

Caroline Town Board Meeting Minutes of March 13, 2012

The Town Board Business meeting held on March 13, 2012 at the Historic Town Hall was called to order at 7:00 p.m. by Supervisor Donald Barber.

Attendance:

Donald Barber, Supervisor
Dominic Frongillo, Councilmember
Linda Adams, Councilmember
Aaron Snow, Councilmember
Irene Weiser, Councilmember

Recording

Secretary: Marilou Harrington, Town Clerk

Also present: 22 people from the Town of Caroline and a few visitors from New Jersey

Privilege of the Floor

Caroline Boucher-from New Jersey. She and her husband have vacationed around the area for aprox.10 years. In 2010 they bought property here on Level Green Road. The previous owner and their attorney told them that the gas lease on the property would expire in 2012. The gas company (that held the lease) notified them that they were “exercising their right”, there would be an automatic renewal to lease the property, and that it would not expire until 2017. She is in support of the proposed moratorium local law.

James Cornell-He said he has been a resident in the Town of Caroline for 70 years. He said he feels many people have been given misinformation about gas drilling. He said he feels that the board is taking the rights of the land owners away with either a ban or passing the moratorium; he said we don’t need it and we don’t need home rule.

Tony Tavelli - Against moratorium. Democracy has been preached by this town board. It is a constitutional republic, which is not what a democracy is as far as protecting each and everyone’s rights. He feels the rights of many of the Town’s people have been trampled upon. That the board only represents those that share their same opinions and other town people with different opinions have little to no representation from the board. He said from people with whom he spoke they won’t come to town board meetings because they don’t feel anyone is listening.

Jonathon Comstock- Missed the public hearing but he is very pleased that the board is following the majority of opinions to support developing a ban on hydrofracking.

Nelly Farnam- Mentioned the Community Service award and that the nominations need to be addressed. She said normally by this time of the year nominations have been made. She appreciates the moratorium

John Booker- Is for the moratorium

Elisa Evett- Commends the board for the quality of work they do and she appreciates a public servant that is committed, responsible and as hard working as Supervisor Don Barber. She said he is hard working and honest and we (the Town of Caroline) are lucky to have him as well as the County for all of the work he does there.

Reports

Cindy Whitaker, Highway Superintendents Report

At the Highway Superintendent meeting 8 out of 9 Town Superintendents were present. They discussed the proposed resolution. They felt that the issue had been addressed in recent years, and after much discussion they passed a resolution to not support the grant resolution; Supporting a NYS DOS Local Government Efficiency Grant Application to Study the Feasibility of Shared Services of Tompkins county and Local Roads for cost Savings and Efficiency Measures

Supervisor Don Barber

Correspondence of Note:

1. Request from County Planning to attend April Meeting to discuss Development Focus Areas- might invite PB
2. Several letters from Citizen regarding their feelings on gas related issues

Report:

1. Banks Road is open. More work in the summer to pave and install permanent guiderails also will be receiving plans for stream stabilization and will need to meet with affected property owners for easement. Looking to go to bid next month
2. Beaver Creek culvert is in. Seasonal road not open yet.
3. Opening of bid packets for flood projects at the Town Barns (Boice Creek) and Six Hundred Road on 3/30 at 10 AM SWCD office
4. 2011 annual report is complete and filed with clerk
5. Have received final paper work for only one FEMA project: 600 Rd
6. Will also seek opportunities at AoT event for consolidating unappropriated fund balances from several muni's to earn 2-3% interest while super saver and CD rates are so low

County Representative, Frank Proto

TCAT - met with Cornell University about increasing their contribution from \$879 thousand to \$1 million. The fares for the bus ride were increased last year in rural areas, now a resolution was passed to increase fares in more densely populated areas. Everyone who rides the T-Cat will be paying his or her fair share.

The Government Efficiency grant was passed at the County board

Road preservation resolution grant was passed at the County Board. Road control set aside \$40 thousand to hire a LaBella Associates. LaBella will help with a procedure for the permits.

Health and Humans Services passed a resolution to sponsor Care Transitions Grant.

Medicaid expense still an issue at the County and State level

Caroline has one of the best Watershed committee in the county. Due to the changes being considered by the Town board relating to the committee structure resolution he is concerned about the impact of the resolution.

Councilmember Linda Adams

Next Watershed Committee meeting is the 3rd Tuesday of the month.

Councilmember Irene Weiser

Last week Councilmember Weiser attended a Tompkins County hazard meeting at the Health Department. About 20 people attended from around the County (and outside the County as well) who work in a variety of capacities. The meeting addressed potential hazards the County could face. What if a problem occurred? The meeting covered 22 potential hazards and public health epidemic planning and

addressed how likely they were to occur and would they affect a single area or likely to affect wide spread areas. The County to renew every 5 years; revise planning around potential hazards. Councilmember Weiser spoke with Beth Harrington about getting together potential dates for incident command training for Town Board members and other Town employees.

Public Information resolution (passed last month)-Pat Brehl and Councilmember Weiser to work on getting out Town information to the people in the Town of Caroline via the Brooktondale Old Mill Newsletter

Councilmember Dominic Frongillo

Mary Psiaki has agreed to stay on the committee and help with the Community Service Award. Councilmember Frongillo will continue to work as the board liaison for the committee.

Planning board industrial site plan review committee is looking to hire a professional. Jon Kanter (retired planner from Town of Ithaca) that will help out for a fee of \$25 an hour. He was recommended by the Town Attorney, Guy Krogh.

A minute taker for planning board was hired. The minute taker is a Planning student at the City Planning department and will be paid \$15.00 per hour.

Energy independent Caroline; report by Jonathon Comstock. He spoke with different Towns and the County and he and Supervisor Barber assessed the Town Barn’s need for solar panels and it was agreed that the Town Barns should first be rebuilt and then look for comparable programs like the Liberty solar Grant for solar array that are available.

Councilmember Aaron Snow

Councilmember Snow sent the Recreation Partnership agreement to Janice Johnson. He hasn’t heard back from her. He will be attending the annual meeting on March 28th. Supervisor Barber asked about the County shares to be contributed. Frank Proto answered that the County contribution is staying the same at 55 thousand.

Transfers

Resolution 67 of 2012

Motion was made by Don Barber: 2nd by Dominic Frongillo

Be It Resolved the Caroline Town board makes the following 2012 Fund Transfers

\$145.48 from General Fund Account Contingency A1900.4 to General Fund Account A 1010.4 Legislative CE

Adopted Barber: Aye; Frongillo: Aye; Adams: Aye; Snow: Aye; Weiser: Aye

Approval of abstracts

Resolution 68 of 2012

Highway Fund Abstract

A motion was made by Mr. Barber and seconded by Mr. Frongillo to approve payment for the Highway Fund voucher numbers 54 through 69 for \$ 86,451.33

Adopted Barber: Aye; Frongillo: Aye; Adams: Aye; Snow: Aye; Weiser: Aye

Resolution 69 of 2012**General Fund Abstract**

A motion was made by Mr. Barber and seconded by Mr. Snow to approve payment for the General Fund voucher numbers 82 through 114 for \$ 11,649.27.

Adopted Barber: Aye; Frongillo: Aye; Adams: Aye; Snow: Aye; Weiser: Aye

Resolution 70 of 2012**Streetlight Fund Abstract**

A motion was made by Mr. Barber and seconded by Mr. Snow to approve payment for the Streetlight Fund voucher numbers 5 and 6 for \$557.59.

Adopted Barber: Aye; Frongillo: Aye; Adams: Aye; Snow: Aye; Weiser: Aye

Resolution 71 of 2012**Caroline Fire Protection Abstract**

A motion was made by Mr. Barber and seconded by Ms. Weiser to approve payment for the Caroline Fire Protection voucher numbers 2 and 3 for \$63,560.00.

