

Caroline Town Board Meeting Minutes of May 8, 2012

The Town Board Business meeting held on May 8, 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, Absent
Aaron Snow, Councilmember
Irene Weiser, Councilmember

Recording

Secretary: Marilou Harrington, Town Clerk

Also present: 10 residents of the Town of Caroline

Privilege of the Floor

Mary Alyce Kobler – Thanked the board for all their hard work and treating the issues they are addressing as serious.

The Recreation Partnership does good work, which needs support not only through the summer but also throughout the whole year.

She said she believes the waste generated by the gas companies should be classified as hazardous. Gas ban- please pass the ban until such time it is proved safe (“which we know isn’t safe”). She is all for landowners rights but she said “air and water knows no boundaries and what other people do on their land affects other people land”.

Jonathon Comstock - He commended the board for the petition to the State on the hazard waste of fracking fluid.

Q and A (April 25 meeting) appreciated the process on many “weighty issues”. From what he got from the Q and A, was that the people who were against the ban were looking for “quasi zoning” which he felt the Town attorney Guy Krogh made it clear that it was on land use distinction and not “pockets of people” where sentiments were different about the ban . He didn’t agree with the suggestion that people in that part of town (Speedsville?) didn’t want the ban as shown by evidence of the petition and the results of the Town board elections.

Mark Witmer - Thanked the board for working hard on the issue of hydrofracking. In responding to Q and A, he agrees with Mr. Crispell, “that we are all in this together”. One of the biggest assets of the Town of Caroline is the diversity in cultural and economic diversity. This is a decision (about hydrofracking) that is going to have to be made as a community. There was some sentiment that there would be different factions and he said that he didn’t like to see that. He appreciates all of his neighbors and believes for the community to move forward they need to work together.

Reports

Cindy Whitaker, Highway Superintendents Report (given by Aaron Snow)

Clean up week went well. People came in and stole scrap metal at night which the highway department use to recoup some of the expense of the clean-up.

Brush clean-up; Town Residents can bring brush and tree branches (no fence posts, wire, fencing or rope, etc.) to have chipped at the Town highway Department through May 24, 2012. No commercial business or trucks allowed. Only town residents can dispose of their tree branches and bushes they may be required to show proof of residence.

Supervisor Don Barber

Correspondence of Note:

1. Letter from Joint Land Owners Coalition regarding Moratoria and Ban legislation
2. TCCOG Pipeline Forum- 5/17 at 5 PM Tompkins County Public Library
3. Sales tax and Mortgage tax report 3.77% Sales Tax increase
4. Code Enforcement Officer wants Town approval to order PDF of Building Code
5. Tompkins County Planning 239-1 review of Moratorium local law
6. Several letters pro and con on Town considering Gas Extraction Moratoria and Banning

Report:

1. FEMA, received FEMA approval packages for Beaver Creek and Banks Road
2. Closed with Tompkins Trust Company for Bond Anticipation Note for \$125K at 2% interest rate
3. Soil and Water Subdivision 20 mins.
4. Road construction local law- to meet with code enforcement officer and highway superintendent to talk about residents of Caroline putting in culverts without a permits.
5. Assessment Review committee- One person was unable to keep the commitment and the alternate is not available- training has to be one by May 17- suggestions from the board. An offer from Bill Hilker (who has been a senior assessor)
6. Landscaping Committee-Dominic suggested putting out a request for landscapers to volunteer- Irene suggested John Reed who has done landscaping for the town before. Design Connect a group from Cornell also a possibility.

County Representative, Frank Proto

Absent

Councilmember Linda Adams

Absent

Councilmember Irene Weiser

The Communication Information Technology Committee met but they haven't decided on leadership for the committee. They want to rotate around the leadership right now. The committee wants to talk with the town clerk and wants to be supportive to the clerk's office in any way they can be. They will also meet with the court clerk as well as other town employees about information technology and what the committee can do to help in a wide variety of areas.

This Sat (May 12th) Emergency Preparedness training 9-12; Incident Command System (IS-100)*. It is run by Beth Harrington. This is the second of 2 classes and councilmember Weiser wanted to remind board members that a resolution was passed requiring board members to take the training either online or in the classroom.

