

Caroline Town Board Business Meeting Minutes of April 15, 2020

The Town Board Business Meeting held electronically via Zoom teleconference on April 15, 2020 at 7:13p.m. hosted by Supervisor Mark Witmer and co-hosted by Councilmember John Fracchia

Attendance: Mark Witmer, Supervisor
John Fracchia, Councilmember
Irene Weiser, Councilmember
Cal Snow, Councilmember
Tim Murray, Councilmember

Recording Secretary: Jessica L. Townsend, Town Clerk

Also Present: Highway Superintendent Bobby Spencer, Tompkins County Legislation Representative Dan Klein and 41 members of the public attended via teleconference.

Privilege-of -the-Floor:

Jonathan Comstock – Spoke in favor of the Moratorium on Commercial Buildings until the Comprehensive Plan is finished.

Janice Burton – Submitted comments to the Town Board – Says “she is sensitive to her privilege that allows her to refuse to shop at Walmart where the prices are low. It is a privilege that allows some to afford to buy quality fresh and local foods that are not produced in factories by international corporations with globally sourced GMO and non-organic ingredients using close to slave labor. Says she wished it were a Reuse Center opening in Caroline instead of an importer of cheap, plastic products from China. “If we protest against a Dollar Store, are we forcing our financially disadvantaged neighbors in Caroline, Danby, Richford and Berkshire to drive far to get things they can afford? These are the people who need our food bank, who have to use the busses, who cannot afford to insulate or put in green energy heating systems. As the numbers of poor folk escalate nationally due to harmful national policies, will we see more people unable to afford quality goods? Does a local discount store decrease the carbon footprint of neighbors who have to shop at discount stores? New construction possibilities in Caroline exist along a continuum. There were concerns about fracking infrastructure establishing facilities that entailed heavy equipment and toxic materials traveling along Hwy 79. A local branch of the Ithaca Free Clinic might be a possibility on the opposite end of that continuum. Would a Dollar Store be in the middle of that continuum? I hope we end up with stringent net-zero energy building codes for commercial development. That is what will serve us best into the future for our children. How do we best be a loving and caring community? How can we make fair choices that benefit as many as possible, and harm the least?”

Katherine Goldberg – Speaking independent of the Moratorium and encourages the town board to Recommend that the town board considers adopting formula business restrictions in order to keep development consistent with the town’s rural character and local priorities.

Alita Giuda, Esq. – Franklin Land Associates, LLC – Opposes the Moratorium. Submitted letter to the Supervisor (ATTACHMENT #1)

Mary Kobler – Spoke in favor of the Moratorium. Shared concerns about the location of the proposed development.

Elisa Evett – Is in favor of a Moratorium. (ATTACHMENT #2)

Rita Rosenberg – (ATTACHMENT #3) Thanked the Town Board for considering a Moratorium. Shared that there are 8 Dollar stores in a 10-mile radius of Caroline. Dollar General is not going to pay a living wage or supply safe and fresh food for its customers.

Kurt Jurka – Spoke in favor of the Moratorium. (ATTACHMENT #4)

Kathryn Baker – Shared concerns about the proposed location of this development, and the impact it may have on other local business owners.

Michelle – Is in favor of a Moratorium. Shared concerns about the lack of access to fresh and whole foods.

Stephen Vukas – Civil Engineer working with Franklin Development – DOT has approved the first stage for this site and finds the location acceptable. The plans have been designed to adhere to the quality and quantity of stormwater. Has listened and understands the concerns of this development and is working in compliance with state agencies.

Reports

Mark Witmer, Town Supervisor – The Town Supervisor’s Report is as follows:
Meeting with other Town Supervisors weekly to discuss issues with COVID-19 PAUSE. Guidance now is to stay at home unless necessary to go out, wear a face mask when in public, and maintain social distancing (6 ft. Minimum).

Working with T.G. Miller on final planning for Ekroos Road Culvert Project. Working with landowners for easement agreements to access their properties at the work site.

Met with Terry Carrol, Lou Vogel, and Brooke Greenhouse to critically examine the New York State Stretch Code for new construction.

Attended meeting hosted by Osamu Tsuda for input on Caroline’s Climate Vulnerability Assessment.

Two meetings of TCCOG Emergency Services Committee working on developing measures to support EMS and Fire services in rural towns.

Watershed Committee: Caroline’s 2020 Clean Up Day has been canceled because of the PAUSE. This is a good time to clean up roadsides.

