

Asa S. Davis, III v. Town of Exeter et al., No. 21-81 (December 1, 2022)  
<https://www.courts.ri.gov/Courts/SupremeCourt/SupremeOpinions/21-81.pdf>

**Holding:**

Rhode Island Supreme Court affirmed the decision of the Superior Court granting summary judgement to the Town of Exeter, determining the Plaintiff has not exhausted all administrative remedies to access their property through Estate Drive. The ruling affirmed the Town’s decision that the plaintiff does not have the right to access his property through an unimproved paper road at the end of the Estate Drive cul-de-sac.

**Key Takeaways:**

1. *“In order for there to be an effective dedication” of private 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 v. Pelletier, 120 R.I. 425, 433, 391 A.2d 1150, 1154 (1978).*
2. The court decided the undeveloped paper road was not a public right of way because it was never dedicated by the landowner or accepted by the public.
3. The plaintiff did not apply for the necessary road opening permits and therefore failed to exhaust administrative remedies.

**Facts:**

Owner (plaintiff) of one hundred acres of property in Exeter with frontage on Ten Rod Road (Route 102) has no driveway or access to another road.

The plaintiff is seeking access to his property through Estate Drive. Applicant was instructed by the Town of Exeter Director of Public Works to apply for a road opening permit to gain access.

In January 2019, the Plaintiff excavated a pathway from the edge of Estate Drive to his property. In response, the town erected jersey barriers to block access from Estate Drive to the plaintiff’s property.

Plaintiff sought declaratory judgement that (1) Estate Drive is a public road and (2) the plaintiff has the right to use the full length of Estate Drive and the right of access to his property. Plaintiff also sought injunctive relief to prevent the Town from blocking portions of Estate Drive and restricting access.

Summary judgement was granted, and plaintiff appealed.

Also of note - In October of 2018 the parcel owner submitted a master plan seeking to install a solar field on the property. The application was denied by the Town of Exeter Planning Board in April of 2019, appealed to the Exeter Zoning Board and denied in July of 2019, and appealed to

Rhode Island Superior Court and denied in September of 2022. The summary of that decision is [here](#).

## **Analysis:**

### **1. Is Undeveloped Land Between Estate Drive and Plaintiff's Property a Public Roadway**

Plaintiff argued the subject property is part of a contiguous public road and was properly dedicated to the town for public use. The Supreme Court disagreed, finding the trial justice concluded correctly that the undeveloped property is not a public road.

The Court stated a dedication of private property for public use requires two elements: *“(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”* Citing to *Robidoux v. Pelletier*, 120 R.I. 425, 433, 391 A.2d 1150, 1154 (1978).

Plaintiff argued that the recorded subdivision plan when Estate Drive was developed created a single public road accepted by the town. The Court disagreed, citing to the trial justice who found the developer of Estate Drive *“intended the unimproved property between the end of the cul-de-sac on Estate Drive and plaintiff's property line to be designated as a paper street.”*

The trial justice cited meeting minutes from the Planning Board of the Exeter Village subdivision where the Estate Drive developer indicated the road ended at the cul-de-sac, and that it was intended the for the public right of way to extend from Ten Rod Road to the cul-de-sac and no farther. The court further agreed with the trial justice's conclusion that the unimproved land south of the cul-de-sac was not intended to be a public roadway.

The court also found there was no road built to the town specifications for the town to accept. *“The land between the cul-de-sac and plaintiff's property has never been used, maintained, or improved as a roadway and consisted entirely of wooded vegetation before plaintiff's self-help excavation...Further, the town has never opened, certified, or accepted the land south of the cul-de-sac for public use, and has never maintained it. Thus, there has been no acceptance of the undeveloped land between the cul-de-sac on Estate Drive and plaintiff's property”.*

### **2. Failure to Exhaust Administrative Remedies**

The court reiterated that a plaintiff must exhaust all administrative remedies before bringing a claim to court. Because the plaintiff failed to apply for the necessary road opening permits from the town to create a road between the cul-de-sac and his property, he has failed to exhaust his administrative remedies.

Plaintiff argued a road opening application would be futile because the town hasn't issued driveway permits for lots in this area, but the court decided he did not show the Town would have certainly denied his request.

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