
Caroline Town Board Meeting Minutes of April 12, 2011

The Town Board Business meeting held on April 12, 2011 at the Caroline Town Hall was called to order at 7:10 p.m. by Supervisor Don Barber.

Attendance:

Don Barber, Supervisor
Dominic Frongillo, Councilman
Linda Adams, Councilwoman
Toby McDonald, Councilman
Pete Hoyt, Councilman

Recording

Secretary: Jo Ann Reinhardt, Deputy Town Clerk

Also present: Guy Krogh, Town Attorney, Bruce Murray, Mrs. Raynor, Bill Turner

Privilege of the Floor

No reports, comments or questions

Mr. Donald Barber, Town Board

- Tompkins County SPCA has a new Director, who will be starting in May. Also, regarding dog control, the funding arrangement with SPCA for the last 6 months of 2011 will be changing and the Town has budgeted for that amount. The amount will be determined by 1/3 of the human population, 1/3 of the dog population through the dog enumeration census, and 1/3 will be the # of calls received from the municipalities in 2010.
- Tompkins County Community Action putting together an action plan for the energy conservation project: Steve Nicholson will be the contact person.
- Supervisor, Mr. Barber attended a conference "Natural gas economics" presentation at Walkins Glen Speakers presenting at the conference were: Susan Christopherson and Jeffrey Jaquet (Cornell University) and Tim Kelsey (Penn State). The information charted out the impact of gas drilling on employment and revenue. (see attachment #1)
- April 18, at 2:00 PM meeting with County about Road Preservation
- Youth Bureau is invited to speak at a Town Board meeting in June.

Correspondence of Note:

- NYSEG Street Light Outage Reporting Protocol
- Time Warner Franchise Fee Report
- Aggregate Census Data
- DEC Rapid Water Forest Management Unit Plan Hearing 4/14 at Candor, NY
- Notice of Proceed with Energy Conservation Project
- Emerald Ash Borer Preparedness Plan
- Caroline Youth Services 2010 Annual Report

Mr. Frank Proto, County Legislator

- A new Health Director, Frank Kruppa started in his position on Monday, April 11. The new Health Department of Tompkins County's building will have a dedication on April, 26.

- Health nursing scholarship funding is in need of more funding. It is set up to help fund three nursing positions in honor of 3 nurses who had served in the Civil War.
- CHHA – Certified Health Home Aide is a program to help Senior Citizens transition from hospital to home. New York State withdrew the funding of \$400,000 towards the funding of CHHA. It cost \$800,000 per year to run the program. The committee has to make a decision of continuing the program by June 1.
- Recreation Partnership contract is being reviewed.
- Tompkins County's budget has to make adjustments of the 2011 from the loss of funding from the Government. This will result in Public Services are being dissolved.
- BJ's Wholesale business is approved & will provide sales tax income and jobs in Tompkins County.
- Water Resources Council sent a letter to the Governor of NYS requesting a 90 day extension on the revised rates.
- Our committee approved at the WRC at the planning committee meeting approved the Town of Newfield to be included in the aquifer study. Re-test the wells a year from to establish a base line for the study.
- Gas drilling in New York State will happen, however the current low gas prices may slow starting to 6 to 8 years from now.
- The 2010 NYS Census results is that the Town of Caroline increased 12.78% in the population. Sales tax distribution of \$552,000. is based on the population count from the 2010 census. The increase for Town of Caroline is between 6 to 7%. The residents of Caroline will receive this benefit with their Tompkins County taxes.

Mrs. Cindy Whittaker, Highway Superintendent

Highway Superintendent reported that State Revenue sharing (CHIPS) may not include the surfacing of town roads next year. The Highway department completes 8 to 10 miles a year of surface treatment on the town roads.

Roads signs are disappearing throughout the town. Please notify Cindy of anyone finds signs.

A crew 80' pipe replaced in the parking lot of the Town Highway.

