

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON D.C. 20268-001

TOWN OF NEW SCOTLAND,
LAW OFFICES OF PETER HENNER,
CLARKSVILLE HISTORICAL SOCIETY,
ONESQUETHAW UNION CEMETERY ASSOCIATION, INC.,
JOSEPH T. HOGAN APPLIANCE AND ELECTRIC SERVICE,
DAN SMITH, as proprietor of JAKE MOON RESTAURANT,
MARILYN MILES, as Membership Chair of the EASTERN
COMPETITIVE TRAIL RIDE ASSOCIATION, JUNE
ALBERTS, PATRICIA AUGLE, DAWN BALDWIN,
JOAN BANGERT, WANDER and PHYLLIS BRAGA,
MARY COLLINS, CAROL COOTWARE, NEVADA
DANCKERT, PAMELA FOX-FERRO and FRANCIS FERRO,
JUDY GROSE-JOHNSON, BARBARA and VICTOR HANSEN,
JEAN HOAGLAND, MARIE and WILLIAM HORNICK,
JEANNETTE KEFALANT, ANTHONY and CAROL LATHAM,
EDWINA LEVERONI, DONNA MARTIN, JOAN PLUNKETT,
GEORGE E PETRUSKA JR., GRACE and GEORGE
PETRUSKA, ROGER SMITH, GEOFFREY STEIN, BLANCHE
and RICHARD STICKLEY, MINNIE TURNER,

Petitioners,

**Petition to review
determination to close
Post Office**

**Motion to suspend
determination to close
Post Office until
disposition of appeal**

-against-

UNITED STATES POSTAL SERVICE,

Respondent.

Peter Henner, a petitioner in the above-captioned proceeding, on behalf of himself and all petitioners, respectfully alleges as follows:

Introduction

1. This is an appeal from the final determination of the United States Postal Service ("USPS") to close the Clarksville New York Post Office (Docket Number 1358213-12041). This determination was posted in the Clarksville Post Office on August 23, 2011, and a copy of this determination is annexed hereto as Exhibit A. This petition is filed pursuant to 39 U.S.C. § 404 and its implementing regulation 39 CFR Part 3001.¹
2. Petitioners are also seeking to "suspend the effectiveness of the determination of the Postal Service [to close the Clarksville Post Office] until the final disposition of the appeal." 39 U.S.C. § 404 (d) (5). Absent such a determination, the Postal Service has the legal authority to close the Clarksville Post Office 60 days after its written determination, or on or after October 22, 2011.
3. As described below, the Postal Regulatory Commission should overturn the determination of the USPS to close the Clarksville Post Office because it is "arbitrary capricious [and] an abuse of discretion" and is "unsupported by substantial evidence on the record" (39 U.S.C. § 404 (d) (5) (A) and (C)).
4. In particular, the USPS has failed to meet its statutory obligation to consider 1) the effect of the closing of the Post Office on the Clarksville community and 2) whether such closing is consistent with the congressional policy, stated in 39 U.S.C. § 101 (b), "that the Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining."

¹ The provisions of § 3001 were last amended on July 21, 1993. However, § 404 has been amended twice since the final amendment of the regulations, and the regulatory references to subsections of the statute have not been updated.

Petitioners

5. Petitioners in this proceeding include the Town of New Scotland ("the Town"), 6 local businesses and civic organizations, and 31 individual petitioners. All of the businesses and individual petitioners are served by the Clarksville Post Office and the Town asserts the interest of individual residents of the Town who are served by the Clarksville Post Office under the doctrine of *parens patriae*.

The Town

6. The Town of New Scotland is a municipal corporation located in Albany County, State of New York, and has approximately 8650 residents. The hamlet of Clarksville is entirely within the boundaries of the Town of New Scotland, and is located in the southwestern portion of the Town.

