

Kathleen Ramsay

From: Benjamin Putnam <Benj@ndp-law.com>
Sent: Friday, September 28, 2018 8:59 AM
To: Kathleen Ramsay
Subject: RE: Creek Road
Attachments: 19 VSA 775.pdf; 19 VSA 717.pdf

Hi Kathleen,

Yes, your summary is generally correct – see attached copy of 19 VSA 775, and specifically, the last couple of sentences.

Note, however, that if the road is discontinued, some landowners may retain a private right-of-way over the discontinued portion. For example, under 19 VSA 717(c) (also attached), a landowner whose sole means of access was over the town highway retains a private right of way over the former route for any necessary access to his or her land. This analysis can be somewhat case-specific, but the takeaway is that abutting landowners may not regain complete control over the roadbed.

Let me know if you need any further clarification.

Benj

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From: Kathleen Ramsay [mailto:KRamsay@TownOfMiddlebury.org]
Sent: Thursday, September 27, 2018 6:21 PM
To: Benjamin Putnam
Subject: RE: Creek Road

Hi Benj,

There has been some discussion of a Supreme Court discussion about the ownership of the land under the road, and what that may mean for any action the Board may consider taking.

So, just to confirm:

- If the Board discontinues the road following procedures outlined in statute, the land under the road reverts to the adjacent property owners.
- If the Town downgrades the road to a Class IV road or trail following procedures outlined in statutes, the right-of-way continues to belong to the Town.

Thanks,
Kathleen

From: Benjamin Putnam [mailto:Benj@ndp-law.com]
Sent: Wednesday, September 05, 2018 11:15 AM
To: Kathleen Ramsay <KRamsay@TownOfMiddlebury.org>
Cc: Chris English <CEnglish@TownOfMiddlebury.org>
Subject: RE: Creek Road

Hi Kathleen,

The procedure for discontinuance vs. conversion to a trail is similar, so I would not expect much of a cost difference between the two. I would estimate \$2,500 as a ballpark figure for the legal costs, assuming the final decision is not appealed. An appeal would add additional cost, but it is hard to estimate the amount without knowing the nature of the appeal.

Thanks,
Benj

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From: Kathleen Ramsay [mailto:KRamsay@TownOfMiddlebury.org]
Sent: Wednesday, September 05, 2018 10:38 AM
To: Benjamin Putnam
Cc: Chris English
Subject: Creek Road

Hi Benj,

The Town is currently exploring options for the future of the gravel section of Creek Road, including the potential costs of those options.

Since we know the cost of relocating the road to prevent future erosion of the road (\$1.3 M+), we are looking into:

- Bare minimum repairs (also a significant investment);
- Discontinuing the road; and
- Converting the road to a legal trail.

Would you please provide a rough estimate of the legal costs associated with discontinuing the road and the cost of converting the road to a legal trail?

Thanks!
Kathleen

The Vermont Statutes Online

Title 19 : Highways

Chapter 007 : Laying Out, Discontinuing, And Reclassifying Highways

Subchapter 007 : Discontinuance Of Highways

(Cite as: 19 V.S.A. § 775)

§ 775. Title to discontinued highway

The selectmen shall notify the Commissioner of Forests, Parks and Recreation when they have filed a petition to discontinue a highway under this subchapter. The selectmen may designate the proposed discontinued highway as a trail, in which case the right-of-way shall be continued at the same width. The Commissioner of Forests, Parks and Recreation with the approval of selectmen, may also make this designation. If the discontinued highway is not designated as a trail, the right-of-way shall belong to the owners of the adjoining lands. If it is located between the lands of two different owners, it shall be returned to the lots to which it originally belonged, if they can be determined; if not, it shall be equally divided between the owners of the lands on each side. (Added 1985, No. 269 (Adj. Sess.), § 1.)

The Vermont Statutes Online

Title 19 : Highways

Chapter 007 : Laying Out, Discontinuing, And Reclassifying Highways

Subchapter 002 : Laying Out, Altering, Reclassifying, Or Discontinuing Highways By Petition To Selectboard

(Cite as: 19 V.S.A. § 717)

§ 717. Evidence of highway completion or discontinuance

(a) The lack of a certificate of completion of a highway shall not alone constitute conclusive evidence that a highway is not public.

(b) A town or county highway that has not been kept passable for use by the general public for motorized travel at the expense of the municipality for a period of 30 or more consecutive years following a final determination to discontinue the highway shall be presumed to have been effectively discontinued. This presumption of discontinuance may be rebutted by evidence that manifests a clear intent by the municipality or county and the public to consider or use the way as a highway. The presumption of discontinuance shall not be rebutted by evidence that shows isolated acts of maintenance, unless other evidence exists that shows a clear intent by the municipality or county to consider or use the highway as if it were a public right-of-way.

(c) A person whose sole means of access to a parcel of land or portion thereof owned by that person is by way of a town highway or unidentified corridor that is subsequently discontinued shall retain a private right-of-way over the former town highway or unidentified corridor for any necessary access to the parcel of land or portion thereof and maintenance of his or her right-of-way. (Added 1999, No. 156 (Adj. Sess.), § 25, eff. May 29, 2000; amended 2005, No. 178 (Adj. Sess.), § 4.)