The change to 4-day work schedule will occur soon for the summer time.

A clean up work detail for the Town of Caroline will be starting May 2 through the 6th. Monday through Friday & May 7th on Saturday from 8-11 a.m. The drop off is at 860 Valley Road.

Toby McDonald, Town Board

No report

Dominic Frongillo, Town Board

No report

Peter Hoyt, Town Board

No report

Linda Adams, Town Board

No report

Town Business

Town Board and Attorney Guy Krogh of Thaler and Thaler had a wide range discussion about the following:

- Board of Appeals for Flood Plain Local Law. Town Attorney Krogh, after speaking with attorney from DEC, concurs that creating an Appeals Board is a necessary step. The discussion then moved to the composition of the Board and it's autonomy.
- Fireworks Display Permit. Mr. Hoyt asked Mr. Krogh to respond to his concern that the Caroline permit is more restrictive than many other Towns, specifically the Town of Ithaca. Mr. Krogh stated that he has seen and helped draft permits that are much more restrictive than Caroline's. The area in question is the indemnity clause. The Town rearranged words in the indemnity clause and received assurances from two pyrotechnic firms that this wording would not inhibit them from applying for a Caroline permit. The Town Board agreed that it would take no further action until we receive the NYS Attorney General's opinion to our question on the indemnity clause.
- Road Use Agreements and Road Use Regulation: Town Board was looking for insight on these two avenues for road preservation. Mr. Krogh said that in many ways these two approaches are similar. He thought the advantage of developing a road use policy which then led to a voluntary contractual arrangement between developer and town was that this contract would not be subject to override by another level of government or litigation from the developer. However, the policy approach is voluntary meaning the roads are not protected like they would be with a law. Mr. Krogh thought the regulation approach would truly protect the roads, but is subject to override by another level of government or litigation from the developer who doesn't feel the Town has the authority to require them to comply.
- Mr. Hoyt addressed a question: "Will an ordinance that prohibit high volume Hydraulic fracturing in the Town hold up if challenged in court"? Mr. Krogh said that he has not seen any written up to stand up to anything. And the next question asked was: "What would be the challenge"? State Preemption, Federal Preemption and Constitution Preemption exceeding the authority of what is zoning. Mr. Krogh said that there is two towns in New York State pursuing zoning laws and they do not have much value.
- Mr. Hoyt asked Mr. Krogh, "Eminent domain may be used to site pipe lines and compressor stations in New York State." and "Is that true?" Yes, it is true and it depends on the pipe size, (in New York State, it is measured by PSI). Some certain pipe lines fall in the jurisdiction of the Public Service Commission and they do have the power of eminent domain. Also, included are the transmission lines that fall in to the Federal Interstate Commission, if they are big enough they fall under the Federal & State preemption. The small pipe lines generally are not sited under eminent domain power. There is eminent domain for gas storage but not for gas drilling. There is a case directly related to preemption law in New York on oil & gas. This is the only case from the Appellate Court. Regarding the question of local authority with gas drilling. The drilling process like that of all gas producers operating in NYS is governed by State Statute and regulations, which is designed to protect the public. The mere fact, the State regulates a certain area of business doesn't automatically preempt all local legislation which applies to that enterprise. Where the State expressly states; "it purpose is to supersede all local ordinances in the local government which is precluded legislation unless it has received clear explicit authority to the contrary." This is so, the Court of Appeals recently observed because quote "the font of the police power in the State and such power can only be exercised when to the degree that it has been delegated in such law making authority in another site." Prior to the recent amendment of the ECL, article 23, local ordinances requires commercial oil & gas drillers to post compliant bonds as a reasonable zoning enforcement to be struck down. But, the policy & purpose behind the recent amendment is not left to the imagination, since the amendment specifically states, to quote "supersedes all local laws and ordinances." It preempts not only inconsistent local legislation and any municipal laws that regulates of gas drilling operation, unless the law relates to local law of roads and real property taxes which is specifically excluded by the amendment.

