

***If a town highway is discontinued, do the persons owning property adjoining the former highway have a right to use the discontinued highway to access their property?***

Yes, but the extent of that right is not clear. The Vermont Supreme Court has said that under the common law, property owners have both a private right to access public roads abutting their property and a right to use the road in common with other members of the public. When a public highway is discontinued or abandoned, the public right of use is lost, but the abutting landowner retains his private right of access, entitling him to reasonable and convenient access to his property. *Okemo Mountain, Inc. v. Town of Ludlow*, 171 Vt. 201 (2000).

The Court has said that what constitutes reasonable and convenient access is a question of fact. Therein lies the difficulty. The Court would leave it to the landowners to work out the details of the access right among themselves, including who should bear the expense of maintaining the former highway, the degree to which the former highway might be improved, and the extent to which persons who subsequently purchase land abutting the former highway can use it to access their land.

Vermont's municipal highway statutes are no help, providing only that if a discontinued highway is not designated as a trail, the right of way shall belong to the owners of the adjacent land. If the former highway is located between the lands of two different owners, it shall be returned to the lots which it originally belonged, if the can be determined and if not, it shall be equally divided between the owners on each side. 19 V.S.A. § 77.

In any case, while a selectboard can discontinue a public highway, it has no legal authority to decide what constitutes reasonable and convenient access for those owning land abutting the highway after the highway is discontinued. This is an issue for that the landowners must resolve among themselves. The final option available for those landowners unable to come to an agreement is to seek a declaration of the scope of their rights from a court.

- *Jim Barlow, Staff Attorney, VLCT Municipal Assistance Center*

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