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Wenham land ruling could affect wood lots statewide

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WENHAM — "Whose woods these are I think I know, his house is in the village though."

Those first lines of Robert Frost's famous poem may say a lot more about a bygone era than is readily apparent.

Scattered across Massachusetts are perhaps 1,000 isolated lots once owned by village dwellers in need of a source of firewood.

Surrounded by land owned by others, they are today often referred to as "landlocked," because you can't get to them without crossing someone else's property.

Local officials have long believed those lots could never be developed. Now, a Land Court ruling involving such a property in Wenham could go a long way toward reinforcing their belief. And it all came down to the definition of a front yard.

Several years ago, Peter Proulx signed a purchase-and-sale agreement with Thomas O'Brien, trustee of Horse Hill Realty Trust, to buy a 5-acre wooded lot in Wenham.

The deal was contingent upon Proulx obtaining permission to build a home on the property. Although he had no direct access to any existing road, he had secured an easement from an abutter to gain access.

In 2008, Wenham's Zoning Board upheld the building inspector's decision not to issue a building permit to Proulx. Though the property abutted Horse Hill Lane, it is barely a dirt path that is neither maintained by the town nor shown on the plan for an approved subdivision.

The building inspector concluded that without a front lot line "coincident" with a street, there could be no front yard. And without a front yard, Proulx could not satisfy town bylaws regarding front-yard setbacks.

Proulx's lawyer argued that his client's property was protected by "grandfather" clauses that exempted existing properties when zoning laws were first established, and that if Horse Hill Lane were considered a street, the proposed house would not violate the 20-foot, front-yard setback required by zoning.

Judge Harry Grossman disagreed, ruling there had to be an actual public way from which to measure the setback, with no intervening parcels of land.

Attorney Daniel Dain, from the Boston law firm of Brennan, Dain, Le Ray, Wiest, Torpy and Garner, represented Wenham in the suit.

The firm specializes in land use and zoning laws, but typically represents developers, Dain said, who are typically

not interested in this type of individual lot.

He noted municipalities could clear up this issue by slight changes in their zoning laws, as Wenham did after Proulx filed his suit, but that often requires approval by town meeting and can become contentious.

Besides being sold for the firewood they contained, other secluded rural plots were sometimes created by farmers who sold off land when they moved to more fertile fields in the Midwest, Dain said.

"Everyone assumed 'front yard' meant along a street, and the lot line and street line were the same," Dain said.

But Proulx had nothing to lose except lawyer's fees, Dain said, since his P&S was contingent on obtaining a building permit. If the judge had ruled against the Zoning Board, he said, the result could have been a dramatic change in the rural character of many communities.

In a lot of cases a parcel long considered unbuildable might be worth as little as several thousand dollars. But if a prospective developer could obtain an easement from a neighbor — for a good chunk of change — to gain access and then be exempt from the front-yard setback requirement, the land's value could increase several hundred times.

Although no one has documented how many similar properties there may be statewide, Dain said it's "just sort of generally known" there are three or four of them in every community.

While Grossman's ruling seems "incredibly boring" on the surface, Dain said, it speaks to a time when New England had old-growth forests. While people assume most of them were cut down to make way for farms, Dain said a tremendous amount of lumber was used to build homes, churches and stores, and to heat them.

"When you think about the amount of firewood that was needed to heat homes," he said, "it's incredible."