Adopted Barber: Aye; Frongillo: Aye; Adams: Aye; Snow: Aye; Weiser: Aye

Resolutions**Resolution 72 of 2012**

Motion was made by Ms. Weiser; seconded by Mr. Frongillo

Resolution to Establish the Communication Information and Technology Committee

Resolved, the Caroline Town Board hereby establishes the Communication, Information and Technology (CIT) Committee whose charge is to

- Develop and oversee policies, procedures, and planning for use of technology resources by the Town, its departments and associated agencies;
- Develop and oversee policies, procedures and planning for appropriate and effective electronic public communication including expanding town-wide broadband access, maintenance of Town website and email list, and recruiting and managing volunteers as needed to assist with electronic dissemination of information;
- Develop and oversee policies, procedures and planning for appropriate and effective public communication via non-electronic methods, and recruit and manage volunteers as needed to assist with non-electronic dissemination of information;
- Collaborate with the Emergency Preparedness Committee to develop emergency communication policies and plans.

Be It Further Resolved that the Caroline Town Board appoints: Irene Weiser as Town Board Liaison and Bert Cooley, Leo Tohill, Una Money Penny, Sarah Richards-Desai, Jeremy Richards, and Pat Brhel, as Committee members and Katy Nicholson (webmaster), Keith Slayden (e-mail services), and John Wolf (IT services) as ex-officio members of the CIT Committee.

Adopted Barber: Aye; Frongillo: Aye; Adams: Aye; Snow: Nay; Weiser: Aye

Resolution 73 of 2012

Motion was made by Mr. Barber; seconded by Ms. Weiser

Resolution Supporting a NYS DOS Local Government Efficiency Grant Application to Study the Feasibility of Shared Services of Tompkins county and Local Roads for cost Savings and Efficiency Measures

WHEREAS, the New York State Department of State has available funds for the 2011-2012 Local Government Efficiency Grant Program, and

WHEREAS, this grant program can assist Town of Caroline in identifying opportunities to cooperate with other local governments in the area to reduce the cost of providing services, and

WHEREAS, the cost to maintain local roadways and bridges represents a large share of all municipal and county budgets and property tax levies, and

WHEREAS, at a time when the cost to maintain highway infrastructure is growing rapidly and local budgets are tightly constrained, it is increasingly difficult to maintain basic highway infrastructure at a cost that can be supported by local budgets, and

WHEREAS, Town of Caroline and its Local Municipal Highway Department would benefit from reducing the cost of adequately repairing and maintaining these roadways, and

WHEREAS, a study to evaluate the County and Local Road System and identify areas where inter-municipal cooperation, shared services, or redistributions of responsibilities could result in a more efficient system of providing quality highway services and lower costs for the repair and maintenance of existing roads, and

WHEREAS, Town of Caroline, on behalf of its citizens, supports this effort and grant application for approximately \$100,000, with a required local cash match of 10% that shall be allocated among the participating municipalities.

RESOLVED, That Town of Caroline supports the County and Local Road Local Government Efficiency Grant Program application, and contingent on the consensus of the majority of the highway Superintendents of the participating municipalities.

FURTHER RESOLVED, that the Town of Caroline agrees, if awarded, to participate and assist in all phases of the County and Local Road Shared Service Local Government Efficiency Grant Study.

FURTHER RESOLVED that the grant application be submitted after the consensus of the highway superintendents of the participating municipalities.

Amendment motion made by Ms. Weiser and seconded by Mr. Frongillo

Amendment Adopted Barber: Aye; Frongillo: Aye; Adams: Nay; Snow: Nay; Weiser: Aye

Resolution Adopted Barber: Aye; Frongillo: Aye; Adams: Nay; Snow: Nay; Weiser: Aye

Resolution 74 of 2012

Motion was made by Mr. Barber; seconded by Mr. Frongillo

Resolution Establishing Road Preservation Committee

Resolved, the Caroline Town Board hereby establishes the Caroline Road Preservation Policy Committee whose charge is to:

1. Develop an understanding of the limitations of current Statute
2. Develop an understanding of Town current laws; including Road Classification and Road Construction
3. Develop an understanding of Highway structure and engineering characterization
4. Develop an understanding of Road Carrying capability and the data being developed on Caroline's road types
5. Develop an understanding of the general process by which a road preservation policy would be implemented
6. Develop an understanding the current work being done by Tompkins County and several Towns with Delta Engineering
7. Review recently developed laws and communicate with the Association of Towns and Cornell Local Roads on the strengths and weaknesses of each
8. Develop a road protection administration process for Caroline including:
 - a. thresholds for triggering,
 - b. a means to know when projects are in approval process (perhaps from other municipalities) that would trigger this process),
 - c. fair projection of road damage from project- site specific engineering needed
 - d. permit form
 - e. bond amount protocol
 - f. reconciliation of scope of work to repair road

- g. Road Use Agreement text
- 9. Present a recommendation to develop either road preservation policy or local law/policy
- 10. Present text of policy or local law and road use agreement; and

Be It Further Resolved that the Caroline Town Board appoints: Don Barber (Town Supervisor), Cindy Whittaker (Highway Superintendent) Bill Podulka , Milt Taam as Commission members and Lynne Irwin (Brooktondale Road), , Guy Krogh (Town Attorney), as advisers to the Road Preservation Policy Committee.

Adopted Barber: Aye; Frongillo: Aye; Adams: Aye; Snow: Aye; Weiser: Aye

Resolution 75 of 2012

Motion was made by Mr. Barber; seconded by Mr. Snow

Resolution Establishing the Town of Caroline Youth Commission

Resolved, the Caroline Town Board hereby affirms the 2012-2013 Caroline Youth Commission that was created by resolution in 1990.

Resolved, the Caroline Town Board hereby establishes the 2012-13 Caroline Youth Commission whose charge members will include: identifying youth needs, recommending programs to serve those needs; overseeing all program that are funded all or in part by the Town of Caroline; serve as the liaison to all contracted programs (Cooperative Extension); and complete all applications, documentation, and evaluations required by funders for these program; be the conduit for the Caroline Community to express their needs and concerns about the Youth development programs; develop recommended budget proposals and if needed coordinate fund raising and grant application activity; and

Be It Further Resolved that the Caroline Town Board appoints: Lucy Gagliardo (White Church Rd.), Bev Liddington (White Church Road), Helen English (Ellis Hollow Rd.) to serve as Commission members and Aaron Snow will be the Town Board Liaison to the Caroline Youth Commission. A member of the Tompkins County Youth Services Dept. will serve as a technical assistance representative.

Adopted Barber: Aye; Frongillo: Aye; Adams: Aye; Snow: Aye; Weiser: Aye

Resolution 76 of 2012

Motion was made by Mr. Barber; seconded by Mr. Frongillo

Adoption of Local Law #1 of 2012 Moratorium of Gas Extraction and related activities.

Moratorium and Prohibition Within The Town of Natural Gas And Petroleum Exploration And Extraction Activities, Underground Storage Of Natural Gas, And Disposal Of Natural Gas Or Petroleum Extraction, Exploration, And Production Wastes

Resolved, the Caroline Town Board voted to adopt Local law 1 of 2012 known as the "Moratorium and Prohibition Within The Town of Natural Gas And Petroleum Exploration And Extraction Activities, Underground Storage Of Natural Gas, And Disposal Of Natural Gas Or Petroleum Extraction, Exploration, And Production Wastes."

Section 1.

This Local Law shall be known as the “Moratorium on and Prohibition of Gas And Petroleum Exploration And Extraction Activities, Underground Storage Of Natural Gas, and Disposal Of Natural Gas Or Petroleum Extraction, Exploration, And Production Wastes.”

Section 2.

A. This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board under the New York State Constitution, and the laws of the State of New York, including but not limited to the following authorities: New York State Constitution Article IX, Section 2(c)(6), 10; Municipal Home Rule Law § 10; Statute of Local Governments §10, Environmental Conservation Law § 17-1101 and § 27-0711, and Public Health Law §§ 228(2), (3).

TITLE

AUTHORITY AND INTENT; FINDINGS; PURPOSE

This Local Law is a police power and land use regulation. This Local Law is intended and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town to address matters of statewide concern. This Local Law is intended to act as and is hereby declared to exercise the permissive “incidental control” of a land use law that is concerned with the broad area of land use planning and the physical use of land and property within the Town, including the physical externalities associated with certain land uses, such as negative impacts on roadways and traffic congestion and other deleterious impacts on a community.

