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LAVINE, J., concurring in part and dissenting in part. I join in part I of the majority opinion but respectfully dissent as to the remainder of the opinion because I construe General Statutes § 13a-39, which permits the selectmen of a town to “define the line of such highway and the bounds thereof,” to mean that the selectmen may determine *both* the width and the length of an existing highway, not just the width as the majority concludes. I therefore would reverse the judgment of the trial court.

I generally agree with the recitation of facts in the majority opinion. I believe the following procedural facts also are relevant. Certain proprietors of land adjoining Brockway Ferry Road sent the following request to the defendant board of selectmen of the town of Lyme (selectmen) by letter dated January 30, 2006:¹ “We the undersigned proprietors of land adjoining Brockway’s Ferry Road hereby formally request that the Selectmen of the Town of Lyme take the steps necessary to define the bounds of Brockway’s Ferry Road and such other steps deemed necessary to remove any and all uncertainties regarding the road’s location as required by Sec. 13a-39 of the Connecticut General Statutes. We are further requesting that detailed attention be given to the western end of our road as this is the portion of the highway that has been the subject of much dispute for the past several years.”

Section 13a-39 provides in relevant part: “Whenever the boundaries of any highway have been lost or become uncertain, the selectmen of any town in which such highway is located, upon the written application of any of the proprietors of land adjoining such highway, may cause to be made a map of such highway . . . and shall also cause to be placed on such map such *lines* as in their judgment coincide with the *lines* of the highway as originally laid down. . . . Such selectmen . . . upon reaching a decision, shall cause the same to be published Such decision shall specifically define the *line* of such highway and the bounds thereof . . . and the *lines* and bounds so defined and established shall be the bounds of such highway unless changed by the Superior Court” (Emphasis added.)

I agree with the majority that the resolution of the defendants’ appeal turns on the construction of § 13a-39 and whether the court properly granted the plaintiff’s motion for summary judgment. The construction of a statute and the determination of whether the court properly granted a motion for summary judgment both raise questions of law and are therefore subject to plenary review. See respectively *Saunders v. Firtel*, 293 Conn. 515, 525, 978 A.2d 487 (2009) and *SS-II, LLC v. Bridge Street Associates*, 293 Conn. 287, 294, 977 A.2d

189 (2009). A motion for summary judgment shall be rendered if the moving party is entitled to judgment as a matter of law.² Practice Book § 17-49. In this instance the court granted the plaintiff's motion for summary judgment on the basis of its conclusion that § 13a-39 permits the selectmen to determine only the width of a highway. I disagree with that construction of the statute and, therefore, conclude that the court improperly granted the plaintiff's motion for summary judgment as a matter of law.

"Statutes must be interpreted to give meaning to their plain language and to provide a unified body of law." *U.S. Vision, Inc. v. Board of Examiners for Opticians*, 15 Conn. App. 205, 214, 545 A.2d 565 (1988). "[A] court cannot, by judicial construction, read into legislation provisions that clearly are not contained therein." (Internal quotation marks omitted.) *Genesky v. East Lyme*, 275 Conn. 246, 268, 881 A.2d 114 (2005).

Analysis of the words in the statute, as it relates to this case, makes two things immediately apparent: there is nothing whatsoever in the statute that confines selectmen to determining only the width of a highway. The word "width" does not even appear in the statute, nor does the word "length," for that matter. The "width" restriction was imported into the statute by this court in its decision in *Hamann v. Newtown*, 14 Conn. App. 521, 524, 541 A.2d 899 (1988), interpreting *Appeal of St. John's Church*, 83 Conn. 101, 105, 75 A. 89 (1910). As will be discussed, I believe that adherence to the restriction created in *Hamann*, in the context of this case, is not warranted.

Moreover, the statute requires selectmen to undertake their task in the context of making a map of the highway and placing on the map such "lines" as coincide with the original lines. It further requires the selectmen to "define the line of such highway and the bounds thereof . . ." and provides that the "lines and bounds so defined and established shall be the bounds of such highway unless changed by the Superior Court" General Statutes § 13a-39. Nothing in this language suggests that the selectmen are to be limited to defining only a portion of a highway—e.g., the width—at the expense of defining the highway in its entirety as would be ordinarily understood and expected.