Discussion and Action Topics:

Approval of Abstracts**Resolution 63 of 2011
General Fund Abstract**

A motion was made by Mr. Barber and seconded by Mr. Frongillo to approve payment for the General Fund voucher numbers 99 through 139 for \$16,177.89.

Adopted Barber: Aye; Frongillo: Aye; Adams: Aye; McDonald: Aye; Hoyt: Aye

**Resolution 64 of 2011
Highway Fund Abstract**

A motion was made by Mr. Barber and seconded by Mr. McDonald to approve payment for the Highway Fund voucher numbers 54 through 73 for \$48,778.57.

Adopted Barber: Aye; Frongillo: Aye; Adams: Aye; McDonald: Aye; Hoyt: Aye

**Resolution 65 of 2011
Streetlight Fund Abstract**

A motion was made by Mr. Barber and seconded by Mrs. Adams to approve payment for the Streetlight Fund voucher numbers 6 and 7 for \$526.35.

Adopted Barber: Aye; Frongillo: Aye; Adams: Aye; McDonald: Aye; Hoyt: Aye

Transfers:**Resolution 66 of 2011**

Resolved, the Caroline Town Board hereby authorizes the Supervisor to transfer 2011 funds as follows:

\$ 1,021.70 from General Fund Account A 7510.4 Historian CE to
General Fund Account A 7510.41 History Room CE

\$ 6,000.00 from Highway Fund DA 5110.4 Repairs CE to
Highway Fund Account DA 5142.4 Snow and Ice CE

Adopted Barber: Aye; Frongillo: Aye; Adams: Aye; McDonald: Aye; Hoyt: Aye

Resolution 67 of 2011

Motion made by Mr. Barber: Seconded by Mr. McDonald

Resolved, the Caroline Town Board hereby appoints Cal Snow of 665 Buffalo Road and Len Pogorzala of Yapple Road to the Caroline Assessment Review Board;

and Be It Further Resolved that the Town of Caroline will hold the Assessment Review for its citizens on Wednesday, May 18, 2011 at 3-6 PM at the Caroline Town Hall

Adopted Barber: Aye; Frongillo: Aye; Adams: Aye; McDonald: Aye; Hoyt: Aye

Resolution 68 of 2011

Motion made by Mr. Barber: Seconded by Mr. Hoyt

Resolved, that the Caroline Town Board hereby authorizes the Supervisor to sign a contract for lawn mowing and cemetery maintenance with Lucente Landscaping \$3,006.59

Adopted Barber: Aye; Frongillo: Aye; Adams: Aye; McDonald: Aye; Hoyt: Aye

Resolution 69 of 2011

Motion made by Mr. Barber: Seconded by Mr. Frongillo

Resolved, the Caroline Town Board hereby establishes September 15, 2011 as the date for the September Business meeting of the Town Board,

and Be It Further Resolved the Caroline Town Board hereby establishes November 3, 2011 as the date for the November Business meeting of the Town Board

Adopted Barber: Aye; Frongillo: Aye; Adams: Aye; McDonald: Aye; Hoyt: Aye

Resolution 70 of 2011

Motion made by Mr. Barber: Seconded by Mr. McDonald

Resolved, the Caroline Town Board hereby hereby authorize to adjust the 2010 – 2011 General Budget as follows; increase Revenue line A 3604 Unified Court Grant by \$22,667.00 and increase of appropriation line A1620.415 Meeting Room Renovations by \$22,667.00

Adopted Barber: Aye; Frongillo: Aye; Adams: Aye; McDonald: Aye; Hoyt: Aye

Adjourned on a motion by Mr. Barber and seconded by Mr. Frongillo the meeting adjourned at 9:21 p.m.

Respectfully Submitted,

Jo Ann Reinhardt, Deputy Town Clerk