

# Ditch to Ditch

The Creation, Abandonment and Management of Town Rights-of-Way

**March 18, 2021 Tug Hill Commission Webinar**

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## **Town Highways**

- Dedicated Highways
- Streets in Subdivisions
- Highways By Use

## **Dedicated Highways**

- Town Board Consent Required
- Highway Superintendent Consent Required
- County HS must survey the proposed right of way
- Width should be at least three rods from ditch to ditch – DOT consent for less needed
- Owner gives Town a deed
- Town Records Deed in County Clerk's Office
- Town may place reasonable conditions on consent (e.g. road must meet town standards - Opns St Comp, 1981 No. 81-270)
- Highway Law 171

## **Streets in Subdivisions**

- Developer files approved subdivision plat in county clerk's office with offer for dedication of subdivision streets.
- Town board accepts offer of dedication by board resolution.
- Highway Superintendent consent not statutorily required but may be locally required.
- Town Law §279

## **Discontinuing Dedicated Streets and Highways**

- Written Application filed with Town Highway Superintendent
- Written consent of town board
- Town Highway Superintendent must determine that the highway has become useless
- Uselessness is a question of fact to be resolved in court but factors to consider include:
  - Conditions
  - Population
  - Proximity to schools, markets and places of worship
  - Physical features
  - Topography and soil conditions
- Release of all damages must be obtained from affected landowners
- Statute dictates consideration paid for release of damages
- Town Highway Superintendent files order in town clerk's office

- Town Highway Superintendent also files application, all consents and all releases
- Town clerk records each release in county clerk's office
- Property may be sold or transferred under Town law 64 (2)
- *Highway Law 171*

### **Highways by Use (Prescriptive Highways)**

- 10 years of continuous and uninterrupted use by the general public
- 10 years of work by the town highway department
- Sporadic snowplowing or maintenance not sufficient
- Width determined by actual use
- Extent of actual use includes: shoulders, ditches, traveled way
- Surveyor should confirm
- Must purchase or get releases from private property owners to widen road beyond actual use even if less than 3 rods
- Highway Law § 189

### **Abandoning Highways By Use**

#### **Total Abandonment**

- Not opened and worked within six years after its dedication or
- Not traveled or used as highway for six years,
- Highway deemed abandoned by operation of law (*Wills v. Town of Orleans*, 653 N.Y.S.2d 997 (4th Dept 1997))
- Town Board resolution required
- Town Superintendent must file certificate of abandonment (including description) and town board resolution consenting to abandonment in the town clerk's office –
- Aggrieved parties have 1 year from date of certificate filing to challenge abandonment
- Title reverts back to abutting property owners and public loses its right of travel and town is no longer obligated to maintain it
- Highway Law § 205 (1)

#### **Qualified Abandonment**

- Average of 2 cars daily in addition to pedestrians and horseback over a 2 year period.
- Town Board Resolution Required
- Town Highway Superintendent Consent Required
- County Highway Superintendent holds hearing upon 20 days written notice to owners and occupants of abutting property to determine whether any one will be harmed
- Town Highway Superintendent files certificate of qualified abandonment in the town clerk's office
- The effect of qualified abandonment,
- Town no longer responsible
- Public may still use the road
- Abutting property owner/occupant may place an unlocked gate and use enclosed for pasturage
- Highway Law § 205 (2)

## Road Maintenance

- Highway Superintendent is responsible for the care and supervision of all town highways and bridges (Highway Law, §140(1)).
- Inspect highways and bridges
- Keep in repair and free of snow
- Remove loose stones
- Remove noxious weeds and brush growing in the bounds of town highways
- Inspect and remove dangerous trees and branches
- Repair culverts and keep open waterways, bridges and culverts
  
- “It has long been established that a governmental body, be it the State, a county or a municipality, is under a nondelegable duty to maintain its roads and highways in a reasonably safe condition, and that liability will flow for injuries resulting from a breach of the duty.” (Atkinson v County of Oneida, 77 AD2d 257 [4th Dept. 1980])

## Road Standards

In 2014 Cornell Local Roads posted recommendations to implement local road standards

- Developed by a professional engineer
- Reviewed by municipal attorney
- Adopt appropriate standards by local law
- Classify local roads by volume, type of vehicles, land use, and seasonality of use
- Determine existing conditions of pavement, roadside, signs, drainage, and alignment
- Identify what needs to be done to meet adopted highway standards
- Rank the needs and prioritize the work to be done
- Develop and implement an action plan
- <https://cornell.app.box.com/v/clrp-tt-guidelines>

