id*. at 16.

### A

### The Nature of Estate Drive

The crux of this dispute hinges on this Court determining the legal status of the unimproved portion of Estate Drive.

The Town maintains that the dedication of Estate Drive was twofold in that the Town accepted the improved portion of Estate Drive as a public roadway and accepted the other

unimproved land as "future roadway extension." (Def. Reply Mem. at 8.) Accordingly, the Town argues that "it converted the area from [the road's] inception at Ten Rod Road to the cul-de-sac as a Town public street, and the other dedicated land was accepted a 'paper street' or 'stub road' with ownership and control over its use vested solely in the Town." *Id.*

Meanwhile, the Plaintiff argues that *all* of Estate Drive was incipiently dedicated and accepted as a public road by the Town when the Exeter Village subdivision was recorded in the Town's Land Evidence Records on October 9, 1996. (Pl. Suppl. Mem. at 14.) Plaintiff further argues that Estate Drive was accepted into the Town road system in accordance with the Town's subdivision ordinances by assent of the Town Council on November 5, 2001. *Id.*

A paper street, also referred to as a "stub road," is defined as "[a] portion of a street reserved to provide access to future development, which may provide for utility connections." G.L. 1956 § 45-23-32(49). It is "a street which appears on a recorded plat but which in actuality has never been open, prepared for use, or used as a street." *Robidoux v. Pelletier*, 120 R.I. 425, 438 n.2, 391 A.2d 1150, 1157 n.2 (1978).

Moreover, it is well settled in Rhode Island that "[t]he placing of any street or street line upon the official map does not in and of itself constitute nor is it deemed to constitute the opening or establishment of any street or the taking or acceptance of any land for street purposes. . . ." Section 45-23.1-1.1(a). For there to be an effective dedication of property for public use, "two elements must exist: (1) a manifest intent by the landowner to dedicate the land in question, called an incipient dedication or offer to dedicate; and (2) an acceptance by the public either by public use or by official action to accept the same on behalf of the municipality." *Robidoux*, 120 R.I. at 433, 391 A.2d at 1154. Thus, it is understood that "a platted street does not become a public highway until it has been accepted by the public; either by official action of the city or town or by

use of the roadway by the public." *Town of Barrington v. Williams*, 972 A.2d 603, 611 (R.I. 2009) (citing *Newport Realty, Inc. v. Lynch*, 878 A.2d 1021, 1033 (R.I. 2005)).

In assessing whether the undeveloped portion of Estate Drive has been dedicated for public use, the Court must ascertain the intent of the dedicator by examining the dedicator's words or conduct at the time of dedication. *See Robidoux*, 120 R.I. at 433, 391 A.2d at 1154. After reviewing the exhibits submitted by the parties as well as the affidavits from the Exeter Public Works Director and the Exeter Town Clerk, the Court concludes that the Exeter Village developer intended the undeveloped portion of Estate Drive to be a "paper street." The November 22, 1993 Planning Board transcript indicates that Estate Drive was not to be extended to the property line but rather end in a temporary cul-de-sac and right-of-way. *See* Hawkins Aff. at Ex. 4. Additionally, during the December 10, 1994 Planning Board meeting, the Town and the developer of Exeter Village discussed that a "temporary" cul-de-sac would be constructed at the end of Estate Drive. *Id.* at Ex. 5. The developer also noted that a pair of catchbasins would be installed between lots seven and eight on Estate Drive so that a drainage structure can be already installed "if and when the road ever continues through." *Id*. at Ex. 5, 7:3-9. Thus, these transcripts indicate that it was the intent of the developer and the Town that the undeveloped portion of Estate Drive be classified as a "paper street."