Businesses and civic organizations

7. The Law Offices of Peter Henner are physically located at 60 Scutt Rd., Feura Bush, NY 12067. Petitioner Peter Henner uses route delivery for personal mail, but maintains a post office box in the Clarksville Post Office and relies upon the Clarksville Post Office for all mail services pertaining to his full-time law practice.
8. The Clarksville Historical Society maintains a post office box at the Clarksville Post Office.
9. The Onesquethaw Union Cemetery Association, Inc. maintains a post office box at the Clarksville Post Office.
10. Joseph T. Hogan Appliance and Electric Service, Inc. maintains a post office box at the Clarksville Post Office.

11. Jake Moon Restaurant is physically located at 2082 Delaware Tpke., Clarksville. The restaurant's proprietor, Daniel Smith, maintains a post office box at the Clarksville Post Office.
12. Marilyn Miles, the Membership Chair of the Eastern Competitive Trail Ride Association, maintains a post office box for the Association, listed on its website, at the Clarksville Post Office.

Individuals

13. June Alberts maintains a post office box at the Clarksville Post Office.
14. Patricia Augle resides at 1968 Delaware Ave, Clarksville and maintains a post office box at the Clarksville Post Office.
15. Dawn Baldwin resides at 2002 Delaware Tpke., Clarksville and maintains a post office box at the Clarksville Post Office.
16. Joan Bangert resides at 10 Olive Street, Clarksville and maintains a post office box at the Clarksville Post Office.
17. Wander and Phyllis Braga reside at 748 Dunbar Hollow Rd., Voorheesville and maintain a post office box at the Clarksville Post Office.
18. Mary Collins resides at 2004 Delaware Tpke., Clarksville and maintains a post office box at the Clarksville Post Office.
19. Carol Cootware resides at 2041 Delaware Tpke, Clarksville and maintains a post office box at the Clarksville Post Office.
20. Nevada Danckert resides at 47 Olive Street, Clarksville and maintains a post office box at the Clarksville Post Office.

21. Pamela Fox-Ferro and Francis Ferro reside at 1932 Delaware Tpke., Clarksville and maintain a post office box at the Clarksville Post Office.
22. Judy Grose-Johnson resides at 1774 Tarrytown Rd., Feura Bush, and maintains a post office box at the Clarksville Post Office.
23. Barbara and Victor Hansen reside at 27 Hart Terrace, Clarksville and maintain a post office box at the Clarksville Post Office.
24. Pamela Fox-Ferro and Francis Ferro reside at 1932 Delaware Tpke., Clarksville and maintain a post office box at the Clarksville Post Office.
25. Jean Hoagland resides at 1045 Clarksville South Rd, Clarksville and maintains a post office box at the Clarksville Post Office.
26. Anthony and Carol Latham reside at 1972 Delaware Tpke., Clarksville and maintain a post office box at the Clarksville Post Office.
27. Edwina Leveroni resides at 1886 Delaware Tpke., Delmar and maintains a post office box at the Clarksville Post Office.
28. George E Petruska Jr. resides at 20 Verda Ave, Clarksville and maintains a post office box at the Clarksville Post Office.
29. Grace and George Petruska reside at 28 Verda Ave, Clarksville and maintain a post office box at the Clarksville Post Office.
30. Roger Smith resides at 15 Olive Street, Clarksville and maintains a post office box at the Clarksville Post Office.
31. Geoffrey Stein resides at 2 Slingerlands Ave, Clarksville and maintains a post office box at the Clarksville Post Office.

32. Blanche and Richard Stickley reside at 1055 Clarksville South Rd., Clarksville and maintain a post office box at the Clarksville Post Office.
33. Minnie Turner resides at 1960 Delaware Tpke., Clarksville and maintains a post office box at the Clarksville Post Office.
34. Jeannette Kefalant resides at 1793 Tarrytown Rd., Feura Bush and uses the Clarksville Post Office for postal services.
35. Donna Martin resides at 2436 Delaware Tpke., Voorheesville and uses the Clarksville Post Office for postal services.
36. Joan Plunkett resides at 2442 Delaware Tpke., Voorheesville and uses the Clarksville Post Office for postal services.