## Road Preservation

Options to review with the Town Attorney

- **Establish a system of truck routes**
  - Vehicle & Traffic Law, §1660(a)(10) – must provide access to state roads (A.J. Baynes Freight Contractors, Ltd. v. Polanski, 90 AD3d 1630 (4th Dept 2011), lv denied 19 NY3d 806 (2012))
- **Exclude Certain Vehicles from Designated Roads**
  - Vehicle & Traffic Law, §1660(a)(17)
- **Exclude Certain Vehicles based upon weight, length, height or limit hours of operation**
  - Vehicle & Traffic Law, §1660(a)(28)
- **Recover Damages for Injuries to highways**
  - Highway Law §320
- **Temporary Weight Limits**
  - Prohibit Vehicles over 4 tons during spring thaw months

- Vehicle & Traffic Law, §1660(a)(11)
- **Adopt a Road Preservation Local Law**
  - Municipal Home Rule Law §10(1)(ii)(a)(6)
  - May include escrows, permits, fees, weight limits, truck routes etc. To date these have not been reviewed in a reported court decision.
  - Cornell Local Roads has samples
  - [https://www.clrp.cornell.edu/assistance/Policies\\_Standards.html](https://www.clrp.cornell.edu/assistance/Policies_Standards.html)
- **Road Use Agreements**
  - Road use agreements typically have provisions that would require the user to obtain insurance, post maintenance bonds or other security; require the use of established truck routes and provide for an agreed upon means of ascertaining the damages that the user will be responsible for. To date these have not been reviewed in a reported court decision.

### Low Volume / Minimum Maintenance Roads

- Local Road Classification Task Force, formed in 1986 and Local Roads Research and Coordination Council, formed in 1990 studied rural roads
- Issued/Revised “Guidelines For Rural Town and County Roads”
- Guidelines are the basis for locally adopted Low-Volume/Minimum-Maintenance Road Programs
- Legislation introduced to codify Guidelines has yet to be signed into law.
- Latest legislation - S3825/A326 [2021]
- You can read the legislation here <http://public.leginfo.state.ny.us/navigate.cgi>
- Local Low-Volume/Minimum-Maintenance Programs must be adopted by local law.
- Samples available at DOS Local Law website (<https://locallaws.dos.ny.gov/>)
- Tug Hill Commission (<https://tughill.org>) and
- Cornell Local Roads ([www.clrp.cornell.edu](http://www.clrp.cornell.edu)) offer guidance on developing a local Low-Volume/Minimum-Maintenance Road Program.
- **Low-Volume Roads are generally classified as having fewer than 400 vehicles per day.**
- 6 Categories
  - **Low Volume Collector** – collects traffic from any other classification and channels it to higher level roads.
  - **Residential Access** – all year access for fire trucks, ambulances and school buses must be provided.
  - **Farm Access** – access to farm’s center of operations including the residence.
  - **Resource/Industrial Access** – access to industrial or mining operations.
  - **Agricultural Land Access** – access to farm land. Traffic volumes are low and vary seasonally. These roads should accommodate farm equipment that can be up to 20 feet wide.

- **Recreation Land Access** – provides access to recreational land including seasonal dwellings and parks. Volumes of traffic can vary with the type of recreation facility and season of the year.
- **Local Law**
  - Establishes procedure to designate Low-Volume Roads
  - Establishes procedure to develop standards for Low-Volume Roads
  - Establishes procedure to designate/discontinue certain Low-Volume Roads as Minimum-Maintenance
  - Establishes procedure to develop Maintenance/Construction Standards
  - Procedure to adopt a local law  
[https://www.dos.ny.gov/lg/publications/Adopting\\_Local\\_Laws\\_in\\_New\\_York\\_State.pdf](https://www.dos.ny.gov/lg/publications/Adopting_Local_Laws_in_New_York_State.pdf)
- **Minimum Maintenance** roads are a subset of Low Volume roads that are classified as agricultural and recreational land access roads with no year round residences.
  - Typically less than 50 cars daily.
  - Minimum maintenance does not mean no maintenance, rather it allows local governments to allocate resources based upon the demands of the road and the needs of the community.
  - Maintenance standards must provide that a driver traveling at a reasonable and prudent speed, under the circumstances, will not be placed in a hazardous situation and that abutting property owners will continue to have reasonable access to their property.
  - Winter Snowplowing suspended.
- **Matter of Weikel v Town of W. Turin 162 A.D.3d 1706 [4th Dept. 2018]**
  - Challenged by property owner with a Certificate of Occupancy for a residence on a minimum maintenance road who wanted the road plowed.
  - Appellate Division found for the town on a statute of limitations argument – did not decide on the merits.
- **Matter of Weikel v Town of W. Turin 188 A.D.3d 1718 [4<sup>th</sup> Dept. 2020]**
  - Property owner petitioned to have the minimum maintenance road designation lifted but town decided to keep the designation.
  - Appellate Division found the town’s decision arbitrary and capricious because the Weikel had a certificate of occupancy for a single family residence and needed the road plowed for proper access.
  - Appellate Division also noted that the town needed to plow the road under Highway Law 140.

