

## **QUIET TITLE ACTION APPROPRIATE TO DETERMINE EXISTENCE OF ANCIENT ROADS**

When a dispute arises over title to property, resolution of the dispute often involves litigation, usually in the form of a declaratory judgment action brought in Superior Court.

A declaratory judgment action involving title to property is called a quiet title action. Quiet title actions often arise from disputes over boundaries, claims of adverse possession, or the location and scope of easements. In *McAdams v. Town of Barnard*, 2007 VT 61, the Vermont Supreme Court held that quiet title actions are also appropriate for resolving disputes over the state's unknown number of ancient roads – those often-abandoned, but legally existing, town highways that crisscross the state.

The McAdams are owners of 280 acres in the Town of Barnard. In 2003, the Town produced a set of maps depicting all of the parcels of land and public highways in the town. When the McAdams learned from these maps that at least three of these potential highways might cross their property, they brought a quiet title action against the Town to determine whether any valid town highways actually existed on their property.

As part of its defense to the suit, the Town asserted that the Windsor Superior Court lacked jurisdiction to hear the case because the discontinuance of a town highway may only be performed in accordance with the statutory discontinuance procedures. The Supreme Court rejected this argument, acknowledging that while a selectboard must follow the statutory procedures to discontinue a highway, the process does not preclude adjudication of the issue of whether a town highway actually exists. Determining whether any town highways exist is not the same as undertaking a discontinuance. Discontinuance is performed by a selectboard to extinguish a known town highway. A quiet title action is heard by a court to determine if a highway exists.

The court also clarified that once the McAdams had established title to the property, the burden was on the Town to prove the existence of all highways that crossed the property. The failure to assert and prove the existence of a highway across the property – even one unknown at the time of the litigation – could be a bar to subsequently asserting that the road exists. Thus, towns subject to quiet title actions cannot just address the highways at issue, but all highways that might impact title to the property in question.

The case may be viewed in its entirety at: [http://dol.state.vt.us/gopher\\_root3/supct/current/2005-542.op](http://dol.state.vt.us/gopher_root3/supct/current/2005-542.op).

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