

Does a town highway that bisects property in single ownership create a ‘natural’ subdivision of the land for zoning purposes?

“Not automatically,” says the Vermont Supreme Court. *Wilcox v. Village of Manchester Zoning Board of Adjustment*, 159 Vt. 193 (1992). The answer depends upon the specific facts of the case and is a question the trial court must address. *Wilcox* at 198. This rule applies whether the situation involves a town highway or private road.

In *Wilcox*, the Court held that a private right of way that crossed a parcel of land *could* create a subdivision. A right-of-way that, because of location and function, effectively separates the parcels that it physically connects so they cannot be used in the ordinary manner as a single “lot,” may render those parcels separate for zoning purposes. *Wilcox* at 197. A simple example of this situation is two lots under common ownership completely separated by a private roadway, with each lot containing a single-family residence in a zone that allows only one dwelling unit per lot. In this case, a court might recognize each lot as a separate lot. As a result, no zoning permit would be necessary in order for the owner to sell off one of the lots in its entirety, even if that lot were non-conforming in size under the town’s zoning bylaws.

The Court went on to caution: “. . .*the existence of a right-of-way contiguous to and separating two parcels in common ownership will not automatically render those parcels separate lots . . . However, a right of way could be a well-traveled road, or simply lines on a plan that pose few practical barriers to the enjoyment of the property as a single parcel.*” *Wilcox* at 197.

An example of where a court *might* find that a public right of way *does not* create a subdivision is with regard to a farm parcel where the farmhouse is located on one side of a town highway bisecting the farm, and the barns, pasture or hayfield are located on the opposite side of the highway. Although the town highway presents a major physical obstacle to the farmer in the operation of the farm, it does not prevent the farmer from utilizing the land on both sides of the highway as a single farm unit.

As you can imagine, there are many variations of this question – some involving preexisting, non-conforming small lots. Each scenario has its own set of unique facts that will affect how a court views the question of subdivision. One step that towns can take to eliminate the guesswork is to enact clear zoning bylaws that establish whether or not highways (private and/or public) subdivide property in the same ownership. We believe that it is important for towns to have clearly established policies that would guide zoning decisions on this issue. However, because the Vermont Supreme Court has not spoken on the issue, there is no guideline to follow, and there does exist the possibility that any established guidelines could be overturned by future court decisions. Call the VLCT Municipal Law Center for guidance, if needed.

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