Brooke Greenhouse, Code Officer – None

Jessie Townsend, Town Clerk – Has turned over tax payments to Tompkins County Budget & Finance Office. Is maintaining workflow primarily from home and it is going well.

Bobby Spencer, Highway Superintendent – Has replaced a pipe on Melynk Road and Bailor Road. Working on some clean-up on Ekroos Road. Crew is working at half-staff as needed.

Irene Weiser, Councilmember – None

Cal Snow, Councilmember – None

Tim Murray, Councilmember - None

Dan Klein, County Representative Report – Thanked the County for all their efforts during this pandemic. County Legislation has been limited to essential items. Proposing a Resolution to New York State to consider all mail in ballots during election. State will determine whether that is appropriate considering the social distancing requirements and other safety concerns. The County Budget Meeting is in less than two weeks. They will need to make projections even if the numbers are off and then the budget process continues throughout the spring and summer. The Tompkins County Highway Superintendent is set to meet with all Town Highway Superintendents to discuss process going forward. The Census is underway and will probably be delayed. ½ of County residents have responded. Encouraged everyone to please check their mailboxes and respond to the census. If you are looking for the best updated information, he recommends calling the Tompkins County Health Dept or visit their website, or call 211.

Introduction of A Local Law Providing for a Moratorium on Actions Subject to Site Plan or Subdivision Review for a Period of One-Hundred Eighty (180) Days

Discussion: Supervisor Witmer summarized that the Comprehensive Plan has been under serious revision for the past six years and is near completion makes it incumbent upon us to enact a moratorium until completion. He proposed a Public Hearing be set for the May 13 Business Meeting Councilmember Fracchia feels delaying it a month is too long, and recommended it be held sooner. Councilmember Weiser agrees and suggested the Public Hearing be held before the May Agenda Meeting in order to have time to modify, if needed, at the May Business Meeting. Further discussion regarding the date – it was decided that the Public Hearing will be held on Tuesday April 28, 2020 at 7pm. Further comments from the public can be sent to clerk@townofcaroline.org or any of the town board members emails.

Review of Greater Tompkins County Municipal Health Consortium Municipal Cooperative Agreement

Supervisor Witmer noted that Town Attorney Guy Krogh has reviewed the agreement and remarks of the board and had no further comment or concerns about it.

Review of Association of Town's Summary of 2020 New York State Budget

Councilmember Weiser and Highway Superintendent Bobby Spencer discussed the CHIPS reimbursement projections and how that may impact our highway department's project for paving the remainder of Buffalo Road this summer. Bobby stated that he hopes to have more information in the next week or two regarding the CHIPS reimbursement and will keep the board informed.

Resolutions**Resolution 79 of 2020
General Fund Abstract**

A motion was made by Mark Witmer and seconded by Councilmember Tim Murray to approve payment for the General Fund for \$15,397.59

Adopted: Witmer: Aye; Fracchia: Aye; Weiser: Aye; Snow: Aye; Murray: Aye

**Resolution 80 of 2020
Highway Fund Abstract**

A motion was made by Mark Witmer and seconded by Councilmember Irene Weiser to approve payment for the Highway Fund for \$21,972.35

Adopted: Witmer: Aye; Fracchia: Aye; Weiser: Aye; Snow: Aye; Murray: Aye

**Resolution 81 of 2018
Streetlight Fund Abstract**

A motion was made by Mark Witmer and seconded by Councilmember Cal Snow to approve payment for the Streetlight Fund voucher for \$545.76

Adopted: Witmer: Aye; Fracchia: Aye; Weiser: Aye; Snow: Aye; Murray: Aye

**Resolution 82 of 2020
Recertifying the Town of Caroline as a Living Wage Employer**

A motion was made by Mark Witmer and seconded by John Fracchia Resolved, the Caroline Town Board hereby approves for the recertification that the Town of Caroline is a Living Wage Employer.

Adopted: Witmer: Aye; Fracchia: Aye; Weiser: Aye; Snow: Aye; Murray: Aye

Discussion

The minutes of the April 7, 2020 Agenda Meeting were accepted by the town board as submitted by Town Clerk, Jessie Townsend

Richard Brooks will be providing mowing services for the Town Hall.

The Highway Department will be picking up the remaining blocks at the Town Hall. Discussion regarding the highway crew working on the bioretention pond feature and assist in finalizing other plans on the Town Hall grounds.

---Adjourn---

The meeting was adjourned by Mark Witmer, and carried unanimously at 8:38p.m.

