



**I. Standard of Review.**

Summary judgment is appropriate when “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” V.R.C.P. 56(a); see also *State v. Great Ne. Prods., Inc.*, 2008 VT 13, ¶ 5, 183 Vt. 579 (mem.) (citations omitted). “Although the nonmoving party is entitled to the benefit of all reasonable doubts and inferences,” an adverse party may not rest on the allegations or denials in its pleadings, but “must set forth specific facts showing that there is a genuine issue for trial.” *Greene v. Stevens Gas Serv.*, 2004 VT 67, ¶ 9, 177 Vt. 90 (citations omitted). “If the nonmoving party fails to establish an essential element of its case on which it has the burden of proof at trial, the moving party is entitled to summary judgment as a matter of law.” *Washington v. Pierce*, 2005 VT 125, ¶ 17, 179 Vt. 318 (citation omitted).

**II. Defendant is Entitled to Summary Judgment on Count III Because Plaintiff Never Submitted the Requisite Application Form and Fee.**

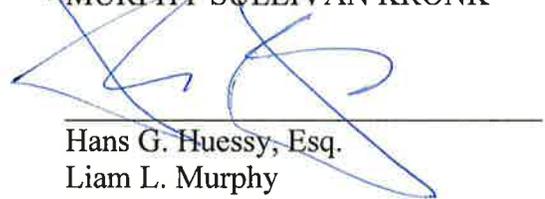
The Town requires all parties seeking the right to access a Town road pursuant to 19 V.S.A. § 1111 to submit an Application Form. In addition, the applicant must submit a \$50 filing fee plus the cost of recording the permit. The Plaintiff has never submitted the requisite form or fee. As a result, the Town has not, and could not possibly have, denied the Plaintiff’s application.

Any alleged delay in the Town’s issuance of a formal response to Plaintiff’s request is entirely the fault of Plaintiff, as it failed to comply with the requisite procedure for obtaining such a permit. Rather than submit the requisite form, Plaintiff instead asked the Town to affirm Plaintiff’s legal opinion as to the scope of its Right of Way over Repa Road,

something the Town has no legal obligation to do. Accordingly, Defendant is entitled to Summary Judgment on Count III.

Dated at Burlington, Vermont this 22<sup>nd</sup> day of December, 2015.

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