Community opposition to closure

37. In April 2011, the community was notified of the possible closure of the Clarksville Post Office. The USPS circulated questionnaires pertaining to the services offered by and at the Clarksville Post Office, by placing them in the 214 post office boxes that have been rented at the Post Office, and making them available at the Post Office to members of the public.
38. The responses on the 97 questionnaires that were returned indicated that the community was bitterly opposed to the possible closing of the Clarksville post office.
39. On May 2, 2011, the USPS conducted a meeting at the Clarksville Community Church, to answer questions about the process and possible closing of the Clarksville Post Office.
40. Several issues were repeatedly raised by members of the community at that meeting:

- a. the hardships that would be caused by requiring members of the community who were dependent upon post office boxes to travel, on average, an additional 5 miles one way to the Feura Bush Post Office,
- b. the lack of security involved in delivery to mailboxes located in rural areas and the need, especially for businesses, to have a secure mail facility,
- c. the general impact on local businesses, including businesses that rely upon the post offices for large mailings, sending and receiving certified mail, and the impacts of having to change addresses and reprint stationery, and
- d. the impact upon the community caused by the loss of a post office, as measured by the reduction in social interaction, loss of community identity as a result of losing its own post office, and the cumulative impacts caused by the possible closure of the post office together with the recent closing of the Clarksville Elementary School.

41. According to the USPS sign-in sheet, 63 individuals attended the meeting. The overwhelming majority of the people who attended the meeting urged that the Post Office not be closed, and described, in detail, the adverse impacts would occur if the Post Office was closed.

42. The USPS received additional comments and questionnaires during the 60 day notice period from May 17 through July 18, 2011. These comments almost unanimously reiterated the community's opposition to the proposal to close the post office and to replace it with a rural route service.

Impacts of the closures upon the Clarksville community

43. The hamlet of Clarksville is an urbanized center of a rural community, located in the southwestern portion of the Town of New Scotland.
44. In 2008, Clarksville celebrated its 175th birthday.
45. In 1832, the Town of New Scotland separated from the Town of Bethlehem. At the time, the Bethlehem Post Office, which had been established in 1812, was located in Clarksville.
46. When the Town of New Scotland was separated from the Town of Bethlehem, the name of the Bethlehem Post Office was changed to Clarksville. The Clarksville Post Office has been continuously in operation from 1832 to the present.
47. The Clarksville Historical Society, one of the petitioners in this proceeding, is preparing to have a special pictorial cancellation for the hoped-for 200th anniversary of the Clarksville Post Office, in June 2012.
48. Since 1832, the hamlet of Clarksville has been the home of numerous businesses including medical offices, legal offices and other professional services, an occasional boardinghouse, and several churches.
49. Today, in 2011, there is still an active business community in Clarksville. Specifically, the following businesses: J&S Auto, Superior Oil, Qwix Mart and Jake Moon Restaurant (the proprietor Dan Smith is one of the petitioners in this proceeding), are located on the main street of Clarksville, in close proximity to the Post Office.
50. In addition, Clarksville is home to several other businesses: Joseph T. Hogan Appliance and Electric Service (a petitioner in this proceeding), Master Seal of Albany, Matt's Sons Industrial, Helderberg Siding, Dunston Painting, Susan Dee Associates, Meadowbrook

Farms, Canon Law Professionals, and the Law Offices of Peter Henner (a petitioner in this proceeding).

51. In addition to businesses, there are several not-for-profit and community organizations that rely upon the Clarksville Post Office, including the Onesquethaw Volunteer Fire Company, the Onesquethaw Union Cemetery Association, the Eastern Competitive Trail Ride Association (a petitioner in this proceeding), the Clarksville Historical Society (a petitioner in this proceeding), the Anam Duan-Fracisian Ecology Center, and the Clarksville Community Church.
52. All of these organizations rely upon the services of the Clarksville Post Office. Most of these businesses maintain post office boxes at the Clarksville Post Office.
53. Businesses that have been long established rely upon the fact that they have had a continuous address; the loss of the Clarksville P.O. Box address will have negative impacts upon their business. In addition, businesses will be required to spend thousands of dollars to print new stationery and bank checks and to advise clients, customers, vendors and professional and business contacts of their new addresses.
54. Businesses, civic organizations and individuals will be required to spend a significant amount of time and money changing their addresses on legal documents. Certificates of Incorporation, addresses to receive official notices, deeds, wills, drivers licenses, and many other document will have to be changed. In the case of real property documents and some notifications, members of the community may need the assistance of attorneys to prepare and file the necessary documents.
55. Furthermore, rural route service is not a viable option for many of these businesses. Those businesses and organizations which are not located in downtown Clarksville

cannot be served by mail boxes on deserted rural routes for reasons of security.

