

CEDAR GROVE HOMEOWNERS' ASSOCIATION et al.

v.

TOWN OF EDDINGTON et al.

Submitted on Briefs July 21, 2010  
Decided August 10, 2010

Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, SILVER, GORMAN, and JABAR, JJ.

#### MEMORANDUM OF DECISION

Cedar Grove Homeowners' Association and Robert Dorr (Cedar Grove) appeal from entry of a summary judgment in the Superior Court (Penobscot County, *Murphy, J.*) in favor of the Town of Eddington on Cedar Grove's complaint for a declaratory judgment regarding its rights and responsibilities under the Town's subdivision and road design ordinances. Contrary to its contention, the court did not err in determining that Cedar Grove should have pursued a remedy pursuant to M.R. Civ. P. 80B. M.R. Civ. P. 80B(b); *Sold, Inc. v. Town of Gorham*, 2005 ME 24, ¶ 13, 868 A.2d 172, 176-77 (noting that "Rule 80B is the sole means for seeking Superior Court review of action or failure or refusal to act by any governmental agency" (quotation marks omitted)).

Because the Town's inaction was not appealed through the proper procedure, the Town's decision to not improve the subdivision's roads by enforcing the developer's improvement guarantee became final and a declaratory judgment action could not revive what was no longer a justiciable controversy. *See Sold, Inc.*, 2005 ME 24, ¶ 10, 868 A.2d at 176 (forbidding the use of a declaratory judgment action as "self-help" for parties who have not filed a timely Rule 80B administrative appeal); *Annable v. Bd. of Env'tl. Prot.*, 507 A.2d 592, 595-96 (Me. 1986) (allowing a declaratory judgment action to proceed against a

state agency when there had been no administrative action but a live controversy remained).

Finally, because Cedar Grove did not file an 80B appeal, the court did not abuse its discretion by declining to apply the good cause exception to the timing of administrative appeals. *See Viles v. Town of Embden*, 2006 ME 107, ¶ 11, 905 A.2d 298, 301; *Keating v. Zoning Bd. of Appeals of City of Saco*, 325 A.2d 521, 524 (Me. 1974).

The entry is:

Judgment affirmed.

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