B. The Town Board has found, determined, and made the following declarations of findings:

1. Caroline is a community in the southeastern part of Tompkins County that takes great pride in and assigns great value to its rural residential character, small-town atmosphere, high-quality agricultural and forestry land, and scenic and other natural resources. Caroline is located at the divide of two major northeastern watersheds: rain that falls in the Town flows north to feed the St. Lawrence Seaway, and south to the Chesapeake Bay.

2. Town residents are dependent upon aquifers and wells for life-sustaining water; maintaining the quality of water resources within the Town is critical to protecting the natural environment of the Town, the general health and welfare of Town residents, and the local economy. Certain of the activities described in Section 4 of the Local Law have the potential

to damage surface and ground water resources, in the event of (by way of example) human error, power outages, flooding or other natural disasters, or engineered materials and structures experiencing stresses beyond those for which they were designed. Water pollution is hazardous to the public health. If a domestic water source is contaminated, remediation is time and cost intensive, and may not restore the water resource to a quality acceptable for domestic use. The Town Board believes it is appropriate to evaluate the effectiveness of aquifer protection legislation as one tool to fortify the Town's water resources from such potential damage, and if appropriate to draft and enact such legislation.

3. Preservation of the Town's irreplaceable scenic sites, air quality and water quality, and priceless and unique character, is of significant value to the inhabitants of the Town and to the tourists who visit here. In order to protect such Town assets in the face of significant development pressures, the Town Board believes it is appropriate to identify and designate Critical Environmental Areas within the Town.

4. The Town's rich natural environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the agricultural, scenic, recreational, and other natural resources of the Town is important for both a healthy environment and vibrant economy. Aesthetic issues are real and evoke strong reactions from people. They deeply affect the way people feel about a place – whether or not businesses will want to locate, or people will want to live in and visit a place.

5. Allowing the activities described in Section 4 of the Local Law would impair the existing character of the Town, because by their very nature such activities have the potential to produce a combination of negative impacts upon the environment and people living in or in proximity to the communities in which they are located. Such negative impacts may include, without limitation, traffic, noise, vibrations, fumes, damage to roadways, degradation of water quality, degradation of air quality, decreased availability of affordable housing, damage to and loss of agricultural lands and soils, damage to and loss of open space, natural areas, and scenic views, decreased recreational opportunities, and damage to the tourism industries.

6. If one or more of the activities described in Section 4 of the Local Law are conducted within the Town, traffic generated thereby could be hazardous or inconvenient to the inhabitants of the Town and could be dangerous to pedestrians (especially children), cyclists, and motorists, and could result in traffic congestion that could delay emergency response times for medical

emergencies, fires and accidents. Certain of the activities described in Section 4 of the Local Law typically involve a large volume of heavy trucks, and accidents involving heavy trucks have greater potential for death than those involving smaller vehicles, and are more likely to occur on roads (such as many roads in the Town) that have sharp corners, narrow lanes, or short sight lines; thus increased volume of heavy truck traffic may create unsafe conditions for the traveling public and a strain on emergency responders. Increased truck traffic increases air pollution and noise levels, and decreases the quality of life and property values for those living nearby. Roads are a critical public resource and constitute a major investment of the public's money. All Town roads, with the exception of those in approved subdivisions, are "highways by use" (as contemplated by Section 189 of the NY Highway Law) and so are not necessarily engineered or able to carry repeated legal limit loads. The Town is not in a position to bear the high costs associated with the road use impacts that typically accompany many of the activities described in Section 4 of the Local Law. The Town Board believes it is appropriate to evaluate the effectiveness of road use legislation as one tool to protect the Town's resources from such costs and damage, and if appropriate to develop a road use policy and enact such legislation to protect Town taxpayers from having to shoulder the burden of repairing or rebuilding roads damaged by activities described in Section 4 of the Local Law.

7. If one or more of the activities described in Section 4 of the Local Law are conducted within the Town, the air pollution, dust and odors generated thereby (whether onsite or by truck traffic to and from the proposed site of such activities) could be hazardous to the inhabitants of the Town. Air pollution is a known hazard to the public health.

8. If one or more of the activities described in Section 4 of the Local Law are conducted within the Town, noise, vibrations, and light pollution typically caused by such Activities could be hazardous or inconvenient to the inhabitants of the Town. Noise, traffic congestion, nighttime lighting, and vibrations can have negative effects on human health and wildlife.

9. The creation, generation, keeping, storage or disposal of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes (as that term is defined at Section 3 of the Local Law) within the Town could have a negative impact on the public health, safety and welfare of the inhabitants of the Town.

10. The high costs associated with the disposal of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes (as that term is defined at Section 3 of the Local Law)

have in other localities resulted, and could in our Town result, in persons seeking to avoid such costs by depositing such material along roadways, in vacant lots, on business sites, in the private dumpsters of others, or in other unauthorized places. Such activities could pose a hazard to the public health, safety, and welfare of the inhabitants of the Town.

11. Pipelines under 125 psi and less than 6” diameter are presently not regulated by the federal or New York state governments, yet may pose many the same dangers as larger, regulated lines when ruptured, and in any event require a clear zone for reasons of inspection, maintenance, and access. The Town Board believes it is appropriate to evaluate whether it is advisable to develop a policy to address such otherwise unregulated pipelines, and if so, to enact such a policy.

12. The Town has not been the home of heavy industrial activity in the past. The Town Board believes it is appropriate to evaluate the advisability of developing and enacting legislative standards to ensure that any industrial activity contemplated for the Town take place only if compatible with present land uses and with the Town’s Comprehensive Plan.

13. Evaluation and determination of whether the activities described in Section 4 of the Local Law are appropriate for the Town is a legitimate goal of land use policy and laws. There is no question that exclusion of specified industrial uses is a legitimate goal of such laws:

As the United States Supreme Court stated in *Town of Belle Terre v. Borass*, 416 U.S. 1 (1974):

the concept of public welfare is broad and inclusive.... The values that it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the [local] legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.

416 U.S. at 6.

And see also *Matter of Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y. 2d 668 (1996), where the Court of Appeals, New York State’s highest court, evaluated a claim that a town’s prohibition of mining throughout the town was in effect unconstitutional ‘exclusionary zoning,’ and held as follows:

We have never held, however, that the ... [‘exclusionary zoning’] test, which is intended

to prevent a municipality from improperly using the zoning power to keep people out, also applies to prevent the exclusion of industrial uses. A municipality is not obliged to permit the exploitation of any and all natural resources within the town as a permitted use if limiting that use is a reasonable exercise of its police power to prevent damage to the rights of others and to promote the interests of the community as a whole. 87 N.Y. 2d at 683, 684. (emphasis added.)

C. The purpose of the Local Law is to provide the Town of Caroline with a period of time to consider, and if appropriate to draft and to enact, one or more local laws to establish industrial site plan review, identify and designate critical environmental areas, develop aquifer protection legislation, develop a road use policy, and/or prohibit the activities described in Section 4 of the Local Law. At this time, it appears to the Town Board that a moratorium of one (1) year duration, coupled with a mechanism for a ‘hardship exemption’ procedure, will achieve an appropriate balancing of interests between (on the one hand) the public need to safeguard the character and other resources of the Town and the health, safety and general welfare of its residents, and (on the other) the rights of individual property owners or businesses desiring to conduct such activities during such period.

Section 3.

For purposes of this Local Law, the following terms shall have the meanings respectively set forth below:

Agriculture Use--- Land used for the production of crops and/or livestock and livestock products (as those terms are defined at Section § 301 of the New York State Agriculture and Markets Law).

Below-Regulatory Concern --- Radioactive material in a quantity or of a level that is distinguishable from background (as that phrase is defined at 10 CFR §20.1003), but which is below the regulation threshold established by any regulatory agency otherwise having jurisdiction over such material in the Town.