Research discloses that § 13a-39 is an old statute, having previously been codified as General Statutes (1902 Rev.) § 2083, and that it permits the selectmen of a town to determine the boundaries of a highway that have become lost or uncertain. *Appeal of St. John's Church*, supra, 83 Conn. 101, concerned the "original layout of Strait's Turnpike . . . by the General Assembly in November, 1796 . . . [which] provided for a road from the courthouse in New Haven to the courthouse in Litchfield, passing through the town of Watertown" *Id.*, 102. "The 1796 layout was run by means of

a compass, and was described by *courses and distances* having reference to certain monuments Prior to April, 1908, the actual boundaries had become lost or uncertain.” (Emphasis added.) Id., 103. In 1908, “pursuant to the provisions of § 2083 . . . certain proprietors of land adjoining this highway applied to the selectmen of Watertown to [reestablish] the boundary lines of this highway.” Id. “The line of the original 1796 survey was made on the east side of the highway. It is now impossible to locate that line by following the *courses and distances* given in the original report, because of the change in the magnetic north and the lack of original monuments referred to in the survey. The width, general direction, and *length of courses* of the highway and ownership of adjoining property, as set forth in the survey of 1796, were the only portions of that survey which were or might be of assistance to the selectmen” (Emphasis added.) Id., 103–104.

Admittedly, the majority of the few reported cases decided under the statute generally concern requests by adjacent property owners that the selectmen determine whether the *boundary* of the highway encroaches on their properties.³ The trial court noted this purpose when it quoted *Hamann v. Newtown*, supra, 14 Conn. App. 524, stating “[t]he purpose of [§] 13a-39 is to settle the uncertain width of a highway for the benefit of adjoining property owners.” That quote is accurate as far as it goes, but it must be understood in the context of that case, in which only the width of the highway was in dispute. Moreover, the language from *Hamann* is followed a citation to *Appeal of St. John’s Church*. As previously noted, *Appeal of St. John’s Church* addressed § 2083, now § 13a-39, in the context of the boundaries of a highway, noting that they encompass both its length and width—although neither the word “length” nor “width” are used—as the opinion mentions courses and distances, specifically. Moreover, a highway is not one dimensional in nature. After all, Strait’s Turnpike ran from New Haven to Litchfield. See *Appeal of St. John’s Church*, supra, 83 Conn. 102.⁴

As for the plaintiff’s contention that the selectmen had no authority to determine the end point of Brockway Ferry Road, that contention is at odds with the facts of *Hamann v. Newtown*, supra, 14 Conn. App. 521. In that case, the Hamanns were owners “of land in Newtown which is crossed by a road known as Kale Davis.” Id., 522. The Hamanns applied, pursuant to § 13a-39, “to the board [of selectmen of the town of Newtown] for a determination of the boundaries of Kale Davis [R]oad, which boundaries the [Hamanns] alleged had become lost or uncertain. Following a hearing, the board issued a resolution which established the boundaries to be as depicted on a certain survey map, and which concluded that the portion of Kale Davis [R]oad which crosses the [Hamanns’] property is a private road rather than a town highway.” Id., 522–23. The Hamanns

appealed to the trial court. The trial court concluded that the board lacked the authority to establish the legal status of a road. *Id.*, 523. This court affirmed the judgment of the trial court. *Id.*, 526. There was no claim in that case that the board lacked the authority to determine the length or direction of Kale Davis Road over the Hamanns' land, just whether it could determine its legal status under § 13a-39. I therefore conclude that the majority's reliance on *Hamann* for the proposition that § 13a-39 necessarily prevents selectmen from determining the length of a highway is mistaken.

This conclusion is further supported by the tenets of statutory construction that “[s]tatutes must be interpreted to give meaning to their plain language and to provide a *unified body of law*”; (emphasis added) *U.S. Vision, Inc. v. Board of Examiners for Opticians*, supra, 15 Conn. App. 214; and that we must “construe a statute in a manner that will not thwart its intended purpose” (Internal quotation marks omitted.) *Tayco Corp. v. Planning & Zoning Commission*, 294 Conn. 673, 686, 986 A.2d 290 (2010). Section 13a-39 falls within chapter 238 of our General Statutes, which is entitled “Highway Construction and Maintenance.” General Statutes § 13a-41 also falls within that chapter.

Section 13a-41, entitled “Bounds of new highways to be marked and recorded,” provides in relevant part: “Whenever a new highway has been laid out by authority of any town or city, such highway shall be marked or defined in the following manner: At the *beginning and termination* by stones, steel or iron bounds on each side, and a stone, steel or iron bound at each angle or deflection between the beginning and termination. . . .” (Emphasis added.) If the bounds in § 13a-41 include the beginning and termination of a highway, there is no reason to suppose that the lines and bounds mentioned in § 13a-39 do not also include the beginning and end. Moreover, as noted, § 13a-39 provides that “the selectmen of any town . . . may cause to be made a map of such highway” It stands to reason that a map of a highway within a town would include its entirety from beginning to end. “The obvious purpose of [§ 13a-39] was to afford proprietors the opportunity to see, from an inspection of the map, the relation the bounds claimed by the adjoining proprietors bore to the actual fences and bounds and the lines of the highway as originally laid out.” *Hartford Trust Co. v. West Hartford*, 84 Conn. 646, 651, 81 A. 244 (1911).