### Seasonal Limited Use Highways

- **Highway Law §205-a**
- Highway Superintendent may annually designate seasonal limited use highways
- Must be done prior to November first each year
- Road must be appropriately posted
- Town does not have to plow or maintain the road December 1 - April 1.
- Qualifying roads must not have an occupied residence or commercial building dependent upon it for access.

- Seasonal status terminates when one or more occupied buildings or seasonal camps are dependent upon the highway for access (Opns St Comp, No. 02-6, Opns St Comp No. 82-235).

### **Sidewalks**

- A sidewalk includes “that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.” (Vehicle and Traffic Law, §144) The courts have construed this definition to include the grass adjacent to curb-line and sidewalk. (Gallo v. Town of Hempstead 124 A.D.2d 700 (2nd Dept. 1986); Cieszynski v. Town of Clifton Park, 124 A.D.3d 1039, (3rd Dept. 2015)
- Town Board may direct HS to construct a sidewalk along a town highway (Highway Law, §151)
- More options discussed in the Red Book (e.g. sidewalk districts, local laws)
- Town – HS responsible for snow removal on town sidewalks abutting town roads (HL §140 (18))
- Consents must be obtained from the state and the county for the construction of sidewalks along state and county roads (Highway Law §§ 54, 136, 151)
- State – HS responsible for maintenance of all state sidewalks and snow removal by town board order (Highway Law §140 (18))
- County – HS responsible for maintenance of all county sidewalks and snow removal by town board order HL 140(18)
- Town can transfer responsibility and liability to abutting property owner.

### **Driveways and Curb Cuts**

- The construction and repair of approaches to private lands by owners is performed by owners under the direction of the Highway Superintendent (Highway Law §213)
- The Town Board may, by ordinance or local law, regulate the location and manner in which driveway entrances and exits may be constructed by owners and occupants of property abutting on town highways (Town Law §130 (7-a); MHRL §10 )

### **Speed Limits**

#### **Towns of Suburban class or with Populations of 50,000 or more**

- Town Board action required by local law or ordinance - V&T Law, §1662-a
- Based upon sound traffic engineering study
- Should not designate below 30 MPH
- Highway Superintendent posts signs in accordance with Uniform Traffic Control Manual
- In addition, some towns have received special state legislation to set speed limits even though they do not meet the classification or population requirements under V&T Law, §1662-a

#### **Towns of the First or Second Class with Populations below 50,000**

- Town Board action required by resolution – V&T, Law §1622
- Request submitted to County Highway Superintendent
- County HS Consents – submits request to Regional DOT
- Regional DOT makes decision
- Town HS posts speed limit signs in accordance with Uniform Traffic Control Manual

## Stop Signs

- Town Board action required by ordinance or local law – V&T Law, §1660
- Should be based upon sound traffic engineering study
- Highway Superintendent posts stop sign in accordance with Uniform Traffic Control Manual
- General Fund Expense (Town Law 64)
- Municipalities are “charged with the duty of warning, guiding and regulating traffic, as it deems necessary, by placing and maintaining traffic control devices conforming to the State manual and specifications” (Woodcock v. County of Niagara, 52 A.D.2d 1087).