Gathering Line, Or Production Line --- Any system of pipelines (and other equipment such as drip stations, vent stations, pigging facilities, valve box, transfer pump station, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), used to move oil, gas, or liquids from a point of production, treatment facility or storage area to a transmission line, which is exempt from the Federal Energy Regulatory Commission’s jurisdiction under section 1(b) of the Natural Gas Act, and which does not meet the definition of a “Major utility transmission facility” under the Public Service Law of New York, Article 7, §120(2)(b).

Injection Well --- A bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semi-solids) are injected into the subsurface and less than ninety (90) percent of such fluids return to the surface within a period of ninety (90) days.

Land Application Facility --- A site where any Natural Gas Exploration And/Or Petroleum Production Wastes are applied to the soil surface or injected into the upper layer of the soil.

Natural Gas --- Methane and any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

Natural Gas And/Or Petroleum Exploration Activities --- Geologic or geophysical activities related to the search for natural gas, petroleum or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, but only to the extent that such activities involve or employ core, rotary, or any other type of drilling or otherwise making any penetration or excavation of any land or water surface in the search for and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.

Natural Gas And/Or Petroleum Extraction Activities --- The digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing.

DEFINITIONS

Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes --- Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of "industrial waste," "hazardous," or "toxic," and whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, whether naturally occurring or otherwise, in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or

production of, or the processing, treatment, or transportation of, natural gas, petroleum, or any related hydrocarbons; (b) natural gas or petroleum drilling fluids; (c) natural gas or petroleum exploration, drilling, production or processing wastes; (d) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum; (f) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (g) drill cuttings from natural gas or petroleum wells; or (h) any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as “solid wastes which are not hazardous wastes” under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes does not include (i) recognizable and non-recognizable food wastes, or (ii) waste generated by Agriculture Use.

Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility --- Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.); (b) impoundments; (c) pits; (d) evaporation ponds; or (e) other facilities, in any case used for the storage or treatment of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, or (iv) are being held for storage.

Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump --- Land upon which Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.

Natural Gas And/Or Petroleum Support Activities --- Shall mean and be any one or more of the following: (a) Natural Gas Compression Facility; (b) Natural Gas Processing Facility; (c) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility; (d) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump; (e) Land Application Facility; (f) Non-Regulated Pipelines; (g) Underground Injection; or (h) Underground Natural Gas Storage.

Natural Gas Compression Facility --- Those facilities or combination of facilities that move

natural gas or petroleum from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

Natural Gas Processing Facility --- Those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO₂ separated from natural gas streams.

Non-Regulated Pipelines --- Those pipelines that are exempt or otherwise excluded from regulation under federal and state laws regarding pipeline construction standards or reporting requirements. Specifically includes production lines and gathering lines.

Person --- Any individual, public or private corporation for profit or not for profit, association, partnership, limited liability company, limited liability partnership, firm, trust, estate, and any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

Pipeline --- All parts of those physical facilities through which petroleum, gas, hazardous liquids, or chemicals move in transportation (including pipes, valves and other equipment and appurtenances attached to pipes and other equipment such as drip stations, vent stations, pigging facilities, valve boxes, transfer pump stations, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), whether or not laid in public or private easement or private right of way within the Town. This includes, without limitation, gathering lines, production lines, and transmission lines.

Radioactive Material --- Material in any form that emits radiation. This definition specifically includes NORM (naturally occurring radioactive material), but only if such material has been moved from its naturally occurring location through an industrial process. All such material is “radioactive material” for purposes hereof, whether or not it is otherwise exempt from licensing and regulatory control pursuant to the NYS Department of Labor, the US Nuclear Regulatory Commission, the US Environmental Protection Agency, the US Department of Energy, the US Department of Transportation, or any other regulatory agency.

Radiation --- The spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma)

from the nucleus of unstable atoms as a result of radioactive decay.

Subsurface --- Below the surface of the earth, or of a body of water, as the context may require.

Town --- The Town of Caroline, Tompkins County, New York.

Town Board --- The Town Board of the Town.

Transmission Line --- A pipeline that transports oil, gas, or water to end users as a public utility and which is subject to regulation either by: (a) the Federal Energy Regulatory Commission's jurisdiction under section 1(b) of the Natural Gas Act, or (b) as a "Major utility transmission facility" under the Public Service Law of New York, Article 7, §120(2)(b).

Underground Injection --- Subsurface emplacement of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes by or into an Injection Well.

Underground Natural Gas Storage --- Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location, whether for the purpose of load balancing the production of natural gas or for any other reason, including without limitation short-term, long-term, or intermittent storage for product quality, processing, or transportation purposes, or because of market conditions. Without limitation, this term includes compression and dehydration facilities, and associated pipelines.

Section 4.

A. 1. From and after the date of this Local Law, no application for a building permit, subdivision approval, certificate of occupancy, or other Town-level approval shall be accepted, processed, approved, approved conditionally, or issued for the construction, establishment, or use or operation of any land, body of water, building, or other structure located within the Town for any of the following: (i) any Natural Gas And/Or Petroleum Exploration Activities; (ii) any Natural Gas And/Or Petroleum Extraction Activities; or (iii) any Natural Gas And/Or Petroleum Support Activities.

2. From and after the effective date of this Local Law, no person shall use, cause, or permit to be used, any land, body of water, building, or other structure located within the Town for any of the

following: (i) any Natural Gas And/Or Petroleum Exploration Activities; (ii) any Natural Gas And/ Or Petroleum Extraction Activities; or (iii) any Natural Gas And/Or Petroleum Support Activities.

B. The moratorium and prohibition set forth above in Section A. of this Section 4 is not intended, and shall not be construed, to: (x) prevent or prohibit the right to use roadways in commerce or otherwise for travel; (y) prevent or prohibit the transmission of natural gas through utility pipes, lines, or similar appurtenances for the limited purpose of supplying natural gas to residents of or buildings located in the Town; or (z) prevent or prohibit the incidental or normal sale, storage, or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene, or propane in connection with legal Agriculture, residential, business, commercial, and other uses within the Town.

C. This moratorium and prohibition shall be in effect beginning on the effective date of this Local Law and shall expire on the earlier of (i) that date which is one year after said effective date, or (ii) the effective date of a local law affirmatively stating the Town Board has determine that the need for this moratorium and prohibition no longer exists.

Section 5.

A. Failure to comply with any of the provisions of this Local Law shall be an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than One Thousand Five Hundred Dollars (\$1,500) or imprisonment for not more than 10 days, or both, for the first offense. Any subsequent offense within a three month period shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars (\$2,500) or imprisonment for a period of not more than 30 days, or both. For purposes of this Clause A., each day that a violation of this Local

MORATORIUM AND PROHIBITION.

PENALTIES.

Law exists shall constitute a separate and distinct offense.

B. Compliance with this Local Law may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction, in an action brought on behalf of the Town by

the Town Board.

C. In the event the Town is required to take legal action to enforce this Local Law, the violator will be responsible for any and all necessary costs incurred by the Town relative thereto, including attorney's fees, and such amount shall be determined and assessed by the court.

Section 6. 'GRANDFATHERING' OF LEGAL, PRE-EXISTING NON-CONFORMING USE.

Notwithstanding any provision hereof the contrary, any Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law shall be subject to the following:

A.1. If, as of the effective date of this Local Law, substantive Natural Gas And/Or Petroleum Extraction Activities are occurring in the Town, and those activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation all valid permits required to be issued by the New York State Department of Environmental Conservation ("DEC") and all other regulating agencies, then and only then such Activity shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of Clauses B. and C. of this Section 6.

2. Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law and which do not qualify for treatment under the preceding Clause A. 1. of this Section 6 shall not be grandfathered, and shall in all respects be prohibited as contemplated by Section 4 hereof.

B. Upon the depletion of any well which is allowed to remain in operation after the effective date of this Local Law by virtue of Clause A. 1. of this Section 6, or upon any other substantive cessation of Natural Gas And/Or Petroleum Extraction Activities (otherwise grandfathered by virtue of Clause A. 1. of this Section 6) for a period of more than twelve (12) months, then and in such event the non-conforming use status of such Activity shall terminate, and thereafter such Natural Gas And/Or Petroleum Extraction Activities shall in all respects be prohibited as contemplated by Section 4 hereof.

C. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by Clause A. 1. of this Section 6 is not intended, and shall not be

construed, to authorize or grandfather any Natural Gas And/Or Petroleum Extraction Activities extending beyond whatever well bore is authorized in any DEC permit in existence as of the effective date of this Local Law. Any expansion or attempted or purported expansion shall not be grandfathered under Clause A. 1. of this Section 6, and instead shall in all respects be prohibited as contemplated by Section 4 hereof.

Section 7. CONFLICTING APPROVALS OR PERMITS WITHOUT FORCE OR EFFECT WITHIN THE TOWN.

No permit or approval issued by any local or state agency, department, commission or board shall be deemed to grant any rights, permission or approval to undertake activities within the Town of Caroline when or to the extent that such activity or activates would violate the moratorium and prohibition set forth at Section 4 of this Local Law.

Section 8. HARDSHIP EXEMPTION.

A. There is hereby established a mechanism by which persons aggrieved by a decision or determination of the Town's Code Enforcement Officer (or other administrative official or body charged with the enforcement of this Local Law) regarding Section 4 of this Local Law may make appeal to the Town Board for a Hardship Exemption from the provisions of said Section 4. The Town Board shall have the power, upon an appeal from a decision or determination of the Code Enforcement Officer or other administrative official or body charged with the enforcement of this Local Law, after public notice and hearing and in accordance with the requirements of law and this Local Law, to consider applications for a Hardship Exemption from the provisions of Section 4 of this Local Law. Applicants for a Hardship Exemption should consult the succeeding provisions of this Section 8, as well as Section 9 of this Local Law, for specification of application requirements and the procedural mechanism involved in consideration by the Town Board of an application for a Hardship Exemption.

B. No such Hardship Exemption shall be granted by the Town Board without a showing by the applicant that enforcement of Section 4 of this Local Law as to such applicant has caused "unnecessary hardship" for purposes hereof. In order to prove unnecessary hardship for purposes hereof, the applicant must demonstrate to the Town Board satisfaction of each of the following four conditions: (i) that, unless the applicant is granted a Hardship Exemption from the provisions of Section 4 of this Local Law, the applicant cannot realize a reasonable rate of

return on the entire parcel of property, and such lack of return is substantial as demonstrated by competent financial evidence; (ii) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the neighborhood or other area in the vicinity of the applicant's property; (iii) that the alleged hardship has not been self-created; and (iv) that the requested Hardship Exemption, if granted, will not alter the essential character of the neighborhood or other area in the vicinity of the applicant's property in an adverse manner.

1. Reasonable Rate of Return. In evaluating whether the applicant can realize a reasonable rate of return for purposes hereof, the Town Board shall examine whether the entire original or expanded property holdings of the applicant (as opposed to only the site of the proposed project) are incapable of producing a reasonable rate of return. No Hardship Exemption shall be granted unless, in addition to satisfying all other applicable provisions of this Local Law, the Town Board finds that the applicant has clearly demonstrated, by detailed written "dollar and cents" proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed project) unless the applicant is granted a Hardship Exemption from the provisions of Section 4 of this Local Law.

2. Unique Hardship. No Hardship Exemption shall be granted unless, in addition to satisfying all other applicable provisions of this Local Law, the Town Board finds that the entire parcel of which the project is a part possesses unique characteristics that distinguish it from other properties in the neighborhood or other area in the vicinity of the applicant's property. The applicant must demonstrate the unique nature of the parcel as a whole. The fact that the improvements already existing at the time of the application are old, obsolete, outmoded or in disrepair or the fact that the property is then unimproved shall not be deemed sufficient to make the plight of the property unique or to contribute thereto. Exceptional topography is an example of a factor demonstrating the unique nature of the property.

3. Self-Created Hardship. The Town Board may find that the applicant suffers from a self-created hardship in the event that the Board finds that (i) the applicant's inability to obtain a reasonable return on the property as a whole results from having paid too much or from a poor investment decision; (ii) the applicant previously divided the property and is left with only a portion which suffers from some unique condition for which relief is sought and which did not apply to the parcel as a whole; or (iii) when the applicant purchased the property, he or she knew or should have known that the property was subject to this Local Law.

4. Adverse Alteration of Essential Character of the Neighborhood or Other Area in Vicinity. In making its determination of whether the proposed project will adversely affect the essential character of the neighborhood or other area in the vicinity of the applicant's property, the Town Board shall take into account factors that are of vital importance to the citizens of the Town including without limitation: (i) the rural residential, agricultural and historic character of the Town, (ii) the Town's irreplaceable recreation, scenic, and tourism sites, (iii) the extent of hazard to life, limb or property that may result from the proposed project, (iv) health impacts, (v) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances, (vi) the impact on property values, and (viii) whether the applicant will use a style of development that will result in degradation to the air quality, water quality or historic, scenic and natural resources of the Town. In order to find that the proposed project does not alter the essential character of the neighborhood or other area in the vicinity of the applicant's property, the Town Board shall interpret the public interest in said essential character of the neighborhood or other area to require, at a minimum, that the project will not do any of the following: (x) pose a threat to the public safety, including public health, water quality or air quality, (y) cause an extraordinary public expense, or (z) create a nuisance.

C. In addition to any other application requirements from time to time established pursuant to this Local Law, an application for any Hardship Exemption shall contain a typewritten narrative explaining what the application is for, how the project meets or exceeds all of the criteria for a Hardship Exemption, and inclusion of the following:

1. With respect to a claim that the applicant cannot realize a reasonable rate of return, the applicant shall provide written financial evidence containing reasonable specification of the nature and factual particulars of such claim, including, at a minimum (as to the entire parcel of which the proposed project is a part) specification of the following: (a) the date(s) of acquisition of the property; (b) the purchase price; (c) present value of the property; (d) the amount of real estate taxes; (e) the amount of mortgages or liens and other expenses; (f) the asking price for the property when it had been offered for sale; (g) the costs of demolishing any existing structures on the property; (h) efforts to market the property; (i) a schedule of all other property in common ownership at either the date of the enactment of this Local

Law or thereafter; and (j) "dollars and cents proof" such as appraisals, economic studies, and any other such evidence supporting the applicant's contention that the grant of a Hardship

Exemption is appropriate.

(For purposes hereof, common ownership means all other interests in property either located within the Town or contiguous to the Town that is held by the any of the applicants (if more than one), whether such ownership is of a legal or equitable interest, in whole or in part, contiguous or not, and whether such property interest is held by any of the applicants through a legal or equitable interest in a(nother) corporation, partnership, trust, business, entity, association, fund, joint venture, or individually.)

2. With respect to a claim that, if granted, the requested Hardship Exemption will not adversely alter the essential character of the neighborhood or other area in the vicinity of the applicant's property, the applicant must demonstrate that the proposed project will not adversely affect essential character with regard to physical, economic, social or environmental elements. Examples of adverse impacts to the essential character of the neighborhood or other area include (without limitation) decreased quality or increased quantity of stormwater runoff, increased soil erosion, increased traffic congestion, decreased road quality, impairment of the scenic or rural character of roads, increased noise, dust, odor and/or glare, reduced wildlife habitat, decreased air quality, decreased water quality, impairment of the viewshed, creation of solid wastes, negative impacts on sustainability efforts, increased social costs, increased emergency response times, negative impacts to public infrastructure, decreased property values, and negative impacts on the health of area residents.

D. In addition to all other application requirements from time to time established pursuant to this Local Law, each application for a Hardship Exemption shall include (without limitation) the following reports in writing, so as to assist the Town Board in determining whether a grant of the requested Hardship Exemption will adversely alter the essential character of the neighborhood or other area in the vicinity of the applicant's property:

1. Environmental Assessment Form. A completed draft of a Long Form Environmental Assessment Form, Part I, regarding the proposed project.

2. Description of Surrounding Uses. The approximate location of all neighboring residential, hamlet, park/recreational, and/or agricultural areas, all county-designated Unique Natural Areas and locally designated Critical Environmental Areas (if any), all wetlands, intermittent,

seasonal and other streams, rivers, and waterways, significant natural communities, endangered and threatened species and species of concern, and historical or archeologically sensitive or mapped areas within a two (2) mile radius of the perimeter of the site of the proposed use.

