

IN THE UTAH COURT OF APPEALS

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Robert A. McFadden and RAMAC- Foothills, L.L.C.,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
	)	
Plaintiffs and Appellants,	)	Case No. 20050717-CA
	)	
v.	)	F I L E D
	)	(June 22, 2006)
Cache County Corporation, John Does 1-10, and Jane Does 1-10,	)	2006 UT App 256
	)	
Defendants and Appellees.	)	

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First District, Logan Department, 050100058  
The Honorable Clint S. Judkins

Attorneys: Christopher L. Daines, Logan, for Appellants  
Craig V. Wentz and Barton H. Kunz II, Salt Lake City,  
and N. George Daines, Logan, for Appellees

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Before Judges Bench, Billings, and Orme.

BENCH, Presiding Judge:

Plaintiffs Robert A. McFadden and RAMAC-Foothills (collectively, McFadden) assert on appeal that the trial court improperly granted Defendants' motion for summary judgment based on McFadden's failure to exhaust all administrative remedies. See Utah Code Ann. § 17-27-1001(1) (Supp. 2003) ("No person may challenge in district court a county's land use decisions . . . until that person has exhausted all administrative remedies.").<sup>1</sup> McFadden failed to file an appeal with the Cache County Board of Adjustment (the Board) after the Cache County Council (the Council) denied his subdivision plat application.

McFadden first asserts that he exhausted all administrative remedies because the Board lacked jurisdiction to hear an appeal from the Council's denial of his subdivision plat application.

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<sup>1</sup>Because there have been substantial amendments to this code section since this matter was filed with the trial court, for ease of reference, we cite throughout this opinion to the statutes in effect at the relevant time.

McFadden argues that the term "administrative," as used in Utah Code section 17-27-703,<sup>2</sup> is ambiguous and that the Council's rejection of McFadden's subdivision application is not an administrative decision subject to appeal to the Board. We disagree.

We "must look to the substance of the . . . council's action to determine if it is legislative or administrative. In general, to be legislative, an ordinance must make a new law; to be administrative, an ordinance must execute or implement an existing law." Low v. City of Monticello, 2002 UT 90, ¶24, 54 P.3d 1153 (citation omitted); see also Citizen's Awareness Now v. Marakis, 873 P.2d 1117, 1122 (Utah 1994) ("The original enactment of a zoning ordinance is usually legislative . . . , while the implementation of that ordinance is typically administrative."). Here, the Council's denial of McFadden's plat did not make a new law; rather, it implemented or applied county ordinances and policies when it rejected McFadden's application. See Bennion v. Sundance Dev. Corp., 897 P.2d 1232, 1235 (Utah Ct. App. 1995) (stating that "the approval of a plat . . . is a decision applying the zoning ordinance"). Therefore, the Council's denial of the application was an administrative decision, which necessitated an appeal to the Board in order to exhaust all administrative remedies. Because McFadden failed to exhaust all administrative remedies, the trial court did not err in granting Defendants summary judgment as to this issue.

Additionally, McFadden asserts that the trial court erred in ruling that, as a matter of law, no exceptional circumstances existed under which McFadden might be excused from exhausting administrative remedies. "Exceptions to [exhausting administrative remedies] exist in unusual circumstances where it appears that there is a likelihood that some oppression or injustice is occurring such that it would be unconscionable not to review the alleged grievance or where it appears that exhaustion would serve no useful purpose." Nebeker v. Utah State Tax Comm'n, 2001 UT 74, ¶14, 34 P.3d 180 (quotations and citations omitted).

McFadden alleges that Mark Teuscher, an employee of Cache County, incorrectly informed him that the Board does not review subdivision plat application appeals and informed him not to complete or submit the appeal forms. McFadden argues that

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<sup>2</sup>The Board's jurisdiction includes "appeals from administrative decisions applying a zoning or subdivision ordinance, including appeals from: . . . administrative decisions related to subdivision plats." Utah Code Ann. § 17-27-703(1)(a) (2001).

Teuscher's incorrect information constitutes an exceptional circumstance that excuses him from the exhaustion requirement. McFadden admits in his trial court pleadings, however, that "Plaintiffs are not claiming that Cache County provided legal advice on which Plaintiffs relied in not filing an appeal." We reject McFadden's exceptional circumstances argument because he concedes that he did not rely on Teuscher's information in deciding not to appeal.

Furthermore, as "the legislature has imposed a specific exhaustion requirement . . . , we will enforce it strictly." Patterson v. American Fork City, 2003 UT 7, ¶17, 67 P.3d 466. McFadden offers no compelling reason to rule otherwise. Therefore, we hold that, as a matter of law, McFadden did not strictly comply with section 17-27-1001(1). As a result, the trial court did not err in granting Defendants' motion for summary judgment.

Accordingly, we affirm.

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Russell W. Bench,  
Presiding Judge

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WE CONCUR:

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Judith M. Billings, Judge

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Gregory K. Orme, Judge