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## **HIGHWAYS - GEORGIA**

### [Scarborough v. Hunter](#)

**Supreme Court of Georgia - July 11, 2013 - S.E.2d - 13 FCDR 2180**

Following notice issued by county Board of Commissioners of intent to hold public hearing regarding proposed abandonment of county road, owners of property that abutted road and others filed complaint for writ of mandamus to compel county to repair and maintain road, and for temporary restraining order to prevent Board from conducting hearing.

The Superior Court entered TRO against Board. Board's application for interlocutory appeal was granted. The Supreme Court reversed. Board thereafter filed answer and counterclaims, then conducted public hearing, after which it unanimously decided to abandon road. The Superior Court then entered judgment for plaintiffs, issued writ compelling Board to repair and maintain road, and awarded plaintiffs attorney fees. Board appealed.

The Supreme Court of Georgia held that:

- Evidence supported Board's findings that 3,000-foot-long, dead-end county road served no substantial public purpose and that its removal was in best public interest, as grounds for decision to abandon road;
- Issue before trial court was not whether abandonment would best serve public interest, but whether Board's decision to abandon road was arbitrary or capricious, and thus, abuse of discretion; and
- Plaintiffs were not prevailing party entitled to award of attorney fees.

A county's duty to maintain roads in the county system is enforceable by mandamus under both the general mandamus statute and a special mandamus statute applicable to the repair and maintenance of county roads, which may be invoked by citizens of the relevant county.

All questions necessary to be determined in order to decide whether a street shall be vacated or abandoned and the interest of the public therein released are referred to the wisdom and discretion of the lawmaking power. Economic factors, including the cost to repair a severely damaged road, are proper considerations for the county in determining whether to abandon the road. While the decision to abandon a road must be for the benefit of the public, the benefit may be in relieving the public from the charge of maintaining a street or highway that is no longer useful or convenient to the public.

Evidence supported county board of commissioners' findings that 3,000-foot-long, dead-end county road served no substantial public purpose and that its removal would in best public interest, as grounds for decision to abandon road. Road ran along side of mountain and served no existing homes or businesses. It was not safe for public use because of construction defects that had been concealed by contractor, which flaws contributed to road's failure. Expected costs to make it safe ranged between \$600,000 and \$800,000, and public was not using road.

On judicial review of decision by county Board of Commissioners following public hearing to

abandon county road, issue before trial court was not whether abandonment would best serve public interest, but whether Board's decision to abandon road was arbitrary or capricious, and thus, an abuse of discretion.

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