3. Traffic Impact Report. A traffic impact report containing: (a) the proposed traffic circulation plan, the projected number of motor vehicle trips to enter or leave the site, estimated for daily and peak hour traffic levels, if the Hardship Exemption is granted; (b) existing and proposed daily and peak traffic hour levels as road capacity levels; (c) a determination of the area of impact of traffic to and from the proposed project; (d) the proposed traffic routes to the nearest intersection with an arterial highway, including gross weights and heights of vehicles; (e) the projected traffic flow pattern including vehicular movements at all major intersections likely to be affected by the proposed project if the Hardship Exemption is granted; (f) the impact of this traffic upon existing abutting public and private ways in relation to existing road capacities; (g) a traffic impact analysis of the effects of the proposed project on the transportation network in the Town using passenger car equivalents if the Hardship Exemption is granted; (h) articulation of the effects and impacts of the proposed project on traffic based on existing conditions and projected future background traffic on the state, county, and Town road system if the Hardship Exemption is granted; (i) evaluation of whether the resulting traffic conditions are likely to hinder the passage of police, fire and emergency response vehicles, or degrade the quality of life, and/or otherwise contribute to hazardous traffic conditions if the Hardship Exemption is granted; and (j) determination of whether there is sufficient road frontage so that any vehicle leaving the site may turn into the lane of traffic moving in the desired direction and be channeled within such lane before crossing the nearest intersection or proceeding along the road and any vehicle entering the property may turn out of the nearest lane of traffic without interfering with other traffic if the Hardship Exemption is granted.

4. Road Impact Report. An evaluation of (a) appropriate roadway geometry including required road widths, bridge widths, starting and stopping sight distances, intersection sight distances, horizontal and vertical curves along the proposed traffic routes; (b) the adequacy of existing pavement structures along the proposed traffic routes to accommodate the full weight load of any trucks and construction vehicles likely to be used in connection with the proposed project if the Hardship Exemption is granted; and (c) impacts to the rural or scenic character of any roads along the proposed traffic route if the Hardship Exemption is granted.

5. Transportation Plan. A description of ingress and egress through the proposed project site through which equipment and supplies will be delivered and which will provide access during and after construction if the Hardship Exemption is granted, and identification of any roads, streets, intersections, bridges, and other facilities along the proposed traffic route that do not meet New York State Department of Transportation standards. Such plan shall describe any anticipated improvements to existing roads, bridges, or other infrastructure, any new road or access construction, measures which will be taken to avoid damaging access/traffic routes and measures that will be taken to restore damaged routes following construction, and measures to maintain the scenic and/or rural characteristics of such roads.

6. Noise Impact Report. A report containing the following: (a) a description of the existing audible conditions at the project site to identify a baseline sound presence and preexisting ambient noise, including seasonal variation; (b) a description and map of sound producing features of the proposed project from any noise generating equipment and noise generating operations that will be conducted in connection with the proposed project site if the Hardship Exemption is granted, including noise impacts from truck traffic travelling within the Town to and from the proposed project; (c) with respect to the noise to be generated by construction and use of the proposed project, the range of noise levels and the tonal and frequency characteristics expected, and the basis for such expectation. (Such report shall cover, without limitation, low frequency, A-weighted, infrasound, pure tone, and repetitive/impulse noise);

(d) a description and map of the existing land uses and structures including any sensitive area sound receptors (e.g., residences, hospitals, libraries, schools, places of worship, parks, areas with outdoor workers, etc.) within one mile of the project parcel boundaries. (Said description shall include the location of the structure/land use, and distances from the proposed project, and expected decibel readings for each receptor); and (e) a description of the project's proposed noise-control features, including specific measures proposed to protect off-site workers and mitigate noise impacts for sensitive area receptors.

7. Visual Assessment. A visual presentation of how the site of the proposed project will relate to and be compatible with the adjacent and neighboring areas, within a two mile radius of the perimeter of the site of the proposed project, if the Hardship Exemption is granted. This presentation shall include computerized photographic simulation showing the site during construction and fully developed and demonstrating any visual impacts from strategic vantage

points. Color photographs of the proposed site from at least two locations accurately depicting the existing conditions shall be included. The study shall also indicate the color treatment of the facility's components and any visual screening incorporated into the project that is intended to lessen visual prominence.

8. Report of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes and Other Wastes. A report containing a description of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes and other solid wastes, industrial wastes, hazardous wastes, toxic and/or poisonous substances and pollutants (whether or not any such substances enjoy exemption or definitional exceptions from state or federal laws otherwise intended to protect the public with respect to hazardous, toxic, or poisonous substances) expected to be produced, stored, injected, discarded, discharged, disposed, released, or maintained on the project site if the Hardship Exemption is granted.

9. Compatible Uses Report. A discussion of characteristics of the proposed project that may decrease the Town's and/or the neighborhood's (or other area's) suitability for other uses such as residential, commercial, historical, cultural, tourism, recreational, environmental or scenic uses if the Hardship Exemption is granted.

10. Fiscal Impact Assessment. An assessment describing the adverse effects and impacts on Town revenue and costs necessitated by additional public facility and service costs likely to be generated by the proposed project if the Hardship Exemption is granted.

11. Fire Prevention, Equipment Failure and Emergency Response Report. A report containing: (a) description of the potential fire, equipment failures and emergency scenarios associated with the proposed project that may require a response from fire, emergency medical services, police or other emergency responders if the Hardship Exemption is granted; (b) an analysis of the worst case disaster associated with the proposed project if the Hardship Exemption is granted and the impact of such a disaster upon the health, safety and welfare of the inhabitants of the Town and their property; (c) designation of the specific agencies that would respond to potential fires, equipment failures, accidents or other emergencies if the Hardship Exemption is granted; (d) description of all emergency response training and equipment needed to respond to a fire, accident, equipment failure or other emergency, including an assessment of the training and equipment available to local agencies; and (e)

the approximate or exact location of all fire, police, and emergency response service facilities within a five mile radius of the perimeter of the site of the proposed use.

12. Public Facilities and Services Assessment. An assessment describing: (a) whether current Town public facilities and services, including water supply, fire protection, school services, recreation facilities, police protection, roads and storm-water facilities, are adequate for the proposed project (taking into account all other uses that have been permitted or are currently operating in the Town) if the Hardship Exemption is granted; (b) a comparison of the capacity of the public services and facilities to the maximum projected demand that may result from the proposed project if the Hardship Exemption is granted (in determining the effect and impact of the proposed project on fire, police, and emergency services, the review shall take into consideration response times, and the number and location of available apparatus and fire, police and emergency service stations that are manned by full time professional service personnel; and where applicable, calculation of response time shall also include the time it takes volunteer emergency personnel to get to their stations); and (c) a review of the impact of the proposed project on the safety if the Hardship Exemption is granted of all children going to and from school by car, bus, bicycle, and walking during and outside of school zone hours and whether safety measures such as signaled cross walks or elevated sidewalks, green space buffers for pedestrians/bikes where established walking/biking route overlap/run along intended truck routes so as to aid in the prevention of accidents.

13. Property Value Assessment. A property value analysis, prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of the project if the Hardship Exemption is granted on the value of properties adjoining the project site.

14. Health Impact Assessment. A human health impact assessment identifying ways in which the proposed project could adversely affect the health of Town residents if the Hardship Exemption is granted, and a priority list of recommendations to minimize the potential health impacts of the proposed project. The health impact assessment shall include (a) a risk assessment of possible impact of chemical exposure on the health of residents, including the Chemical Abstract Service number of all chemicals proposed to be used or generated at the project site; (b) an assessment of possible health effects due to industrial operations in non-heavy industrial zoned areas; and (c) an assessment of possible health effects due to community changes including the presence of an industrial activity in a previously non-heavy industrial area, declining property values, impacts to the education system and sudden

changes in population numbers, demographics and customs.

Section 9.

HARDSHIP EXEMPTION APPLICATION PROCEDURES; TOWN BOARD CONSIDERATION PROCEDURE.