Furthermore, the Supreme Court has stated that "[i]n certain cases, . . . a recorded plat is all that is needed to disclose a landowner's dedicatory intent" because the Court can ascertain the dedicator's intent to offer the streets to the public for use as ways by looking at the "streets delineated thereon and lots sold with reference to the plat. . . ." *Rubidoux*, 120 R.I. at 434, 391 A.2d at 1155. Here, the Town planning maps clearly indicate that the public road portion of Estate Drive ends at the cul-de-sac. The Town planning maps depict illustrative boundaries that

distinguish the improved public road portion of Estate Drive and the "paper street" portion that was ultimately dedicated to the Town for "future extension." *See* Hawkins Aff. at Exs. 17(a) and 17(b). Moreover, aerial photos from 1999 to 2018 show that the contested portion of Estate Drive has remained undeveloped since the inception of the public road. *See id*. at Exs. 16(a)-(g). These photos, which are publicly available through the Town's GIS mapping system, "show that from 1988 to 2018 there had never been anything but woodlands and trees between the Estate Drive cul-de-sac and Plaintiff's property line and that no publicly accessible roadway had ever been constructed connecting Plaintiff's lot to the cul-de-sac." (Mattscheck Aff. ¶ 25; *see also* Hawkins Aff. at Exs. 16(a)-(g).) Additionally, the "paper street" "has never been amenable to vehicular travel" and the Town has never maintained the "paper street" because it is not a roadway improved to Town standards and certified as a public road by the Town Council. *Id*. ¶¶ 37, 35.

Therefore, there is no issue of material fact as to the legal status of the undeveloped portion of Estate Drive, and this Court concludes as a matter of law that Estate Drive is a "paper street" dedicated to the Town for future development and not a public road that has been accepted by the Town.

**B**

**Subject-Matter Jurisdiction**

The Town contends that Plaintiff's Second Amended Complaint is subject to dismissal for lack of subject-matter jurisdiction because the Plaintiff has failed to exhaust his administrative remedies. (Def. Reply Mem. at 15.) Consequently, the Town is arguing that Plaintiff's failure to exhaust his administrative remedies automatically deprives the Court of subject-matter jurisdiction. *Id*.

Conversely, the Plaintiff maintains that jurisdiction is proper because there are no administrative remedies to exhaust with the Town with regard to Estate Drive. (Pl. Suppl. Mem. at 16.) Furthermore, the Plaintiff argues that this Court has subject-matter jurisdiction over this claim because Plaintiff is seeking a declaratory judgment pursuant to G.L. 1956 § 9-30-1 and injunctive relief pursuant to G.L. 1956 § 8-2-13. *Id*. at 2, 9.

A party's claim for lack of subject-matter jurisdiction "questions a court's authority to adjudicate a particular controversy before it." *Boyer v. Bedrosian*, 57 A.3d 259, 270 (R.I. 2012). "'[S]ubject matter jurisdiction is an indispensable requisite in any judicial proceeding.'" *Long v. Dell, Inc.*, 984 A.2d 1074, 1079 (R.I. 2009) (quoting *Newman v. Valleywood Associates, Inc.*, 874 A.2d 1286, 1288 (R.I. 2005). Pursuant to § 8-2-14, this Court

> "shall have original jurisdiction of all actions at law where title to real estate or some right or interest therein is in issue…and shall have exclusive original jurisdiction of all other actions at law in which the amount in controversy shall exceed the sum of ten thousand dollars ($10,000); and shall also have concurrent original jurisdiction with the district court in all other actions at law in which the amount in controversy exceeds the sum of five thousand dollars ($5,000) and does not exceed ten thousand dollars ($10,000)[.]" Section 8-2-14.

While the Rhode Island Superior Court is a court of general jurisdiction, it does not have subject-matter jurisdiction over all cases if such jurisdiction has been conferred by statute upon another tribunal. *See Barone v. O'Connell*, 785 A.2d 534, 535 (R.I. 2001).

Moreover, our Supreme Court "has drawn a distinction between subject-matter jurisdiction and the authority of the court to proceed." *Gallop v. Adult Correctional Institutions*, 182 A.3d 1137, 1142 (R.I. 2018); *see also Chase v. Bouchard*, 671 A.2d 794, 795–96 (R.I. 1996); *Hartt v. Hartt*, 121 R.I. 220, 226, 397 A.2d 518, 521 (1979). The Supreme Court has made clear that the Superior Court "is vested with subject-matter jurisdiction, in the fundamental sense" over all cases

and is rarely ever "divested completely of its statutorily-granted subject-matter jurisdiction." *Gallop*, 182 A.3d at 1143. However, the Supreme Court has also indicated that the Superior Court can act in *excess* of its authority when it proceeds and considers a Plaintiff's claim despite the Legislature either prohibiting the claim all together or reserving such jurisdiction over the claim to another tribunal. *See id.* at 1142-43.

