



Roads by Use

2015 Local Government Conference
March 26, 2015

Mark Gebo, Esq
Hrabchak, Gebo & Langone, P.C

Issues

1. Roads by Use
2. Seasonal Roads
3. Minimum Maintenance Roads
4. Abandoned Roads
5. Qualified Abandoned Roads
6. Official Highway Map

How Roads Created

1. Laying Out
2. Dedication
3. By Use

Roads by Use

1. Highway Law § 189
2. Requirements:
 - a) Use by Public – 10 Years
 - b) Publicly Maintained – Control and Dominion

Road by Use – What does Town Own?

1. Only right of public to cross over
2. Adjoining property owners own land underneath to center line.

Road by Use – Width

1. Highway Law § 189 says layout to 3 Rods
2. Opinions say only have what is actually used
3. Not as shown on tax map
4. If going to widen, need permission from neighboring property owners (best in writing in the form of an Easement).

Road by Use – Problem Areas

1. Shoulders
2. Drainage
3. Straightening
4. Cutting Trees
5. Allow others to use right-of-way
 - a) Water/Sewer Line
 - b) Utility Pole Lines

Seasonal Roads

1. Highway Law § 205-a
2. Highway Superintendent designates each year
 - a) By November 1st
 - b) No plowing from December 1st to April 1st
 - c) Must post signage
3. Can only do if no business or residence needs road for access

Use of Seasonal Roads

1. Up to Town Board
2. Snowmobile
3. ATV's
4. Loggers
 - a) By Contract

Seasonal Roads – Problems

1. Year round home
2. Camp
3. Change of use from seasonal camp to year round home
4. Restricting zoning permits on seasonal road

Minimum Maintenance Roads

1. No state statutory authority
2. Home Rule Law
 - a) Must adopt local law
 - b) Must be study first to classify roads
 - c) Define what maintenance will be done
 - d) Cornell Highway School Study
3. Helps manage budget

Minimum Maintenance Road Issues

1. Does not mean no maintenance
2. How to discontinue designation
 - a) Change to local law
 - b) Limit amount per year
3. Restricted Zoning Permit
 - a) Notification on permit application/permits

Abandoning Roads

1. Highway Law § 205(1)
2. Requirements
 - a) Not worked for 6 years
 - b) Not used by public (2 per day)
3. Town Highway Superintendent issues certificate
4. Town Board Appraisal
5. De facto Abandonment

Abandoned Road – Effect

1. Title to land reverts to neighboring owner
2. Public right to use extinguished
3. Town cannot change mind later

Qualified Abandonment

1. Highway Law § 205(2)
2. Requirements:
 - a) Not worked for 6 years
 - b) Still some public use (2 or more per day)
3. Process:
 - a) Request County Highway Superintendent to hold hearing
 - b) Neighboring property owners notified (20 day notice)
 - c) Co-Highway Superintendent makes finding

Qualified Abandonment – Effect

1. Public still has right to use
2. Property owners can gate – cannot lock (gate 10 feet wide)
3. Town can resume maintenance later

Qualified Abandonment – State Land

1. If accesses state land, can only qualifiedly abandon
2. Must do on notice to DEC
3. DEC can maintain
4. No fencing or gating
5. Town can resume maintenance
6. Title of right-of-way remain with Town

Official Highway Map

1. Highway Law § 250 and 205
2. Why do
 - a) Confusion with old maps and atlases
 - b) Avoids question of whether is a Town road
3. Need to line up with:
 - a) County Highway Map
 - b) CHIPS Inventory

Official Map – Process

1. Study all roads in Town
2. Determine which are maintained
3. If un-maintained, check against County Highway Map and Inventory of Highways
4. Determine if any need to be abandoned
5. Then Board can hold public hearing and adopt

Questions?

THANK YOU!

Mark Gebo, Esq
Hrabchak, Gebo & Langone, P.C
*216 Washington Street
Watertown, NY 13601
(315)788-5900
mgebo@gebolaw.com*