A. Every application for a Hardship Exemption shall be in writing on forms from time to time prescribed by the Town Board, and shall be signed by the applicant. If the applicant is not the owner of the property involved, the owner of the property shall nonetheless attest to the accuracy of the statements and representations made in the application, and both the applicant and the owner shall certify that he (or she or it) has undertaken due diligence with respect to the accuracy of the matters contained in the application. Ten copies of the application and supporting documentation shall be filed with the Town Board, accompanied by a fee in the amount set from time to time by resolution of the Town Board. The Town Board is hereby authorized to adopt rules and regulations for the conduct of hearings on applications for Hardship Exemptions, consistent with this Local Law and State statutes.

B. In evaluating an application for a Hardship Exemption, the Town Board shall comply with any applicable provisions of the state environmental quality review act (SEQRA) under Article 9 of the Environmental Conservation Law and its implementing regulations as codified in Title 6, Part 617 of the New York Codes Rules and Regulations, as the same may from time to time be amended.

C. The Town Board shall schedule a hearing on all applications for a Hardship Exemption within 62 days of the filing of a complete application therefor. Said 62 day period may be extended by mutual agreement of the Town Board and the applicant, or whenever required by law, including but not limited to the completion of any required SEQRA procedures. Public notice of the hearing shall be given at least five days prior to the date thereof by publication in the Town's official newspaper. The Town Board may adjourn or continue such public hearing from time-to-time. The cost of sending or publishing any notices relating to any application shall be borne by the applicant, and shall be paid to the Town Board prior to the hearing. At least five days before any hearing on an application for, the Town Board shall mail all notices that the Attorney for the Town may advise are necessary or advisable (such as for example notices to abutters and notices that may be required by Section 239-m of the NYS General Municipal Law).

D. In addition to such other procedures as may be required by applicable law, the following shall apply with respect to the conduct of hearings regarding applications for Hardship Exemptions: (a) the burden of proof shall remain with the applicant to show that he (or she or it) has satisfied the conditions necessary to qualify for a Hardship Exemption, and the burden shall never shift to the Town; (b) any party may appear in person or by agent or by attorney; (c) no decision or determination shall be made except upon consideration of the record as a whole and as supported by and in accordance with substantial evidence; (d) all evidence shall be made a part of the record; and (e) official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the Town Board. When official notice is taken of a material fact not appearing in the evidence in the record and of which judicial notice could be taken, every party shall be given notice thereof and shall on a timely request be afforded an opportunity prior to decision to dispute the fact or its materiality.

E. Decisions by the Town Board on applications for a Hardship Exemption shall be made within 62 days from the close of the public hearing on such matter. The time within which the Town Board must render its decision may, however, be extended by mutual consent of the applicant and the Town Board. The final decision on such matter shall be made by written order signed by the Town Supervisor. Such decision shall state the findings of fact that were the basis for the Town Board's determination. The Town Board's decision as to each application for a Hardship Exemption shall be filed in the office of the Town Clerk no later than five business days after the day such decision is rendered, and shall be made a public record.

F. The Town Board, in the granting of Hardship Exemptions, shall grant only the minimum Exemption that it shall deem necessary and adequate to allow an economically beneficial use of the property, and at the same time preserve and protect the essential character of the neighborhood and the health, safety and welfare of the community.

G. The Town Board, in the granting of Hardship Exemptions, shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed project. Such conditions shall be consistent with the spirit and intent of this Local Law, and shall be imposed for the purpose of minimizing any adverse impact such Hardship Exemption may have on the neighborhood or other area in the vicinity of the applicant's property. Such conditions may include, but are not limited to, landscaping, lighting, access and egress, signs, screening, location and layout of buildings, and limitations upon the use or characteristics of

the use which are reasonably related to the public health, safety and general welfare and as may be necessary to carry out the intent of this Local Law. If the applicant refuses to accept such requirements and conditions, the Hardship Exemption shall be denied.

H. Any person aggrieved by a decision of the Town Board with respect to an application for a Hardship Exemption may apply to the Supreme Court for review by proceedings under Article 78 of the Civil Practice Law and Rules. Such proceedings must be instituted no later than thirty (30) days after the filing of the Town Board's decision in the Town Clerk's office.

I. Any grant by the Town Board of a Hardship Exemption shall expire if a building permit for the proposed project is not obtained by the applicant within one hundred twenty (120) days from the date of the decision granting such Exemption.

J. Whenever the Town Board denies an application for a Hardship Exemption, the Town Board shall refuse to hold further hearings on such or a substantially similar application by the same property owner or his successor or assign for a period of one year following such denial, unless the Town Board shall find and determine from the information supplied that changed conditions have occurred relating to the promotion of the public health, safety, convenience, comfort, prosperity and general welfare and that a reconsideration is justified.

Section 10.

If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board of the Town hereby declares that it would have enacted this Local Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

Section 11.

SEVERABILITY.

SUPERSEDING INTENT AND EFFECT.

During the time this Local Law is in effect, it is the specific intent of the Town Board, to supersede any inconsistent provisions of any and all other local ordinances, local laws or local resolutions of the Town of Caroline.

Section 12.

This Local Law shall take effect immediately upon filing with the New York Department of State.

Adopted Barber: Aye; Frongillo: Aye; Adams: Nay; Snow: Aye; Weiser: Aye

Councilmember Linda Adams remarks on Moratorium:

I have information that the price is \$2.29 per 1,000 cubic feet of natural gas. I think it has been pretty well established at that price that there isn't going to be any development. So that is a market that is in favor of this community. I also have information from Food and Water Watch organization which maps pending or actual banned moratoriums, and one of the things that is interesting about these maps is that areas in the Southern Tier that are closest to the Pennsylvania activity, just to the south of us, are not entertaining these bans or moratoriums. So obviously, I think in this period of time we can attain the goals that are stated in this moratorium document without the moratorium and just get to work on these things, thereby we will have an effort to temper some of the divisiveness that has occurred in the last year.

Councilmember Irene Weiser remarks on Moratorium:

63. That's the number of votes I've already cast as a new board member. But this one is different. This one is harder, much harder. It's harder because I know my vote will hurt and anger some people in this town, and will have damaging effects on some people's lives and livelihoods.

I know there are some who think this vote was a foregone conclusion – that my and perhaps other board members minds were already made up. I want to assure you that that has not been the case. I have listened thoughtfully to your concerns – considering the comments you have made carefully to be sure that when I do cast my vote I can look you in the eye because I know that I have done my best to take your concerns to heart before I made up my mind.

Here is what I have understood your concerns to be: First and foremost, I know there are some who feel that a moratorium or ban is an infringement on their rights as property owners. It is perceived as a form of government intrusion that is strongly resented. I hear you on this and it is an act that I do not take lightly. But the right to do with one's property what one wishes is not unlimited. As far back as 1887 the US Supreme Court said that "all property in this country is held under the implied obligation that the

owner's use of it shall not be injurious to the community." *Mugler v. Kansas*, 123 U.S. 623, 665 (1887) This principle still remains the law of the land today.

Which leads to the second concern I have heard expressed – that there are some who feel that drilling can be done safely. First, let me say, I know that NO ONE in this town wants to harm their neighbor. The reality is that there is a point of disagreement about how much harm will come from drilling. I concede that some people's fears may be overblown – certainly not every well that is drilled will contaminate drinking water, and we have trucks traveling our roads now carrying heating oil and other toxics that if spilled could result in serious damages. But nor can I deny that studies showing fracking's harms to health and environment are increasing, and showing increasingly serious problems. And the economic impacts on communities are at best unpredictable – while some communities may prosper in the short term, in the long term the boom-bust cycle leaves most towns ravaged.

Which leads to the third concern that I know exists, though few have spoken to me about it directly. There are many in this town who are skating on thin ice financially and drilling offered the hope of some degree of financial security, or at least some temporary relief. It is this aspect that pains me most deeply as I think about the vote I am about to cast – to know that by my vote I will be taking away that hope and consigning some members of this community to the silent suffering of financial hardship.