This Court is aware of the "long adhered to . . . doctrine that when the General Assembly provides a right of judicial review from the decision of an administrative agency, it is incumbent upon the party aggrieved to exhaust all remedies within such agency before judicial review may be invoked." *Jacob v. Burke*, 110 R.I. 661, 666–67, 296 A.2d 456, 459 (1972). However, our Supreme Court has stated:

> "It is true that when a litigant has failed to exhaust his administrative remedies the trial justice, may, in his discretion, dismiss an entire complaint for lack of subject matter jurisdiction. *See Ricciotti v. Warwick School Committee*, 319 F.Supp. 1006 (D.R.I. 1970). This does not mean, however, that in every such case the entire action need be dismissed." *Id*. at 673, 296 A.2d at 463.

Furthermore, the Supreme Court in *Jacob v. Burke*, made clear that a trial justice may exercise jurisdiction over a party's equitable claim despite dismissing a party's legal claim for failure to exhaust administrative remedies. *See id* at 674, 296 A.2d at 463.

Accordingly, this Court, contrary to the Town's view on this issue, is not automatically deprived of subject-matter jurisdiction over Plaintiff's claims just because he has failed to exhaust his administrative remedies. Plaintiff's claims are grounded in declaratory and injunctive relief. Consequently, the Court has subject-matter jurisdiction in the general sense to hear this case pursuant to §§ 9-30-1 and 8-2-13. *See Tucker Estates Charlestown, LLC v. Town of Charlestown*, 964 A.2d 1138, 1140 (R.I. 2009) (noting that the Superior Court acts on its original jurisdiction when acting under the authority of the UDJA); *Sullivan v. Coventry Municipal Employees'*

*Retirement Plan*, 203 A.3d 483, 487 (R.I. 2019) (explaining that the Superior Court is a court of general equitable jurisdiction). However, the Court would be acting in excess of its jurisdiction if it were to render a decision on Plaintiff's claims in light of the authority of the Town's Planning Board to act on behalf of the Town in land development regulation.

The Rhode Island Supreme Court recently addressed the exhaustion of remedies doctrine in *Bellevue-Ochre Point Neighborhood Association v. Preservation Society of Newport County*, 151 A.3d 1223 (R.I. 2017). In that case, which involved a zoning dispute, the Court explained that:

> "'It is well settled that a plaintiff aggrieved by a state agency's action first must exhaust administrative remedies before bringing a claim in court.' *Richardson v. Rhode Island Department of Education*, 947 A.2d 253, 259 (R.I. 2008) (quoting *Arnold v. Lebel*, 941 A.2d 813, 818 (R.I. 2007)). The doctrine 'aids judicial review by allowing the parties and the agency to develop the facts of the case, and * * * promotes judicial economy by avoiding needless repetition of administrative and judicial factfinding, perhaps avoiding the necessity of any judicial involvement.' *Doe ex rel. His Parents and Natural Guardians v. East Greenwich School Department*, 899 A.2d 1258, 1266 (R.I. 2006) (quoting *Almeida v. Plasters' and Cement Masons' Local 40 Pension Fund*, 722 A.2d 257, 259 (R.I. 1998)). However, 'we have recognized that a party is not precluded from proceeding under the UDJA, particularly when "the complaint seeks a declaration that the challenged ordinance or rule is facially unconstitutional or in excess of statutory powers, or that the agency or board had no jurisdiction."' *Tucker Estates*, 964 A.2d at 1140 (quoting *Kingsley v. Miller*, 120 R.I. 372, 374, 388 A.2d 357, 359 (1978))." *Bellevue-Ochre*, 151 A.3d at 1231.

