

*Thompson v. Town of North Kingstown Zoning Board of Appeals, et al.*, C.A. No. WC-2021-0308 (March 7, 2023)

**Holding:**

Rhode Island Superior Court granted The Town of North Kingstown Zoning Board of Appeals Motion for Summary Judgement, finding that all three requirements for collateral estoppel were met. Therefore, the Plaintiff is precluded from relitigating the issue of whether the Board of Appeals substantially prejudiced his rights by rejecting his six grounds for appeal of a Final Plan Decision which was previously litigated in the Preliminary Plan Decision, and found to be without merit.

**Link to Decision:** <https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/21-0308.pdf>

**Key Takeaways:**

1. Plaintiff cannot appeal the Final Plan Approval of a land development project on the same grounds that he appealed the Preliminary Plan Approval of the same project because his grounds for appeal were already litigated and determined by Superior Court to be without merit.
2. *“This Court is satisfied that Plaintiff should not be permitted to take ‘a proverbial second bite’ of the apple.”*

**Facts:**

Plaintiff appealed the decision of the Town of North Kingstown Zoning Board of Appeals which affirmed the North Kingstown Planning Commission’s Final Plan Approval of a major land development project known as The Preserve at Rolling Greens.

The Plaintiff appealed the Preliminary Plan decision to the North Kingstown Board of Appeals, and then to Superior Court. In both cases, the Preliminary Plan Approval was upheld.

While the appeal of the preliminary plan was pending, the Planning Commission approved the Project’s Final Plan in March of 2021. The Plaintiff then appealed the Final Plan Approval for the same six arguments in their appeal of the Preliminary Plan.

The Final Plan Approval was appealed to the Town of North Kingstown Board of Appeals. The Board of appeals found *“the appeal should be dismissed because § 45-23-66 “limits appeals of any final plan approval to only issues that were not addressed in the preliminary plan review, or that deviate from the preliminary plan.”* The Board of Appeals decided that even if the Plaintiff had the right to appeal the Final Plan Decision, the Plaintiff was asserting the same six grounds that failed when appealing the Preliminary Plan. Therefore, the Board of Appeals rejected each of the Plaintiff’s six arguments. As a result, the Plaintiff appealed this decision to Superior Court.

The Defendants filed a Motion for Summary Judgment.

## **Analysis:**

### **1. Summary Judgement**

Plaintiff argued that summary judgement isn't appropriate because "*zoning appeals are not civil actions, but instead appellate proceedings.*" The Court decided they can consider the Defendants' Motion for Summary Judgement "*because the issue before the court is whether the Plaintiff is collaterally estopped from brining this appeal.*"

### **2. Collateral Estoppel**

Defendants argued the Plaintiff is estopped from repeating the same arguments that he made at the Preliminary Plan stage because he appealed the Planning Commission's Final Plan Decision on the same six grounds he appealed the Preliminary Decision, arguing that the Plaintiff should not receive a "second bite of the apple" because those six grounds for appeal were already rejected by Superior Court.

The Court determined that all three requirements under the doctrine of collateral estoppel were met in this case "*(1) an identify of issues; (2) a final judgement on the merits; and (3) an establishment that the party against whom collateral estoppel is asserted was a party of in privity with a party to the prior action. Providence Teachers Union, Local 958, American Federation of Teachers, AFL-CIO v. McGovern, 113 R.I. 169, 172, 319 A.2d 358, 361 (1974)*"

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