The reality is, no matter which way I vote, some people will be unhappy and angry, and some lives will be affected, so mollifying people's feelings cannot be a basis for my action. This is a vote of both conscience and duty.

It is my duty as an elected official to do my best to safeguard the safety and welfare of the residents and the long-term interests of the community. As much as it pains me to deny some people the opportunity to possibly receive much needed money, my responsibility is not to the few who may benefit but to the many who may be harmed. I do not believe drilling is in the best interests of this community, and I will cast my vote in favor of a moratorium. Further, I urge the board to move ahead with a drilling ban as soon as is practicable.

Councilmember Dominic Frongillo remarks:

After listening to our citizens speak tonight and over the past several months, I am moved by the depth of caring for our community. This issue reaches to the core of who we are as a community.

The Town of Caroline was founded two hundred years ago by settlers from other lands. When they first came here, our forbearers met their new reality by working the land by hand, with axe, plow, horse, and hard work. And they worked together. Neighbors helped neighbors, watching out for each other's animals, helping plow fields and raise barns. Neighbors were an extended family, helping raise kids and create a strong community. They built our community on values of hard work, freedom, independence, and inter-dependence.

Now, things are changing. Two hundred years ago, we didn't to worry about pollution that could alter our aquifers or atmosphere, because it didn't exist. We didn't have to worry about severely damaging our roads, because all we had were horses, buggies, and farm wagons. Now we use 80-ton machinery that will sink right into our double surface-treated roads. We didn't have to worry about contamination of our aquifer because we didn't have chemicals that could cause cancer, and no neighbor -- not even the best blacksmith -- could forge equipment that could shatter rock two miles beneath the surface.

We face a new frontier for which we are unprepared, with huge machinery, chemicals, foreign-owned corporations, massive drill rigs, and pipelines, none of which existed when our forebears first settled on the hilltops. We're learning that just like in times past when we depended on our neighbors for butter or to raise a barn, we now depend on our neighbors to keep our water clean, and our roads in good shape. We need to meet this new frontier together, as one community.

In the Town of Caroline, we don't ask for much. We pay our taxes. We respect and honor the freedom

and independence each of us has to build what we need and earn a living from our land. We know everyone wants to take care of their land as best we can and to be good stewards.

We also believe in responsible land ownership. When impacts from one neighbor's activities are of a scale greater than anything we've seen in this town before, we as a community have a responsibility to each other -- to know that taxpayers are not unfairly burdened with the cost of road repairs, that industrial uses don't devalue a neighbors' house or farm, that the water used by an outside company is left just as clean as when they found it, that farmers downstream can still find pure water for their cattle.

At first, gas drilling seemed to many like a good opportunity; an opportunity to make some extra money, to have a little cushion at the end of the year. Yet, we've learned enough about the impacts of gas drilling on roads, industrial development on the rural landscape, contamination that's killing livestock and pets, and is making kids sick. We see there are costs associated with this activity that were not clear at the outset.

Just as businesses and farms stay in business by only entering into a new activity after careful weighing of the consequences and costs, we owe it to ourselves to do our due diligence, and calculate all the risks and benefits, and weigh all options. We need to make smart, prudent, conservative decision based on the best available evidence.

This moratorium is about giving the town the time to study this issue, do our homework, and come up with the best protections possible. It is the job of the Town Board to be conservative, to protect our community and ensure our assets are being stewarded wisely. It's the responsibility of the Town Board to be wise and judicious when sudden changes arise that may substantially affect our town. Just as we steward taxpayer resources wisely, going through the budget line-by-line and asking "do we need this?" and "what can we afford this year?", it is the job of the Town Board to ensure -- in the face of a huge potential change that might occur in our town -- we've done everything that we can to make sure it will not harm or put our town in debt. It's our job to ensure that future generations aren't burdened by the debt we incurred in our time; to ensure those who come after have the freedom to work the land just as our town forbearers did for us.

We need to protect our roads, and make sure that taxpayers do not unfairly have to pay for their water supply, have their soil ruined, or come up with money to repair roads damaged by large trucks.

Just as a town may pass a moratorium for a large industrial scale wind turbines, to make sure they have prepared for dealing with access roads and the impacts of turbines on neighboring properties, we should do our due diligence to understand the impacts on the community and on the neighbors of a huge new industrial activity that we have never seen before.

Just as the government can impact what people do on their land, so can the neighbors. Let's use government as a tool to make sure that if this activity happens that it's done in accordance with smart principles. Let's also study if there are better ways that we can spend our limited resources that are less costly to our roads, our property values, our water, our health, our economy, and our climate.

I cast my vote to do our due diligence, do our homework, and make the best informed decisions possible. Anything less would not be doing our job.

Councilmember Aaron Snow remarks on moratorium: People have been selling gas since 1930 on their property to get a little extra income and pay taxes. A couple of years ago we began hearing issues about hydrofracking. I think that threat is evident and causes a lot of fear. A lot of information has surfaced and this is an issue the town board has to deal with. Before people would sign a lease and some they feel issues are over-exaggerated. Some issues I believe are over-exaggerated, as well as on both sides of the issue, I think are over-exaggerated a little bit too. My experience going to Pennsylvania, if some people who were opposed to gas drilling were to walk around and look at farms they would see that it seems okay actually. This is just my thought, but then again there are a lot of effects that aren't

seen visually. My experience in Pennsylvania is that it didn't seem to be that much "in your face". But there seems to be all around fear tactics that many people put out there to scare others. For me I have to stand up for what I believe in and that is that the moratorium is a good tool for the Town of Caroline. I don't believe the DEC is going to be able to regulate the big industry; I will be voting in favor of the moratorium.

Supervisor Don Barber remark on moratoriums:

The purpose of this Local Law (LL) is to provide the Town and its local government time and space from gas extraction to consider a number of policy issues that the gas extraction industry may affect in Caroline.

Many residents have spoken in favor of enacting this LL both at the March 1st Public Hearing and at /Privilege of the Floor in many Town Board meetings. They concurred that the LL and its purpose were valid.

I have also heard a few concerns about adopting this LL that I want to address:

Legal Challenge- this local law was carefully written so that its purpose and structure are for the purpose of providing a specific window of time to work on specific issues that are directly related to gas extraction activities. Moratoria have been widely used by Local Governments over the years, including the Town of Caroline, for exactly that purpose. And with the hardship section, I believe on advice of our attorney that this law cannot be successfully challenged.

CEDC – I approached our attorney about moratorium LL after I had received a number of similar LL from other Towns from the staff at Association of Towns. That packet came with a legal analysis of the strengths and of each. Our attorney told me that he had been working with CEDC on moratoria language for other municipalities and that together they had developed language that he felt was strong and defensible. He suggested to save the Town \$\$ that I contact them, ask them to draft Moratorium language and that he would look it over and provide any comments. I looked the law over as well and provide comments especially in the sections of Intent, Findings, and Purpose. After that collaborative effort, the draft language was brought before the TB and community. My sense is that this LL has as strong a legal foundation as possible and that it was developed to save the taxpayers \$\$.

Timing is too early – The purpose of this local law is valid now. I'm not sure it will be months from now. By adopting this LL, developers, citizens, and government of Caroline are on notice that we have one year to work on six gas related policy issues. From any side of this issue, I can't see the logic in putting the start of this process with the legal protection that any yet to be issued gas well permits will not be valid until this LL sunsets.

I will vote for this Moratorium LL. With NYSDEC working thru the process to begin issuing shale gas extraction permits change will occur in our community whether or not wells are permitted in Caroline. We have the ability to see the good and the bad from this change by just going a few miles south. I believe this LL identifies all of the study areas that this community needs to consider that are within the authority of our Local Government. The Moratorium gives the Town Board and the community time to do this work, without the pressure of the permitting process underway.

I urge my colleagues to vote to adopt this LL and make the commitment to spend the time and create the process to consider these six issues: road preservation, CEA, aquifer protection, ISPR, pipelines, and a Ban of some or all gas extraction and related activities in our Town.

Adjourn

On a motion by Mr. Barber and seconded by Councilmember Snow, the meeting adjourned at 10:16 P.M.

Respectfully Submitted,

Marilou Harrington, Town Clerk