

## **HIGHWAY BISECTION OF MERGED LOTS NOT NECESSARILY A SUBDIVISION**

In the case *In re: Appeal of Jenness and Berrie*, the Environmental Court decided a case of whether a highway that bisects a merged lot automatically results in a subdivision. Specifically, the question before the court is whether the use of Stickney Brook Road functionally separated an undeveloped 1.1-acre parcel from a 0.9-acre parcel that had been developed with a singlefamily residence constructed on it. This decision lends clarity to a 1992 Vermont Supreme Court decision and provides guidance to administrative officers and other land use officials on how to evaluate the functional use of two parcels separated by a right-of-way. *Wilcox v. Village of Manchester Zoning Board of Adjustment*, 159 Vt. 193 (1992).

The story begins in 1960, when the Andersons, in two separate transactions, purchased two parcels of land: a 0.9-acre parcel developed with a single-family residence across the road from an undeveloped 1.1- acre parcel. From 1960 to 2001, the Andersons retained ownership of both parcels in separate deeds. In 1971, the Town of Dummerston adopted zoning regulations establishing a two-acre minimum lot size in the Rural Residential District, where the parcels are located. The property, held in common ownership by the Andersons, met the two-acre minimum lot size requirement.

In March of 2001, the town adopted a revised zoning ordinance that retained the two-acre minimum lot size in the Rural Residential District, and a new merger provision that caused adjoining pre-existing small lots under common ownership to merge. The Appellant-Applicants purchased from Bernice Anderson the undeveloped 1.1-acre parcel in July of 2001. The sale of the 1.1-acre parcel resulted in a subdivision of the merged two-acre parcel, but it was not a subdivision for the purposes of zoning and created a non-conforming parcel. The ZBA denied a zoning permit to construct a single-family residence.

The decision by the Environmental Court implies that the adoption of the two acre minimum lot size standard in 1971 is the time period used to determine whether the Stickney Brook Road effectively separated the parcels. The court established that the use of the road by children riding bikes, walking and sledding, and the low volume of traffic proved that the Stickney Brook Road “did not interfere with the use and enjoyment of the property in the ordinary manner as a single two-acre parcel,” and held that the parcel was not subdivided by the road. The Appellant-Applicants failed to prove otherwise and were not “entitled to the so-called Wilcox exception to merger” and the appeal was denied. This decision was subsequently appealed to the Vermont Supreme Court.

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