

MEMORANDUM

TO: The Stillwater Town Board

FROM: Trainor, Pezzulo & DeSanto, PLLC

RE: Duties and Responsibilities of the Town Highway Superintendent

DATE: September 7, 2023

The Town has asked for a recitation of statutory authority and caselaw relative to the duties and responsibilities of the Town Highway Superintendent as they relate to the maintenance of Town roads. Specifically, there is a question regarding the Highway Superintendent's responsibilities to trim/cut/remove trees and other vegetation on the sides of Town roads. We have found as follows:

The New York Highway law confers enumerated duties on the Highway Superintendent. Specifically, at NY Highway Law §140, details the duty to "Cause briers, brush and noxious weeds growing within the bounds of town highways to be cut and removed between July fifteenth and August fifteenth, and as many other times as he may deem necessary, in each year. § 140 (7).

There are two types of Town highways that are relevant to this issue. The first being a highway by "dedication." A dedicated roadway is conveyed to the Town by private owner(s) for the use of the public. A dedicated roadway is, by statute, required to be a minimum of "three rods" or 49.5 feet wide. These types of roads are determined by deed and the maintenance requirements are for the entire width of the deeded roadway. This means that the roadway is as wide as the conveyance, regardless of the actual path of travel, and the Town is vested with ownership of the entire width along with the responsibility to maintain the entire width per § 140 as set forth above.

The second type of road is a "user" highway. This means that the public right of way is determined by the traditional path used by the public. In this regard, §140 (1) states that the Highway Superintendent shall "Have the care and superintendence of the town highways and bridges and board walks or renewals thereof on highways less than two rods in width." This means that, even if a road was not dedicated to the Town, the responsibility of the Highway Superintendent to maintain the roadway is enumerated by statute.

With regard to highways by use, Highway Law §189 authorizes the Town open public rights of way to the width of three rods. This means that the Town may widen roadways that are less than 49.5 feet, regardless of the paved area traditionally traveled. As such, the Highway Superintendent must maintain all areas of the Town's right of way, regardless of the width/distance traveled by the public with respect to both dedicated roadways and highways by use.

The Third Department recently reiterated these standards in the case of Hoffman v. Town of Shandaken, 147 A.D.3d 1275, 1276, 47 N.Y.S.3d 786 (3d. Dept. 2017). In that case, the Court

considered whether the town's plowing activities exceeded the scope of the public right of way on a user highway. The Court held that "[a]fter a roadway is established as a highway by use, Highway Law § 189 plainly permits a town to maintain and improve it in furtherance of the public's right of travel, to the width of 'at least three rods.' Stated differently, so long as the use at issue relates directly or indirectly to the public's right of travel, the use of the highway may be extended past the paved portion of the road to a width of at least three rods." *Id.* at 788. Furthermore, the Court considered the Town's plowing and widening of the road at issue, beyond the area of the public right of way, were "necessary to preserve the public's right of passage," and the Town's interest in maintaining the road was consistent with Highway Law § 189 authorizing the three-rod width of the Town's scope of work. *Id.* at 788; *citing*, Dutcher v. Town of Shandaken, 23 A.D.3d at 782, 803 N.Y.S.2d 756; *see generally*, Thompson v. Orange & Rockland Elec. Co., 254 N.Y. at 369, 173 N.E. 224).

Therefore, with respect to the Town of Stillwater's obligations under the law, the Highway Superintendent is obligated to maintain all public roadways to a width of 49.5 feet and specifically is required to trim vegetation, maintain culverts, clear loose stones, maintain bridges, among other responsibilities set forth at § 140 of the New York Highway Law.