This point addresses the allegation in the plaintiff's complaint that she did not petition the selectmen to determine the bounds of Brockway Ferry Road adjoining her property.⁵ In their petition to the selectmen, the defendant proprietors of adjoining land⁶ claimed that the boundaries of the western terminus of Brockway Ferry Road had become lost or uncertain. If a highway is public, it is to be available to the public. No property

owner should be permitted to ban the public, including neighbors, from traversing a public highway that crosses his or her land because he or she has not asked that the lost or uncertain boundaries be determined pursuant to § 13a-39.

For all the reasons stated, I conclude that the court improperly sustained the plaintiff's appeal.⁷ I would reverse the judgment of the trial court and remand the matter for further proceedings.

¹ The letter is signed by Curtis D. Deane, William A. Lieber, Carolyn D. Lieber, David Sutton, Barbara Bennett, Richard Sutton, Wendy Sutton, Jane Dunn Wamester, Cyrus Murphy, Bridgett Brodtkin, Russell K. Shaffer, Leslie Shaffer, Eleanor Sutton and Robert H. Sutton.

² The plaintiff does not challenge the factual findings of the selectmen, only the authority they had to make the findings as to the boundaries of Brockway Ferry Road.

³ See *Hartford Trust Co. v. West Hartford*, 84 Conn. 646, 81 A. 244 (1911) (action to restrain town from taking strip of land for highway use); *Appeal of St. John's Church*, supra, 83 Conn. 103 (reestablishment of boundaries through Watertown); *Kent v. Pratt*, 73 Conn. 573, 48 A. 418 (1901).

⁴ *Appeal of St. John's Church* also is significant because our Supreme Court concluded that "[i]t is evident that the purpose of these sections of the General Statutes is to furnish an easy and convenient method of defining bounds of highways which shall have been lost or become uncertain.

"[General Statutes (Rev. 1902) §] 2084 [now § 13a-40] indicates the method of taking an appeal from the decision of the selectmen to the Superior Court. This section makes provision for the review of the doings of the selectmen by the Superior Court, which is authorized to confirm, change, or set aside the action of the selectmen. Apparently the remedy afforded by this statute is appropriate for the purposes of this case.

"The appellant's contention, that the purpose for which the application was brought could not be legally attained under § 2083, because the original bounds of this highway cannot be found or ascertained, is fully answered by the finding and judgment of the court." *Appeal of St. John's Church*, supra, 83 Conn. 106.

⁵ Despite her allegation that she did not petition the selectmen to determine the bounds of Brockway Ferry Road, the plaintiff also alleged that "[t]he . . . Town of Lyme Board of Selectmen, lacks jurisdiction to make a decision defining the bounds for Brockway Ferry Road . . . through and across the Plaintiff's property due to the fact that, in the public hearing held before the . . . Selectmen, the plaintiff . . . placed in issue (i) whether or not Brockway Ferry Road . . . ever extended through and across the Plaintiff's property and (ii) in the event that Brockway Ferry Road . . . ever did extend through and across the Plaintiff's property, whether or not it had been abandoned by a long period of nonuse. The resolution of the issue of the status of Brockway Ferry Road . . . as a municipal highway is a condition precedent to a definition of highway lines pursuant to . . . § 13a-39, and is beyond the jurisdiction of the . . . Selectmen."

Review of the record reveals that, pursuant to the research commissioned from Boundaries, LLC, by the selectmen, Brockway Ferry Road was created sometime between 1744 and 1784 by the town. A petition submitted by William Brockway and others stated in part, "the subscribers all of Lyme . . . are all dwelling in the North Society or Third Parish in said Lyme and near that ferry called Brockway Ferry and about three miles distant from said parish meeting house to which we cannot travel without trespassing on the enclosures of many of our neighbors for want of a highway from said meeting house to said ferry, which would be very convenient for us and absolutely necessary not only for your petitioners but for all travelers which use said ferry."

"The public use for the purpose of travel rarely corresponds precisely with the boundaries of highways as fixed by the record of their layout. The fact that the highway has not been occupied and worked to its whole width for a considerable period will not extinguish the rights of the public to the parcels not so occupied or worked. This road as an entirety had been laid out and opened, and has constantly been in use, for more than one hundred years, and it cannot be curtailed in its width by the encroachments of adjoining proprietors without unmistakable evidence of abandonment upon the part of the town." *Appeal of St. John's Church*, supra, 83 Conn. 105.

⁶ See footnote 1 of the majority opinion.

⁷ Because I conclude that the court improperly granted the plaintiff's

motion for summary judgment, I do not address the defendants' third and fourth claims.