## Winter Parking

- Adopted by Local Law
- Samples Available on DOS website
- Include enforcement authority in local law
  - Penalty
  - Towing

## Drainage

- A town may acquire drainage rights via **Dedication, Prescription, or the Eminent Domain**
- Provide clear metes and bounds descriptions in deed, easement or survey
- Secure simultaneous rights to work areas and access ways through adjacent property
- Highway Law Section 147 authorizes entry onto private property to perform drainage work outside the ROW,
  - County Highway Superintendent Approval required
  - Town Board Approval required
  - Private landowner release recommended
  - Court order if necessary

## Obstructions

- Highway Law 319 (1)
- trees which have been cut or have fallen either on adjacent lands or within the bounds of the highway, in such a manner as to interfere with public travel therein;
- limbs of trees which have fallen within the highway, or branches of trees overhanging the highways so as to interfere with public travel therein;
- lumber, wood or logs piled within the bounds of the public highway;
- machines, vehicles and implements abandoned or habitually placed within the bounds of the highway;
- fences, buildings or other structures erected within the bounds of the highway;
- earth, stone or other material placed in any ditch or waterway along the highway;
- telegraph, telephone, trolley and other poles, and the wires connected therewith, erected within the bounds of the highway in such a manner as to interfere with the use of the highway for public travel.

- Highway Law 319 (2)
- Owner or occupant must remove all obstructions in the ROW placed there by them or with their consent.
  
- Utilities must remove poles and wires when the same constitute obstructions to the use of the highway by the traveling public.
  
- **Temporary Obstructions** (such as trees, lumber, wood, logs, machinery, vehicles etc.)
  - Remove within 48 hours after the service of a notice,
  - Notice must be served personally or by mail, upon such owner or occupant,
  - Notice must request that temporary obstruction be removed.
  - If not removed within 48 hours, the town superintendent shall remove such obstruction.
  
- **Permanent Obstructions** (including, among others, telegraph, telephone, trolley and other poles and wires connected therewith)
  - Moved and reset within 30 days,
  - The town superintendent shall move and reset such poles and wires.
  
- The expense thereby incurred shall be paid in the first instance out of moneys levied and collected and available therefor, and the amount thereof shall be charged against such owner, occupant or company, and levied and collected, as provided in Highway Law 157.

## Utilities

- **Highway Law 149** - Permit issued by Highway Superintendent with consent of the town board, to a person or corporation to lay and maintain drainage, sewer and water pipes within a town highway (Highway Law, §149).
  
- **Town Law 64 (7)** – Town Board issued Franchise Agreement
  - requires public hearing
  - **Town Law 130 or Municipal Home Rule Law 10** – local road excavation law
  - look to terms of the ordinance or local law for process and authority
  - Permit or franchise governs the permittee/franchisee scope of authority, costs and requirements.
  
- **Town Law, §198(1)(e); (3)** Water or Sewer District
  - Highway Superintendent supervises installation.
  - Cost of restoring town road is an improvement district expense not a highway fund expense.
  
- **Digsafely.com (811) Notification**
  
- **Franchise Agreement**
  - Town board issued after public hearing
  - Franchise generally governs the utility's use of town property.
  
- **Relocate poles**



- Utility required to relocate poles to accommodate road work (New York Tel. Co. v. City of Binghamton, 18 N.Y.2d 152 (1966))
- **Double or Zombie Poles**
  - Last wire moved required to remove pole or town may adopt a local law regulating removal of zombie or double poles.
- **Tree and Vegetation Trimming**
  - Utility Companies must file Tree and Vegetation Management Plans with NYS PSC (6 NYCRR, Part 84)
  - New York State Department of Public Service has information
  - [www3.dps.ny.gov/W/PSCWeb.nsf/All/F23366F8E2F89E8C852576A8004F62EB](http://www3.dps.ny.gov/W/PSCWeb.nsf/All/F23366F8E2F89E8C852576A8004F62EB)
- **Fallen Wires**
  - To preserve public safety, upon notice, an electric company has a common law duty to promptly shut off power or make necessary to a damaged transmission line (Russell v New York State Elec. & Gas Corp., 276 App Div 44, (3d Dept 1949), aff'd, 301 NY 593 (1950)) A telephone company has a similar duty but it might have more time to respond depending on the circumstances (Ray v New York Tel. Co., 260 App Div 405, 407 (3d Dept 1940))
  - Contact the Dept. of Public Service for more information

#### **SEQRA**

- Don't forget to talk to the town attorney about SEQRA – some actions might require SEQRA review.
- State Environmental Quality Review Act
- (Environmental Conservation Law Article 8; 6 NYCRR Part 617)
- Information available on the DEC website [www.dec.ny.gov/permits/357.html](http://www.dec.ny.gov/permits/357.html)