

When one citizen believes a road is a private road and another thinks it is a town highway, how does the town settle the dispute and determine if the road is a town highway or a private road?

A road may be established as a town highway by the procedures laid out in statute or by dedication and acceptance. 19 V.S.A. § 1 (12).

If the town determines that the road has not been established by the procedures laid out in statute, the next step is to see if it has been established by dedication and acceptance. To make a road a public highway by dedication and acceptance, there must be both a dedication by the private owner and an acceptance of that dedication by the town.

Dedication of a road as a highway or public road is the setting apart of the land for public use, and may be either express or implied from the acts of the owner. *Druke v. Town of Newfane*, 137 Vt. 571 (1979). The intent of the owner is an essential part of the process. Dedication alone is not enough to impose on the town a duty to maintain the road without acceptance by the government of the road as a public highway.

To constitute acceptance, there must be both an act of acceptance and the intent to accept the dedication. *Okemo Mountain, Inc. v. Town of Ludlow*, 164 Vt. 447 (1995). Acceptance may be inferred from evidence that the town, acting through the proper officials, has voluntarily assumed the burden of maintaining and repairing the road, and where it is found that labor or money has been used for repairs. Acceptance can also be supported, in part, by the placement of a road on the state highway map.

The selectboard of the town is the proper board vested with the power to lay out, alter and discontinue highways, as the convenience of the inhabitants and the public good may require. Work done by officers of a town unauthorized by the selectboard, although with its knowledge, is not a sufficient basis to constitute the acceptance of a road as a town highway. For instance, if the road commissioner repairs a road with town money and the selectboard knows about it but did not authorize it, then there has been no acceptance of the road.

The existence of a public road or town highway is a mixed question of law and fact. There is no clear-cut test to follow when making this determination. It is important to note that a town can use the facts of a particular situation to make a valid argument either for or against the proposition that a road is a town highway depending upon the political will of the town at that time. The key elements are dedication, acceptance, and intent by both parties to form a public highway. Whether the facts found constitute a public road or town highway is for the selectboard or, if necessary, the court to decide on a case-by-case basis.

- Jennifer Ciarlo, VLCT MAC Law Clerk

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