(*Note-All elected and appointed officials and other municipal employees who have not been trained in the past 5 years should attend or take a class that is offered on line. Municipal officials and employees are responsible for ensuring the public safety and welfare of the people of that jurisdiction. FEMA requires that public officials complete NIMS and ICS training in order to be eligible to recover expenses for emergency incidents.)

Recusal issue- After the Q and A session on April 25th a person asked Councilmember Weiser if any of the board members were participants of ROUSE. (ROUSE is a group that educates people on hydrofracking and supports the ban on gas drilling.) Councilmember Weiser told the person that she is a member of ROUSE and he thought she might need to recuse herself (similar to Pete Hoyt recusing himself last fall for being in favor of gas drilling and owning leased property). She explained she

thought the situation was different as she did not own leased property and that the public should be very aware of her views on hydrofracking as they have been stated in the newspaper, were on her campaign signs and in her campaign literature when she ran for the town board. She said would address the question with the town attorney. After speaking with attorney Guy Krogh and receiving information from him she learned in NYS that the law about conflict of interest only pertains to if the Town is contracting with some entity and the board member as some financial interest to be gained. For the record Councilmember Weiser said “I own a house on a small parcel of land on about ½ of acre, I don’t have a gas lease, and I don’t own any other property in town. I have been participant in ROUSE as a member and also on the Steering committee..... But after reflection about my role on the Town board and until the issue of a ban is decided and voted upon, (though there in no conflict of interest), but because the members of the town can expect me to have an open ear and that I will not be coaching ROUSE in anyway that might not seem appropriate..... I will remove myself from the steering committee of ROUSE.” The town attorney said to Councilmember Weiser that just because she has been elected to office that doesn’t mean she loses her rights of association and her 1st amendment rights for freedom of speech.

Councilmember Dominic Frongillo

No report

Councilmember Aaron Snow

No report

Transfers

Resolution 97 of 2012

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

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

\$ 100.00 from General Fund Account Contingency A1990.4 to General Fund Account A 1010.4
Legislature CE

\$ 2,000.00 from General Fund Account A1460.4 Records Management CE to General Fund Account
A1460.1 Records Management PS

\$ 91.36 from General Fund Account A 1990.4 Contingency to General Fund Account A 9050.8
Unemployment

Be It Further Resolved the Caroline Town Board makes the following 2012 Budget adjustments:

Increase General Revenue Line A 3062 Records Mgmt Grant by \$11,720 and Increase General Appropriation
Line A 1460.4 by \$11, 720 and

Increase General Revenue Line A 2665 Sale of Equipment by \$150 and Increase General Appropriation Line A 1410.4 Clerk CE by \$150 and

Increase Highway Revenue Line DA 3061 FEMA Grant for Beaver Creek by \$8,147 and Increase Highway Appropriation Line DA 5110.41 by \$8,147.

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

Approval of abstracts

Resolution 98 of 2012

Highway Fund Abstract

A motion was made by Mr. Snow and seconded by Mr. Barber to approve payment for the Highway Fund voucher numbers 96 through 102 for \$58,976.97.

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

Resolution 99 of 2012

Streetlight Fund Abstract

A motion was made by Mr. Snow and seconded by Mr. Barber to approve payment for the Streetlight Fund voucher numbers 9 and 10 for \$576.61.

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

Resolution 100 of 2012

General Fund Abstract

A motion was made by Mr. Snow and seconded by Mr. Frongillo to approve payment for the General Fund voucher numbers 148 through 182 for \$ 26,666.46.

