RIGHT-OF-WAY (TRANSPORTATION)

- To make a way over a piece of land, usually to and from another piece of land.
- A type of easement granted or reserved over the land for transportation purposes.
- Reserved for the purposes of maintenance or expansion of existing services with the right-of-way.

ROAD RIGHT-OF-WAY

- All public roads are located within land which is referred to as road right-of-way.
- Typical road right-of-way include: driving surface, roadside shoulders and ditch, public utilities, sidewalks & traffic signs, etc.
- Width is established by deed, statute, traveling public and maintenance of the road system.

EASEMENT

- An interest in land belonging to another, consisting of a right to use it or control its use for some purpose, but not to take anything from it or possess it.
- Public Easement: an easement for the benefit of the public at large, such as a street across a private land.

TOWN HIGHWAY ACQUISITION

- Methods of Acquisition
  A) By purchase
  B) By dedication (gift)
  C) By release and payment of damages
  D) By use
  E) By condemnation
  F) By improvement on petition
- Eminent Domain – the inherent power of a government to take private property for public purposes.
TOWN HIGHWAY ACQUISITION cont.

- **Taking** – the act of a state or federal government in depriving a property owner of the use of their property in order to serve a public purpose; an exercise of the power of eminent domain.
- **Regulatory Taking** – a statute or regulation that destroys the value of land and thus amounts to a taking.
- **Just compensation** – the compensation that the Fifth Amendment requires the state or federal government to pay to a property owner whose property is taken for public use.

COST OF ACQUISITION

- The purchase price – payable from the town general fund.
- Actual construction of the new town highway should be paid from Item 4 of the highway budget.

ACQUISITION BY DEDICATION

- Accomplished pursuant to Highway Law 171, Subdivision.
- Dedication is in the nature of a gift, a gift of private lands for highway purposes.
- An offer to dedicate land to the public use does not constitute as a dedication.
- The offer must be accepted by the municipality.

ACQUISITION BY DEDICATION

- Acceptance of dedication
  - Consent of both the town board and the superintendent of highways.
  - Superintendent of highways must then make an order laying out the highway.
  - Prior to making the order, the superintendent should notify the county superintendent.
  - County superintendent must then cause a survey to be made.
  - The survey is incorporated in the order of the town superintendent of highways.
  - The dedication is now complete.

SUBDIVISIONS

- Town Law 279 provides for the filing and recording of plats of a subdivision of land with the county clerk, upon approval by the town planning board.
- Any street, highway or park shown on a filed or recorded plat shall be deemed to be private until such time as it has been formally accepted by a resolution of the local legislative body or until it has been condemned by the town for use as a public street, highway or park.
- A proper acceptance by a town is necessary to effect a change into town highways of streets shown on a filed subdivision map.
- The town board may accept streets, highways and parks shown on a plat of a subdivision of land at any time.

STATUTORY AUTHORITY

- Highways by public use are governed by Highway Law 189.
- The establishment of highways-by-use is not so simple as this brief provision would seem to indicate.
- Period of continuous use
- Maintenance requirements
- Use of public funds
- Width of highway by use
ACQUISITION UNDER EMINENT DOMAIN PROCEDURE LAW

- The taking of private land for a public purpose without the consent of the owners.
- The taking of private property under this drastic power is conditioned by the State Constitution on the use of due process and the payment of just compensation.
- Procedure:
  - Section 64, Subdivision 2
  - Highway Law 173, Petition for acquisition

NY HIGHWAY LAW 189 - HIGHWAY BY USE

ABANDONMENT OR DISCONTINUANCE OF TOWN HIGHWAYS

- Strictly regulated by law.
- A person may not be deprived of his property rights without due process and just compensation.

SPEED ZONE ESTABLISHMENT PROCEDURE

1. Written request to the Town Board.
2. If approved, a certified copy of a Town Board Resolution requesting the zone is sent to the County Highway Superintendent.
3. The Superintendent reviews and prepares the necessary forms and presents them to the NYSDOT Traffic Division.
4. NYSDOT does a study of conditions to either disapprove or issue an order establishing the speed zone.

ABANDONMENT - QUALIFIED

1. If a Town has not worked a highway for six years, the Town Board may pass a resolution to abandon such highway.
2. The resolution has to be filed with the County Supt. Of Highways of said county and with the county judge.
3. The notice of abandonment will be legally advertised in the official newspaper of the county.
4. If after seven years there has been no objection, the right-of-way ceases to exist and reverts to the adjoining original land owners.

ABANDONMENT - PERMANENT

1. A written request from the Town Superintendent to the Town Board requesting the abandonment.
2. The Town Board may reject the request or pass a resolution to abandon a section of highway.
3. A release must be signed by all adjoining property owners and lien holders.
4. The resolution must be approved by the County Board of Supervisors.
5. A public hearing must then be held.
6. Approved and signed by the county judge.
EFFECT OF VACATION OR ABANDONMENT OF PUBLIC WAY

- While the discontinuance of a public highway or street will destroy the public easements therein, the private easements of the abutting owners, such as the easements of light, air, and access, are unaffected and unimpaired. To extinguish these private easements, something more is needed than the mere discontinuance in and of itself of the public way; they can be extinguished only by condemnation or conveyance.

THANK YOU

QUESTIONS