## STATE OF VERMONT WASHINGTON COUNTY

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Ronald and Patricia Tedesco, Plaintiffs,	) ) Wash	IN 27 P 2: 02
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	) Dockt	WASHINGTHI TARK
<b>v.</b>	)	THIRD OUT ON THE
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Town of Woodbury, et al.,	)	
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Defendants.	,	

## DECISION Town of Woodbury's Motion for Summary Judgment

Plaintiffs seek review of a decision of the Town of Woodbury Selectboard approving, pursuant to 19 V.S.A. § 1111(b), an application for a curb-cut on a town highway filed by Defendants Zoppo and Nielsen. Section 1111(b) prohibits municipalities from unreasonably denying access to town highways from abutting properties. The statutory "test for reasonableness" points primarily to general considerations of "safety, maintenance of reasonable levels of service on the existing highways, and protection of the public investment in the existing highway infrastructure." *Id.* The Selectboard held a public hearing on the matter, and two members conducted a site visit specific to assess safety. The Selectboard determined that the curb-cut was proposed in a safe location, and granted the application. Plaintiffs believe that the curb-cut is proposed in an unreasonably dangerous location. The Town has filed a summary judgment motion in which Defendants Zoppo and Nielsen join.

There is no statutory right to review in these circumstances. Plaintiffs' right to review arises exclusively under Rule 75. The Vermont Supreme Court recently summarized the purpose and standards of Rule 75 review as follows.

As we have explained, the relief available under Rule 75 represents "the modern equivalent of extraordinary relief by mandamus or certiorari." In re Town of Bennington, 161 Vt. 573, 573–74 (1993) (mem.). The purpose of mandamus is generally to require a public official or body to perform a simple ministerial duty imposed by law, although it may be available to enforce even discretionary duties "[w]here there appears, in some form, an arbitrary abuse of power vested by law in an administrative officer . . . which amounts to a virtual refusal to act or to perform a duty imposed by law." Sagar v. Warren Selectboard, 170 Vt. 167, 171 (1999) (quotation omitted). The purpose of certiorari is to review judicial or quasi-judicial action of a lower court or tribunal "in regard to substantial questions of law affecting the merits of the case." Richards v. Town of Norwich, 169 Vt. 44, 48 (1999). Under either writ, the standard of review is "necessarily narrow." In re Town of Bennington, 161 Vt. at 574.

Ahern v. Mackey, 2007 VT 27, ¶ 8.

Plaintiffs have not demonstrated that this case presents either an arbitrary abuse of discretion amounting to a refusal to act or a substantial question of law affecting the merits of the case. The Selectboard considered the issue of safety and found that the curb-cut had been proposed in safe location. Plaintiffs may have a reasonable basis for disagreement with the Selectboard on this point, but they have not presented a legal basis for the relief requested, reversal of the Selectboard's decision.

## **ORDER**

For the foregoing reasons, the Town motion for summary judgment is GRANTED.

Dated at Montpelier, Vermont this 27 day of June 2007.

Mary Miles Teachout
Superior Court Judge