

Our zoning and subdivision bylaws require that when two or more lots are being created, a subdivision permit is needed. Recently, it came to our attention that the owner of a nine-acre parcel of land that straddles the town boundary line wants to sell off the entire four-acre piece that lies in our town. Does the landowner need to get a subdivision permit from us before he sells the land?

No. In this case, because that part of the nine-acre lot that lies in your town is being sold in its entirety, no subdivision permit is needed. (Should the landowner wish to sell only a portion of the four-acre parcel in your town, it would be subject to subdivision review.)

The principal reason why the bylaws do not apply in the current proposal is that a municipality only has the authority to enact zoning and subdivision regulations within its legal jurisdiction, that is, within the established political boundaries of the municipal entity itself. 24 V.S.A. § 4401(b). Your regulations do not extend to the portion of the property that lies in the adjacent town, even though the land is contiguous and may even have been purchased in its entirety by a single deed conveyance. The fact remains that part of the parcel lies in one town's jurisdiction and part in another. The common boundary line between the two municipalities essentially 'subdivides' the parcel.

Sometimes this act of law actually creates a non-conforming sized lot in one or both towns. Under this circumstance, the bylaws of one town would not recognize that portion of the parcel in the adjacent town. For example, a landowner proposing to develop the portion of the property that lies within your town cannot add in the acreage of the portion of the lot that lies in the adjacent town when calculating lot size in order to make it conforming. It may help to think of this situation as analogous to a municipality's taxing authority. Municipalities do not have the authority to tax property in an adjacent municipality, even if the property is contiguous and under same ownership.

Although, in this case, the landowner is not subject to municipal subdivision review, the zoning administrator should refer the landowner to the Department of Environmental Conservation regional permit specialist since a state permit may be required. 24 V.S.A. § 4442(c). That is because state law does not recognize municipal boundaries when determining when a subdivision permit is required. The law defines "subdivision" as:

... a tract or tracts of land, owned or controlled by a person, which the person has partitioned or divided for the purpose of resale into 10 or more lots within a radius of five miles of any point on any lot, or within the jurisdictional area of the same district commission, within any continuous period of five years... . 10 V.S.A. § 6001(19).

VLCT News, March 2000