Respectfully Submitted,

Jessica L. Townsend, Town Clerk

(ATTACHMENT#1)

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VIA EMAIL & U.S. MAIL

Mr. Mark Witmer
Town Supervisor
Town of Caroline Town Hall
P.O. Box 136
Slaterville Springs, NY 14881
clerk@townofcaroline.org

Re: Proposed Local Law Seeking to Impose a Moratorium

Dear Supervisor Witmer:

This Firm represents Franklin Land Associates, LLC regarding the above referenced matter. As discussed below, both the proposed Local Law itself, as well as the Town of Caroline's consideration of the Local Law suffer from many infirmities. However, what is truly stupefying is the timing of the proposed moratorium. By its own terms the Local Law recognizes that the Town has supposedly been working on updating its Comprehensive Plan for at least 6 years, which is 2,190 days. Yet, until the Franklin Land Associates application, during this entire era the Town had not enacted a moratorium on development. Now, according to the proposed Local Law, not only does the proposed moratorium need to be enacted immediately, but the "update" to the Comprehensive Plan is purported to be completed within 180 days. This does of course raise the question of why the proposed moratorium is necessary now with only 180 days remaining in the update process, when it was apparently not required during the first 2,190 days of the Comprehensive Plan update process.

Given these circumstances, as well as the apparently blatant politics driving the current effort to enact a moratorium on all development in the Town, we are compelled to oppose the adoption of the proposed Local Law Providing for a Moratorium on Actions Subject to Site Plan or Subdivision Review for a Period of 180 Days (the "Moratorium"). This effort is not only legally suspect, but is unnecessary.

Franklin Land Associates, LLC ("Franklin") is under contract to purchase property in the Town of Caroline (the "Town"). Franklin submitted the necessary documentation to obtain approvals in February, 2020 for a proposed Dollar General convenience store. In fact, the Town forwarded our application to the Review Board within a week of receipt, and scheduled the project for the Review Board's March 17, 2020 meeting. Unfortunately, this meeting was cancelled

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because of the current COVID-19 pandemic. However, absent this development the review would already be underway. Franklin's project is being pursued in equitable and legal reliance upon the Town's zoning and planning efforts being in full compliance with all legal requirements.

We object to the Town Board's consideration of the Moratorium in the manner proposed. Given the limited access to Town Board activity with the Town's offices closed, the 3 minute comment limit is unreasonable. Similarly, holding review of the Moratorium until 8 pm will limit the public's ability to participate, given technological constraints to access the meeting.

Further, the Town's actions, including the proposed Moratorium, have interfered with the land use review process and would prejudice the exercise of Franklin's rights to develop its project. Sound planning principles hold that a municipality should engage in a thoughtful and deliberative process to create a land use plan that takes into account the needs of the community as a whole.

The Town asserts that the comprehensive planning process requires the imposition of the Moratorium process. However, to date, only a few very general documents related to a Comprehensive Plan have been publicly shared, and those documents indicate that the comprehensive planning process is at the early stages. Based on the public records, no updates on the status of the Comprehensive Plan process have been recently shared, nor has any draft plan been circulated for public review. There is no public record that the comprehensive planning process is nearing completion. Even given the current COVID-19 limitations, any discussions about any planning and zoning process, must occur only during a properly convened meeting of the Town Board, with any decisions made in accordance with all applicable legal requirements.

The Moratorium is also premature, in no small part because of the immediate impact it would have in halting otherwise lawful applications from being processed. Further, the Town cannot have rationally determined that a moratorium is necessary under these circumstances. To put a 6-month moratorium in place given the unknown, and, despite the alleged passage of 6 years, certainly early stage of the comprehensive planning process is an abuse of power, to the detriment of the property rights of Franklin and every other application and property owner in the Town.

Given that the Town records indicate that a Comprehensive Plan update has been under consideration in some form since at least "the past six years," there is no indication that consideration and adoption of a new Comprehensive Plan would be completed any time soon, let alone within the 180 days stated in the Moratorium. The Town should at least be honest about this prospect with its citizens so that are fully informed when considering and commenting upon the merits or demerits of the Town's proposed action. Giving the Town Board carte blanche to stop development for an indeterminate period is violative of law, due process, and any notion of fairness.

