



**COUNTY OF SULLIVAN
DIVISION OF PUBLIC WORKS
SULLIVAN COUNTY GOVERNMENT CENTER
100 NORTH STREET
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MONTICELLO, NY 12701**

**Sullivan County Superintendent of Highways' Decision on the
Town of Highland's Clark Road (TH27)
Qualified Abandonment Request**

Background

The Town of Highland Town Board passed a resolution on May 11, 2010 requesting the Sullivan County Superintendent of Highways to conduct a public hearing and make a determination regarding a qualified abandonment request for a portion of Clark Road, Town Highway #27.

Pursuant to Highway Law, Article 8, Section 205, Sub-paragraph 2, when it appears to a town's superintendent of highways and the town board, that a qualified abandonment of a town highway is appropriate, the county superintendent of highways is required to conduct a public hearing on notice to the adjoining property owners, to ascertain whether such qualified abandonment is proper and whether it will cause hardship or injustice to owners and occupants of the land adjoining such highway.

Per Article 8, Section 205, Sub-paragraph 2 of the Highway Law, to accomplish the qualified abandonment of a given highway, two criteria must be satisfied.

1. "That it has not for two (2) years next previous there to, been usually traveled along the greater part thereof by more than two (2) vehicles daily..."; and
2. "It shall also appear to the Superintendent of Highways of the County in which town is situate that a qualified abandonment of such highway is proper and will not cause injustice or hardship to the owner or occupant of any lands adjoining such highway..."

Procedure

Letters were sent by the Sullivan County Division of Public Works on June 25, 2010 to adjoining landowners and other interested parties, notifying them of the public hearing to be held regarding the qualified abandonment request.

Hearing notices were published in the River Reporter on July 8, 2010 and the Sullivan County Democrat on July 9, 2010.

Per the requirements of Article 8, Section 205, Sub-paragraph 2, a public hearing was held at the Town of Highland Town Hall on July 21, 2010 at 6:30 PM to provide an opportunity for the public to express their opinions on the request for qualified abandonment of a portion of Clark Road (Town Highway 27).

Comments Received

Twenty (20) people commented on the proposed qualified abandonment at the public hearing. At the end of the public hearing it was announced that the County Superintendent of Highways would be accepting written comments up until and including July 30, 2010.

As of the close of business on July 30, 2010, thirty-four (34) letters regarding the qualified abandonment had been received.

In the verbal comments, seven (7) were for abandonment while thirteen (13) were opposed. Written comments consisted of eleven (11) in favor of abandonment and twenty-three (23) opposed.

Exhibits

The following exhibits were received:

1. Town of Highland Resolution/Sutherland Letter
2. Public Notice & Mailings
3. Proof of Publication
4. Correspondence (4)
5. Map offered by Michael Davidoff, Town Attorney
6. Map offered by Andrew Boyer, Town Supervisor
7. Estimated Cost of Improvements
8. Letter offered by Frederick Bosch
9. Town of Tusten Resolution 95-10 offered by Peggy Harrison
10. Letter offered by Calin Riffle
11. Speakers' sign-up list

Observations

Those expressing concern about not being able to use the road in the future for sightseeing and similar activities were apparently unfamiliar with the provisions of qualified abandonment. Article 8, Section 205, Sub-paragraph 2 states, “the effect of such qualified abandonment, with respect to the portion of said highway described in the certificate, shall be as follows: it shall no longer be worked at the public expense; shall not cease to be a highway for purposes of the public easement, by reason of such suspension of work thereon; no persons shall impair its use as a highway nor obstruct it, except as here and after provided, but no persons shall be required to keep any part if it in repairs;...”

On the other hand those who were in favor of the Clark Road qualified abandonment, who complained about people poaching deer and driving ATV’s up and down the road, also did not consider these provisions that the road would remain open even under a qualified abandonment and those illegal activities are a matter for law enforcement – not factors to consider in whether or not to do a qualified abandonment.

Others complained that drivers blindly following their GPS’ directions got stuck on the road. As several others accurately pointed out, doing a qualified abandonment on the road will not prevent this from happening in the future.

Burden of Proof

Since the Town initiated the request for a qualified abandonment of a portion of Clark Road (Town Highway 27), the undersigned is of the opinion that the Town bears the burden of proof in showing that the requirements of Article 8, Section 205, Sub-paragraph 2 of the Highway Law is fully met to accomplish a qualified abandonment.

In a letter dated May 5, 2010 from Highway Superintendent Norm Sutherland to the Town of Highland Town Board, he states, “it has not for two (2) years prior hereto been usually traveled along the portion indicated in the attached map, by more than two (2) vehicles daily.”

Measurements

No data supporting this statement in the form of traffic counts or other proof has been provided. Further, traffic counts taken by Sullivan County DPW on Blind Pond Road (which is a continuation of Clark Road within the Town of Tusten) between County Bridge 447 and the Town of Highland line yielded counts of sixty-six (66) vehicles per day or average annual daily traffic of fifty-five (55) vehicles per day in 2005.

The question naturally arises, has traffic averaging fifty-five (55) vehicles per day on an annualized basis, dropped in the last five (5) years to less than two (2) vehicles per day?

On August 3, 2010 members of the Sullivan County Division of Public Works survey crew took nineteen (19) width measurements and photos along Clark Road. These were taken at approximate intervals of one tenth of a mile along the entire length of the proposed qualified abandonment.

It was found that the travelled way varies from approximately nineteen (19) feet at the beginning of the proposed qualified abandonment (near the Strenglein property) to approximately nine (9) feet near the Tusten border. The bank-to-bank (work limit) widths varied from approximately twenty-six (26) feet near the Strenglein property to twelve (12) to fourteen (14) feet near the Tusten border.

Decision

The latter portion of Sub-paragraph 2 of Section 205 referenced above states, “this section shall not apply to highways less than two rods in width unless it shall appear to the town superintendent at any time that such a highway has not, during the months of June to September inclusive of the two years next previous thereto, been usually traveled along the greater part thereof by more than ten pedestrians daily.”

One rod is equal to sixteen point five (16.5) feet, therefore a highway that is two (2) rods in width is thirty-three (33) feet wide. According to the survey crew’s measurements, no portion of the proposed qualified abandonment is over two (2) rods in width – it is all less than two (2) rods.

According to this section of the Highway Law therefore, the controlling criteria for qualified abandonment of this highway must be based upon pedestrian traffic, not vehicular traffic.

The town offered no information on pedestrian traffic.

Lacking factual support to meet the criteria of Section 205 of the Highway Law for qualified abandonment of Clark Road (TH 27), it is my decision that said qualified abandonment is not proper and shall not be carried out. Therefore, Clark Road (TH27) shall remain as currently maintained by the Town of Highland.

Original signed by _____ August 25, 2010
Robert A. Meyer, P.E. Date
Commissioner
Sullivan County Division of Public Works