Businesses may receive valuable documents, including confidential communications, money, and packages that cannot be left outside for extended periods of time. In addition, businesses are more likely to receive mail that may require a signature and, especially in the case of small businesses and not-for-profit organizations that do not have full-time staff people available when mail is delivered, it may be impracticable to receive mail requiring a signature without extended delays.

56. Furthermore, organizations are frequently required to send out large quantities of mail.

For example, the Clarksville Historical Society, a not-for-profit organization, mails a large newsletter four times a year, and sends a variety of mailings to its members.

57. The Law Offices of Peter Henner frequently mails bulky documents, including court papers, which need to be weighed before mailing, certified mail, and other mail that requires the assistance of an actual Post Office.

58. Many individuals also rely upon the security of a post office box. For these individuals, as for the businesses, rural route service is not a viable alternative.

59. Rural route service is also not a viable alternative for many individuals. Many individuals receive checks that should not be placed in rural boxes for security reasons or because the contents of the packages are perishable. Three petitioners, Marie and William Hornick and 84 year old Blanche Stickley, receive medications by mail and these medications can not be safely left outside, especially in subfreezing or extremely hot weather.

60. The average user of the Clarksville Post Office will need to travel an additional five miles per day to access mail at the Feura Bush Post Office. This will be a significant hardship for many people, especially senior citizens who do not drive.
61. The five miles between the Clarksville and Feura Bush Post Offices are on roads which can be especially difficult in wet or snowy weather. Part of the route is on Town roads, which are the last to be cleared during snowstorms. The part of the route that is on State Route 32 has several dangerous steep curves.
62. The financial and energy use implications should also be considered. There are 214 post office boxes at the Clarksville Post Office. If we assume that 100 (approximately half) of those box holders will choose post office boxes at Feura Bush, and if we assume that, on average, they will travel an additional 10 miles per day to access their mail, that is an additional 1000 miles of driving per day, or based upon 250 days per year (based upon a five day week - excluding Saturday mail pickup), 250,000 miles per year. At an average fuel consumption of 25 miles per gallon, this is equivalent to the use of an additional 40 gallons per day of gasoline or 10,000 gallons per year. At four dollars per gallon, this is a total expense to the community, for gasoline alone, of over \$40,000 per year. If the true cost per mile, figured at the Internal Revenue Service allowed rate of \$.55 per mile, is measured rather than the cost for gasoline alone, this is equivalent to \$137,500 per year for driving expenses.
63. The environmental impacts of this fuel use, and the significant economic expense to the community were not considered by the USPS.

Inadequacy of Postal Service review of closing

Inaccurate analysis of questionnaires

64. The USPS prepared a Postal Service customer questionnaire analysis, which analyzed the questionnaires that it received prior to and at the May meeting. According to this analysis, of the 97 questionnaires that were returned, 11 were favorable to the "proposed alternate service," 33 expressed no opinion, and 53 were unfavorable, which is approximately a 5:1 ratio of unfavorable to favorable responses.
65. However, closer examination of these questionnaires indicates that the percentage of "unfavorable" responses (i.e. people who did not want to see the Clarksville Post Office closed) was actually higher.
66. The statistics appear to be based on the answer to Questions 3 which offered the choices of "Better," "Just as Good," "No Opinion" of "Worse" when comparing the proposed service to the existing service.
67. Of the 11 responses considered favorable by the USPS, only five had chosen "Better" while 6 had chosen "Just as Good," and should have been considered expressing no opinion. This changes the results to 5 favorable and 53 unfavorable, or approximately a 10:1 ratio.
68. This statistic also failed to take into consideration those surveys where no boxes were checked in response to Question 3, but contained obviously negative comments including pleas not to close the Post Office.
69. An additional 17 questionnaires were returned during the 60 day notice period from May 17 through July 18, 2011. According to the USPS, 12 of these questionnaires included "unfavorable comments" and five were described as "no opinion expressed." Again, the

statistical analysis of the USPS is suspect. Petitioners respectfully maintain that a true analysis would indicate that the comments that were received were unanimously opposed to the closing of the Post Office.