In addition, there is no evidence that the Town is under pressure from any deluge of land use applications¹ that might possibly warrant a moratorium during a legitimate planning process. To the contrary, the Town has posted on its website a Petition signed by various individuals² that seeks a shut-down of development, and more specifically, Franklin's proposed project. This, at a minimum, insinuates that the Moratorium is a knee-jerk reaction to public opposition. Proper comprehensive planning considers the needs of the community as a whole, and should not be swayed by the whims of a vocal minority, or even a majority, of the public. For the Town to seek a moratorium in response to just one project, particularly when it is based solely on unsubstantiated public opposition, is contrary to proper land use and zoning principles. As such, not only is the Town's haste and determination here unwarranted, it is highly suspect.

Even absent these issues, the Moratorium is fatally defective, both procedurally and substantively. Its purported rationale, that the comprehensive planning process that is now in its sixth year suddenly warrants a moratorium stopping all development, on the basis of "protection of the Town's interests, and the public health and welfare" lacks any detail, let alone sufficient explanation of the evils to be curtailed to support an immediate, 180 day moratorium.

The Moratorium is also defective, unreasonable and excessive because it prohibits any application for development that would require site plan review or subdivision. An exclusion for smaller commercial developments should be added, because they would be consistent with the type of growth that the initial comprehensive survey data shows the Town wants. (These include, for example, promoting local employment opportunities, and supporting opportunities for new small businesses.) As it stands, the Moratorium seeks to preclude any development whatsoever, without having identified any perceived evils or influx of development that have actually occurred, or any reasonable timeframe within which the Town will actually complete its comprehensive planning process.

Further, the waiver provision included in the Moratorium is unconstitutional, unlawful, and unreasonable. *See* Moratorium §7. The purpose of a waiver is to provide a constitutional relief valve such that property owners may exercise their constitutional rights to develop their properties in accordance with existing laws where appropriate. It is not an opportunity for the Town to impose a burdensome and complex review process, including reviewing items such as whether a proposed application will cause a host of potential impacts more numerous than those to be reviewed during the State Environmental Quality Review Act (*see, e.g.* Moratorium §7(A)(4)), or to consider the potential impact to climate change from a project. *Id.* §7(A)(6).

A waiver looks to the hardship presented to the applicant by a moratorium denying them an opportunity to develop their land. Inasmuch as the Moratorium seeks to impose what is in

¹ And, given the current state of the economy during the COVID-19 pandemic, including, notably, the ban on construction other than essential construction, a rush for building permits would not be anticipated.

² Franklin additionally objects to the Town Board's consideration of the Petition to the extent that the signatures it contains are from individuals who do not reside in the Town of Caroline.

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essence a full site plan review on a proposed application for a waiver, prior to any recipient of a waiver undergoing those processes, it is unlawful.

Franklin objects to the Moratorium, and to the expenditure of any Town resources on such efforts. A property owner is entitled to predictability in land use regulations, and the proposed Moratorium and all that would follow vitiates those rights. Should the Town adopt the Moratorium, Franklin reserves all of its rights, up to and including seeking immediate judicial relief and annulment of any such moratorium.

Very truly yours,

COUCH WHITE, LLP

Alita J. Giuda

Alita J. Giuda

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(ATTACHMENT #2)

I urge the town board to enact the proposed law to impose a moratorium on commercial development in the Town of Caroline to give the town the time to consider carefully and thoroughly what the implications would be of allowing a 9,300 sq. ft. Dollar General store to be built on the corner of Landon Rd. and Rte. 79.

The proposal for construction of such a store should undergo a thorough environmental review and should be in accordance with guidelines spelled out in the forthcoming Comprehensive Plan.

First of all, the town should know whether the store would have a paved parking lot and if so, how big it would be.

This is a big concern since it is well known that parking lots harm the land under and around them. Paved land cannot act as a sponge to absorb, filter and slowly release rainwater which is key to the health of the soil. Furthermore, instead of being soaked up, the rain flows off the surface carrying with it to the surrounding land such pollutants as phosphorus, hydrocarbons, heavy metals and road salt.

Another environmentally relevant issue would be the increased road traffic and the pollution that goes with it.

I am fully aware of, and sympathetic to, the reasons for viewing such a store as an asset to the community, namely that it would provide more affordable merchandise closer to home for many Caroline residents, but I think that there are costs to Caroline residents that should be taken into account.

According to the minutes of the last town board meeting, Jonathan Bates has pointed out that the town would reap limited financial benefit from such a store. He cited U.S. Small Business Associates findings that 57 cents of every dollar spent at such a non-locally owned store does not stay in the community. That means that that money is not taxable and thus not available to Caroline to help pay for our needs.

