

**RESOLUTION #46 OF 2015
TOWN OF CLAYTON
A RESOLUTION TO OBTAIN CERTAIN EASEMENTS BY MEANS OF EMINENT
DOMAIN IN CONNECTION WITH THE NYS ROUTE 12 SEWER.**

Title: A resolution to obtain certain easements by means of Eminent Domain in connection with the NYS ROUTE 12 Sewer.

At a regular meeting of the Town Board of the Town of Clayton held at the Town Offices, 405 Riverside Drive, Clayton, New York, on August 12, 2015, at 5:00 p.m. there were:

Present:

Justin A. Taylor, Supervisor
Lance Peterson, Councilmember
Robert W. Cantwell III, Councilmember
Christopher D. Matthews, Councilmember
Mary Zovistoski, Councilmember

WHEREAS, this Board has heretofore established the Town of Clayton Route 12 Sewer District pursuant to the provisions of Article 12-A of the Town Law (the "District") for the purposes of providing sanitary sewer service to the improved properties along New York State Route 12 between the Village of Clayton and the Town of Orleans (the "Project"), and

WHEREAS, the Project will involve the construction, installation and maintenance of transmission main lines and appurtenances for the collection and transmission of sewage from the improved properties within the District for treatment at the Sewage Treatment Plant located on Route 12 in the Town of Alexandria and jointly owned by the Towns of Clayton, Orleans and Alexandria, and

WHEREAS, in order to construct the transmission lines it is necessary for the Town of Clayton to acquire easements from property owners along the transmission line to facilitate the installation and maintenance thereof, and

WHEREAS, the majority of the property owners within the District along the proposed transmission line have voluntarily executed easements in favor of the Town, and

WHEREAS, although the Project Engineer has redesigned the route of the transmission line to avoid properties for which easements have not been voluntarily acquired, there are still approximately 10 parcels for which rerouting is not possible, and it is therefore necessary for the Town to acquire the necessary easements for those parcels through eminent domain proceedings.

NOW, THEREFORE, be it resolved by the Town Board of the Town of Clayton as follows:

1. The foregoing recitations are incorporated herein and made a part hereof as if fully set forth hereafter.
2. The anticipated environmental impacts associated with the Project have already been fully assessed pursuant to the State Environmental Quality Review Act ("SEQRA") and a negative declaration has been issued by the Town of Clayton, as SEQRA lead agency which determined that the Project will not result in any significant adverse impacts.
3. Pursuant to the provisions of Article 2 of the New York Eminent Domain Procedure Law ("EDPL"), certain procedural prerequisites to acquiring a property interest through eminent domain proceedings including the conduct of a public hearing on notice and the rendering by the condemning authority of determination and findings are applicable unless one or more exemptions to such procedural requirements is applicable.
4. One exemption from compliance with the provisions of EDPL Article 2 is established by Section 206(D) of the EDPL, when in the opinion of the condemnor the acquisition is de minimis in nature so that the public interest will not be prejudiced by the construction of the project.
5. The easements which are to be acquired by eminent domain are in connection with the construction and long term maintenance of the sewer project, which consist of a temporary construction easement which will be a maximum of 10' in width and a contiguous permanent utility easement which will be a maximum of 20' in width which will be located immediately adjacent to the road frontage of each of the properties to be acquired, will all be narrow in size and scale in comparison with the remainder of each affected parcel, will not require the removal of any existing structures or otherwise interfere with the current residential use of each parcel or its visual appearance, and will each serve a valid public purpose, to wit: facilitating the construction and long-term operation of a municipal sewer transmission line.

6. Following the construction of the sanitary sewer line, all of the properties for which easements are to be acquired, including the 10 parcels that are the subject of the eminent domain, will be benefited by the availability of the municipally owned sanitary sewer service.
7. Based upon the relatively small size and scale of this acquisition, and the lack of appreciable interference with the condemnees use of or appearance of their properties, the benefit the project will have to the affected parcels, it is hereby determined by the Town Board of the Town of Clayton that the acquisitions of the real property interests for the construction of the underground transmission line are de minimis in nature so that the public interest will not be prejudiced by the construction of the project, and as a result, the proceedings will be exempted from the procedural requirements of Article 2 of the EDPL.
8. Each easement to be acquired is necessary for the completion, construction and future maintenance of the sewer transmission project, and without each acquisition, the project cannot be completed, and therefore, each easement to be acquired is for a public use and will confer a public benefit.
9. The descriptions of each parcel of real property to be acquired and their location, by metes and bounds and by reference to the proposed acquisition map for each such parcel are attached as Exhibit A.
10. The attorney for the Town of Clayton is hereby authorized and directed to proceed to have the necessary acquisition maps prepared to satisfy the requirements of the Eminent Domain Procedure Law, and to prepare and file the necessary petition and accompanying documents with the Supreme Court, Jefferson County, New York for an order granting the Town permission to file the acquisition maps in order to obtain easements over the subject properties for the purpose of constructing the transmission lines.

A motion to adopt the foregoing resolution was made by Council Member Christopher Matthews and seconded by Council Member Robert W. Cantwell III and upon a roll call vote of the Board was duly adopted as follows:

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| Justin A. Taylor, Supervisor | Yes <u>X</u> No ___ |
| Lance Peterson, Councilman | Yes <u>-</u> No ___ |
| Robert W. Cantwell III, Councilman | Yes <u>X</u> No ___ |

Christopher D. Matthews, Councilman

Yes No

Mary Zovistoski, Councilwoman

Yes No

Aye Nay Abstain Absent

Dated: August 12, 2015

(SEAL)

Kathleen E. LaClair, Town Clerk