70. Furthermore, the questionnaires themselves, and the stock pro forma answers prepared by the USPS in response to the concerns raised on the questionnaires indicate that the USPS was simply trying to use these questionnaires as a means to justify its preordained decision to close the Clarksville Post Office.

71. The questions on the questionnaire obfuscated the plain and simple fact that the closure of the Post Office would have a clear negative impact by asking questions that were designed to elicit either extraneous and useless information, or to elicit non-negative responses with respect to the prospective closure of the Post Office.

72. Furthermore, the responses to the concerns raised by questionnaires were form responses. Every individual who returned a questionnaire raising a particular issue received the same form response. Individual issues and concerns, raised on the questionnaires were, for the most part, not considered by the USPS or, at the very least, were plainly not referenced in the USPS answers.

73. It was only when individuals did not use the questionnaire form, but submitted actual comments, that the USPS responded to them in an individualized matter. For example, Peter Henner, one of the petitioners in this proceeding, submitted a letter describing the impacts of the prospective closure. He received an individualized response from the USPS.

Financial analysis

74. The USPS estimates a total annual savings of \$26,521 as a result of the closing of the Clarksville Post Office.
75. This estimate is based upon the avoiding of \$58,951 in annual costs, minus \$32,430 in replacement costs.
76. The largest cost which will be saved is the \$36,381 of postmaster salary plus \$12,188 of fringe benefits, for a total of \$48,569.
77. However, it should be noted that the postmaster position became vacant on March 31, 2010, and the Post Office has filled this position on a temporary basis by an OIC since then.
78. Indeed, had the postmaster not retired, the USPS would not have even performed the review, which the USPS now is utilizing to justify its determination to close the Post Office.
79. In any event, the estimated savings of \$26,000 should be weighed against the costs that will be incurred by the entire community as a result of the closing of the Clarksville Post Office (cf. an estimated cost of \$137,500 for mileage alone to drive to Feura Bush (see ¶ 62 above)).

Analysis of the functioning of the Clarksville Post Office

80. The USPS has made certain conclusions with respect to the workload of the Post Office. These conclusions are based upon a survey of retail transactions and an analysis of mail sent and received during a two-week period.
81. The two-week period selected was March 5 through March 20, 2011. Upon information and belief, this is a relatively slow time of the year. Had the survey been done during a

busier time of year, such as the months before Christmas, the USPS would have obtained radically different results with respect to the volume of mail and business activity at the Post Office.

82. The USPS file contains a memorandum dated March 25, 2011, where the OIC was directed to "provide the names and addresses of businesses, religious institutions, civic organizations and local government offices and schools that are served by the Clarksville Post Office. The list of businesses should include small, part-time and in-home businesses, as well as public institutions, such as schools, police departments, etc., religious institutions and businesses physically located outside the community that use retail services on a routine basis at the Clarksville Post Office." The bottom of the memorandum contains a "comment" section, which has a list of businesses.
83. The only businesses identified on the March 25 document were: "Super Oil," "Master Seal of Albany," "matt's sons industrial," "Heldebrugh siding," Clarksville elementary school," "Dunsten Painting," "Onesquethan fire co.," and Clarksville Community church." (sic).
84. However, as noted in ¶¶ 49-51 above, there are many more businesses, not-for-profit organizations, civic organizations and religious institutions that rely upon the Clarksville Post Office. Many of these businesses and institutions submitted questionnaires and comments during the comment period and at the public hearing.
85. Nevertheless, in the "Effect on Community" section of the final determination, the USPS ignored the fact that, as demonstrated by the public comments, there were many other organizations, businesses and institutions in addition to those identified in the original memorandum of March 25.

