

## RESOLUTION 2018-35

### INTRODUCTION:

Over the last five months we have once again examined the issues related to access on what was once Church/Crock road.

This issue is not a recent one. There has literally been decades of litigation stemming from this 90 year plus abandonment mystery.

The Town Board has heard from the current interested parties along what is now the Town portion of Church Road and along what is now an abandoned part of the former Church/Crock Road and along what is part of the current Town portion of Crock Road. We have studied caselaw, reviewed title affidavits, researched maps old and new and have asked the town attorney to prepare an extensive history of the issue in anticipation that the town may face litigation regardless of what decisions are made or not made today.

To say that the issue is both complex, confusing and steeped in conflicting opinions and history is an understatement.

After much research, the Town Board can state the following facts with some clarity.

1. There is sufficient evidence from the 1888 map, oral history and town records to support the fact that Church/Crock road was in fact a Town Road for a period of time prior to 1928.
2. This notion is supported by the fact that the town felt it necessary to record in its minutes the official abandonment of Church/Crock Road in 1928.
3. While most of the town's records from this time period were destroyed, the Town Clerk in the late 1960s or early 1970s retrieved a copy of the 1928 minutes book when dealing with a different road abandonment issue. So we have a recording of the 1928 Minutes by Town Clerk John Paterson, referencing the exact page from where he took the 1928 minutes and these minutes are re-produced on the Town Clerks official letterhead.
4. These minutes reflect that Gallatin, in 1928, abandoned sections of six town roads under then section 234 of the Highway Law. The minutes do NOT make clear if the Town took this action under section 1 or 2 of then Section 234 the Highway Law. Section 234 is now reclassified as section 205 of the Highway Law. Section 1 is generally known as absolute or permanent abandonment and Section 2 is qualified abandonment. Permanent abandonment, as detailed by Courts and educational sources, typically can includes written request for abandonment, parcel owner releases, County Board approval and participation in a public hearing. Qualified Abandonment includes testimony from the Highway Superintendent that the Town has not maintained the road in the prior six years, that the road is not currently traveled by residents in any meaningful fashion and a town board resolution. While far from conclusive, the empirical evidence from that era tilts more toward a finding of the Town using qualified abandonment versus the more structured absolute abandonment. Admittedly, this is partially based on a lack of the more extensive documentation found with absolute abandonment at the Town and/or County level, understanding that those records may not exist either.

5. Among the six abandoned roads in 1928 are portion of Church and Karwacki. The only judicial cases dealing with "access" (versus easements by prescription and/or necessity) on these two roads have both found a right of access. The less clear is Judge Koweek decision in 2016 Peters case that gave all rights of vehicular access to the "southern" parcel owners on Church/Crock to the north onto Crock Road. The Order, drafted by a party attorney, does not detail any analysis of qualified abandonment. However, the language in the transcript and dicta includes the judge's use of the qualified abandonment definition. More clear is the case in Lankenau vs. Gallatin when the Town and the Court agreed by stipulation that Karwacki Road was indeed a qualified abandoned road for purposes of access and the issuance of permits to construct a house.

6. The Town Board has no power to rescind a building permit. It can only recommend that the Town CEO rescind it. The reality we deal with is that both times that the a judge with jurisdiction over one of the roads listed in the 1928 minutes was asked to find access over that road as it was defined prior to 1928, the court found that access existed over the prior Town road bed.

Therefore, the Town Board resolves, at this point, that is will not request the CEO review the existing building permit for right of access unless and until a judicial decision finds against the current precedent granting access by qualified abandonment over the 1928 abandoned Town roads.