I would also be concerned that the products sold at such a store would not only be of inferior quality, they could also be harmful to the health of their purchasers. I have read that many items like toys, utensils and serve-ware are made from cheap, inferior grade plastics that are more likely to break while you're using them, but more importantly, may also contain harmful chemicals that could be toxic. If this store were to offer food items I would be concerned. I have read that recent studies indicate there are harmful chemicals in poor-quality dollar store containers, meaning they may not be safe for food products.

Finally, such a store would be the antithesis of the vibrant, community-centric store that is Brookton's Market, whose demise might be spelled by the arrival of a Dollar General store. What a sad day that would be!

(ATTACHMENT #3)

As the town of Caroline residents are faced with the prospect of a Dollar General in our community, we are presented with many questions, challenges and opportunities. I would like to share some critical information and also state that this situation has opened the door for our community to come together to have honest and well-informed conversations. To identify what responsible development looks like for the town of Caroline and what are the growing needs regarding access to goods and services and food justice for all our residents. I am grateful to the town board members for giving careful consideration to enacting a 180 day moratorium.

I never knew there was so much information out there in regard to Dollar Stores being built throughout the country; Through research I will share points of interest for those that are listening this evening;

Dollar General's business strategy is to build stores within 10 miles of each other with no consideration to whether they make sense for the community, they simply find a willing landowner. There are currently 8 Dollar stores within a 10-mile radius of Caroline - North, South, East and West.

They target rural communities that have a percentage of families who are near or fall below the poverty line

Profits from Dollar General go directly back to the corporate offices and not to the community

The Caroline Town board at tonight's business meeting will also be considering recertifying the town as a living wage employer. Dollar General does not pay a living wage

There is rightful concern in our community for people who might be inclined to depend on Dollar General for their food, which is far from fresh, local or have significant nutritional value and for cheap merchandise that is manufactured out of our country

It is important to recognize that Dollar stores worsen inequality by extracting wealth from vulnerable communities leaving them to fall further behind. They contribute to a growing disparity between communities that have access to fresh food and healthy local economies and those that do not.

Let's hold each other and our leadership accountable for considering the whole picture, determining together what we need in order to have a robust local economy that will benefit everyone in our community and beyond and not let corporations determine it for us. I look forward to having these conversations through public hearings in the immediate future.

ATTACHMENT #4)

Dear Caroline Town Supervisor:

I am unable to attend the 4/15 Town Board meeting, but submit this comment regarding the Local Law Providing for a Moratorium on Actions Subject to Site Plan or Subdivision Review for a Period of One-hundred Eighty (180) Days. As appropriate, please share during Privilege-of-the-Floor or please record in the Town Board meeting record:

Although I am unable due to a work commitment to attend the 4/15 Board meeting and speak during Privilege-of-the-Floor, I am expressing my support for the Moratorium on Actions Subject to Site Plan or Subdivision Review for a Period of One-hundred Eighty Days. Enacting such a moratorium will allow the Planning Board to complete the Town of Caroline Comprehensive Plan, an important document and framework for guiding, in a logical approach, the future of the Town of Caroline. The Comprehensive Plan will provide guidelines for safe and appropriate commercial, agricultural, and residential development in the Town of Caroline that considers the safety and well-being of the residents of the Town.

Time is of the essence, given the apparent interest of a commercial retail business to propose a development to be situated on the south side of Rt. 79 just east of the intersection with Landon Rd. That stretch of the Rt. 79 highway is notorious for drivers speeding, even above the area's posted 45 MPH speed limit. Further, the proposed site is on a slope of Rt. 79, and very near a distinct curve in the road. All of these factors contribute to unsafe conditions in which to have a mix of high-speed traffic while other cars are either slowing (on a curve) to enter a retail parking lot, or emerging from the parking lot (with impaired visibility) onto high-speed Rt. 79. The Landon Rd.-Rt. 79 intersection is already precarious, with visibility hampered in both directions (east and west) when on Landon heading either north or south. Visibility to the west is hampered by the rise in the road. Visibility is hampered to the east by the curve in the road coupled with the rise in the road. Adding the precariousness of retail traffic to this mix has the potential to endanger the safety and welfare of Town of Caroline residents as well as others traversing that portion of Rt. 79. The Town Board would be derelict in its duty not to pause to allow the Planning Board to progress on the Comprehensive Plan and provide guidelines for appropriate siting of businesses and commercial development that integrate safely with the topography, thoroughfares, and other characteristics of the Town of Caroline lands and roads to protect the safety of its citizens.