Matters related to land development in the Town of Exeter are governed by § 45-24-47 entitled "Special provisions—Land development projects" and the Exeter Land Development and Subdivision Regulations. Section 45-24-47(b) provides that:

> "A zoning ordinance adopted pursuant to this chapter which permits or requires the creation of land development projects in one or more zoning districts shall require that any land development project is referred to the city or town planning board or commission for approval, in accordance with the procedures established by chapter

> 23 of this title, including those for appeal and judicial review, and with any ordinances or regulations adopted pursuant to the procedures, whether or not the land development project constitutes a "subdivision", as defined in chapter 23 of this title. *No land development project shall be initiated until a plan of the project has been submitted to the planning board or commission and approval has been granted by the planning board or commission*. In reviewing, hearing, and deciding upon a land development project, the city or town planning board or commission may be empowered to allow zoning incentives within the project; provided, that standards for the adjustments are described in the zoning ordinance, and may be empowered to apply any special conditions and stipulations to the approval that may, in the opinion of the planning board or commission, be required to maintain harmony with neighboring uses and promote the objectives and purposes of the comprehensive plan and zoning ordinance." Section 45-24-47(b) (emphasis added).

Section 1.5 of the Exeter Land Development and Subdivision Regulations empowers the planning board with "the authority to act on behalf of the town in all matters of land development and subdivision regulation[.]" "Development" is defined by the Regulations as "[t]he construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill or land disturbance; or any change in use, or alteration or extension of the use, of land." *See* § 2.2.

Here, Plaintiff has failed to exhaust his administrative remedies before commencing this action by failing to apply for the appropriate permits. The undeveloped portion of Estate Drive is a paper street and thus not a public road. If Plaintiff would like to use Estate Drive as a way to gain access to his Property, he must follow the procedure outlined by the Town of Exeter Code of Ordinances and the Exeter Land Development and Subdivision Regulations.

The Town of Exeter Code of Ordinances makes clear that no "person shall excavate or dig into any portion of any of the public highways of the town without having first obtained a permit" from the Town Council. Section 38-71; *see also* § 38-72 ("The town council may at any time issue a permit authorizing a person to excavate or dig into the public highways of the town.").

Consequently, the Plaintiff should have filed for the appropriate permits that would have allowed him to turn the "paper street" into a public road. Pursuant to the Town of Exeter Code of Ordinances, the Plaintiff can apply to the Town Council for a road opening permit to improve the paper street to Town standards and have it certified as a public road. *See* §§ 38-72 and 38-103. The Plaintiff can also apply to the Public Works director for a curb cut on Ten Rod Road since his Property lot has frontage on Ten Rod Road. *See* § 38-121; Hawkins Aff. Ex. 8(a). The Plaintiff also can petition the Planning Board for authority to extend the roadway on the Exeter Village plat pursuant to § 9.8 of the Exeter Land Development and Subdivision Regulations. The Plaintiff has failed to utilize any of these administrative processes in order to gain access to his Property from Estate Drive. Consequently, Plaintiff cannot use this Court as a mechanism to usurp the Town's authority in Land Development.

Therefore, it would be in error and excess of jurisdiction for this Court to consider Plaintiff's claims when Plaintiff has not exhausted his administrative remedies.

## IV

## Conclusion

For the above-stated reasons, this Court grants summary judgment in favor of the Town on all counts of the Second Amended Complaint. Given that this Court's decision regarding subject-matter jurisdiction is dispositive of this case, the Court need not address the Town's alternative grounds for dismissal. Counsel shall submit the appropriate judgment for entry.

**RHODE ISLAND SUPERIOR COURT**

***Decision Addendum Sheet***

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|---|---|
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| **COURT:** | **Washington County Superior Court** |
| **DATE DECISION FILED:** | **January 13, 2021** |
| **JUSTICE/MAGISTRATE:** | **Taft-Carter, J.** |
| **ATTORNEYS:** | |
| **For Plaintiff:** | **James P. Howe, Esq.; John O. Mancini, Esq.** |
| **For Defendant:** | **James P. Marusak, Esq.; Marc Desisto, Esq.; Mark and Rosemary Iannuccilli, *pro se*; Martina Baligian, *pro se*** |