

Bond Case Briefs

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PUBLIC ROADWAYS - RHODE ISLAND

Davis v. Town of Exeter

Supreme Court of Rhode Island - December 1, 2022 - A.3d - 2022 WL 17347388

Property owner brought action against town, seeking declaratory and injunctive relief in dispute over whether unimproved land between cul-de-sac at terminus of a road leading to a subdivision and his property was a public road which he had right to use to access his land.

The Superior Court entered summary judgment for town. Owner appealed.

The Supreme Court held that:

- Unimproved property was not intended to be a public roadway;
- Town did not accept the unimproved property for public use;
- Unimproved property was not accepted as a roadway by a public user; and
- Futility exception to administrative exhaustion requirement did not apply.

Record demonstrated that subdivision developer intended unimproved property between end of cul-de-sac at termination of an improved, paved road to subdivision and owner's property line to be designated a paper street, not dedicated as a public roadway, at time the improved road was developed, for purposes of owner's action seeking injunctive relief to prevent town from denying his use of the improved road for development applications and from blocking road so it could not be used to access his property; paved road and cul-de-sac were designated on official map with double lines while the unimproved area after the cul-de-sac was designed with only a single solid line, and minutes of planning board meeting indicated that town and developer intended the public roadway to extend to the cul-de-sac and no further.

There was no clear and convincing evidence that town accepted undeveloped land between end of cul-de-sac at termination of improved, paved road leading to a subdivision and owner's property line for public use, as would support owner's claim for injunctive relief to prevent town from denying his use of the improved road for development applications and from blocking the road so it could not be used to access his property, where subdivision developer never performed any construction or clearing of the land beyond the cul-de-sac, and town had never opened, certified, or accepted the land for public use, nor did it ever maintain the land.

Undeveloped land between end of cul-de-sac at termination of improved, paved road leading to a subdivision and owner's property line was not accepted as a roadway by a public user, as would support owner's argument that the land was a public roadway that he had right to use for development applications and to access his property, where property in dispute had been inaccessible to vehicular access since inception of the subdivision and had been covered by vegetation and trees until owner's unauthorized excavation.

Property owner failed to show that town planning board's refusal of road opening permit would be near certainty, and thus, futility exception to exhaustion of administrative remedies requirement did not apply in action alleging that paper street, an undeveloped land between cul-de-sac at terminus of

a paved road leading to a subdivision and his property was a public roadway which he could use for development applications and as access to his land, where owner failed to follow procedures for a paper street to be certified as a public road and accepted by the town.