86. The Community Survey Sheet dated 03/29/2011 asks which non-postal services are provided by the Post Office (e.g. public bulletin board, school bus stop, community meeting location...) The answer to this question is incorrectly stated as “none.” However, there is a large, well used bulletin in the lobby of the Post Office, containing information about community events, meetings and even announcements about lost (and then recovered) farm animals.
87. Contrary to the stated “none,” the Post Office is indeed used as a meeting place. As described in the questionnaires and at the meeting, post office customers rely upon the post office as a place where they can expect to see other members of the community.
88. In short, it appears that the USPS did not consider the input that it received from the community, and particularly from business and civic organizations, regarding the fact that the community was far more economically and socially active than it believed, and that the impacts of the closure would be far more severe than the USPS wanted to acknowledge.

Legal obligations of the USPS

89. 39 U.S.C. § 404 (d) (2) (A) requires the USPS to consider five factors before making a determination to close or consolidate a post office. Of particular concern to Clarksville, the USPS is required to consider 1. "the effect of such closing or consolidation on the community served by such post office... 3) whether such closing or consolidation is consistent with the policy of the government as stated in § 101 (b) of this title..."
90. 39 U.S.C. § 101 (b) specifically requires the USPS to "provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for

operating a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities."

91. The USPS determination to close the Clarksville post office is in derogation of the USPS' obligations under §§ 404 (d) and 101 (b) because the USPS failed to consider the impact of the closing on the Clarksville community, and because such closing is contrary to the USPS' obligation to maintain effective postal services to rural communities and small towns, even if, as the USPS claims, the Clarksville Post Office is actually operating at a deficit.

The Commission should overturn the determination of the USPS

92. Section 404 (d) (5) requires the Postal Review Commission to set aside any determination, findings and conclusions that are "a) arbitrary capricious abuse of discretion or otherwise not in accordance with the law, and... c) unsupported by substantial evidence on the record."
93. The determination by the USPS to close the Clarksville Post Office is arbitrary, capricious and not justified by the record, because the USPS has not considered the impacts upon the community, particularly with respect to the hardships that will be caused to individuals, businesses and civic organizations.
94. Furthermore, the USPS has failed to act in accordance with its obligations under 39 U.S.C. § 101 (b), because it has assumed and has concluded that the closure of the post office is justified because it is allegedly not self-sustaining, even though such a basis for closure is statutorily prohibited.
95. Finally, the determination to close the post office is not supported by substantial evidence, because the impacts upon businesses and civic organizations were not

considered; even when relevant issues were identified in the review process with respect to businesses and civic organizations, such issues were completely ignored and disregarded in the final determination.

Motion to keep the Clarksville Post Office open pending the determination of this appeal

96. Although the USPS cannot take any action to close the Clarksville Post Office until 60 days after its final determination was made, that 60 day period will expire on October 22, 2011 (39 U.S.C. § 404 (d) (4)).
97. The closing of the Post Office will have an immediate and severe impact upon the community. Individuals and businesses that rely upon a post office box will need to make immediate arrangements for an alternative post office box. Those choosing to switch to rural delivery will have to make appropriate arrangements, including the construction and installation of mailboxes, possibly including security features.
98. Furthermore, once delivery to the Clarksville Post Office has stopped, it will be difficult to restart it. The OIC will be reassigned, the USPS may surrender its lease on the existing facility and, at the very least, there will be a loss of continuous mail service to the Post Office.
99. Therefore, petitioners respectfully urge the commission to "suspend the effectiveness of the determination of the Postal Service [to close the Clarksville Post Office] until the final disposition of [this] appeal," pursuant to 39 U.S.C. § 404 (d) (5).

Wherefore, petitioners respectfully urge the Postal Review Commission to set aside the determination, findings and conclusions of the USPS to close the Clarksville Post Office, and

further request that the Commission keep the Clarksville Post Office open until this appeal is decided.

Dated: Clarksville, New York
September 21, 2011

Respectfully submitted,

Peter Henner
P.O. Box 326
Clarksville, NY 12041
Tel.: (518) 768-8232
Fax: (518) 768-8232
e-mail: peter@peterhenner.com