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

Agenda

Discussion and Action Topics

- Transfers (8:00)
- Approve Abstracts: Highway, General, Lighting (8:05)
- Resolution Adopting Recreation Partnership Agreement (8:15)
- Resolution Adopting Gas Extraction Moratorium (8:20)
- Resolution Urging State passage of Bills Designating Waste Generated Natural Gas Extraction be Classified as Hazardous (8:25)

- Discussion of Prohibition of Gas Extraction Local Law Input to date and Process for Exploring Questions Raised (8:45)
- Resolution Creating Aquifer Protection Advisory Committee (9:15)
- Resolution Expressing Interest to Joint Time Warner Cable Consortium (9:35)

Town Business

We would hold a work session that is open to the public and their input encouraged. The work session would be centered on the finding statements:

1. Their accuracy and completeness (Linda had questions about economic impact)
2. In the context of carving out a section of the Town how they might be adjusted
3. In the context of the hardship section, which reports/documents may be required for the Board to decide if a hardship special use variance can be issued

Regarding #2 – There seems consensus that exceptions/ carve out areas need to be based on something - a peculiarity of the land, the contents of the community's Comprehensive Plan; need to show that the impacts from drilling would be less if they occurred in this area than if they occurred in other areas

If revise comp plan and land use law both would need to justify why any area is distinct and different based on geographic features that make the area more or less consistent with a certain use.

Possible subject areas

1. geographic features
2. Lack of aquifers or wetlands, aquifers/wetlands that don't cross to other regions
3. Roads can accommodate the loads
4. No impacts to surrounding areas – noise, lights, air pollution, traffic- population density

Other areas of investigation- for Board discussion or work session:

1. Subsurface extraction prohibition
2. Hardship exemption process, including make-up of Review Board and appeals process
3. General discussion of each Law section; because this law is a BIG step. The legislative history needs to show a deliberative process. I need to hear how this is read by others and their reaction

Discussion:

(Please note that the following is a synopsis of the board discussion and not written verbatim.)

Councilmember Frongillo- Regarding question #2 if someone comes forward wanting to research if possible to have an exemption area on the ban, what would the time frame on that be?

Supervisor Barber- Since we will have the work session on May 24th it would seem someone would have to come back in a month with what they would want to explore more and give the board a reason for it.

Councilmember Weiser –Can we put information out before hand so people interested in the carve out will have time to consider the information? Website, e-mail?

The Town cannot adopt something that is in opposition of the comprehensive plan? If we did members of the town could hold the town board liable under Article 78 proceedings. The comprehensive plan reflects the deliberative democratic process of the town and the building of consensus, which we as the town board are obligated to uphold. If we are in violation of the comprehensive plan we could be sued.

Supervisor Barber- The comprehensive plan would have to be revised before anything could be put in effect that is contrary to what the plan states. It is required to go through a deliberative process if the comprehensive plan was to be changed. We are addressing a local law that has to comply with the findings of the comprehensive plan. The community can come to the board and ask to have the comprehensive plan reviewed and revised. The community would lead us to a point of agreeing to review the plan like they lead us to look at a local gas ban.

Councilmember Snow- Asked how long did it take to complete the comprehensive plan?

Councilmember Frongillo answered that there was a survey sent to every resident of the town (and we received a 26% response), there was 4 working groups, 11 public meetings, 2 public hearings and it was a 4 year process.

Councilmember Snow- Asked about the difficulty applying for the hardship exemption.

Supervisor Barber- Answered that he had spoken with the Town attorney Guy Krogh and that the first 4 reasons of the proposed local law addresses the hardship exemption which are directly from State law. They are required to be in the local law and are not negotiable. The 5th part of the hardship exemption is determined by a SEQR review and is decided by the Town Board.

See Resolution 104 below in regards to the May 24th Town board work session on the proposed law; Gas Drilling Ban.

Resolutions

Resolution 101 of 2012

Adoption of the 2013-2017 Intermunicipal Recreation Partnership Agreement

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

WHEREAS, the Town of Caroline is currently a member of the Intermunicipal Recreation Partnership by agreement dated August 21, 2007, with an original 5 year term expiring December 31, 2012; and

WHEREAS, the Recreation Partnership has been an excellent and cost efficient model of inter-municipal collaboration which enables municipalities to jointly plan, finance, and share a diverse set of high quality recreation programs; and

WHEREAS, the Intermunicipal Recreation Partnership agreement by its own terms may be renewed for an additional five years by appropriate resolutions by each of the municipal partners on or before December 31, 2012; and

WHEREAS, any municipality may withdraw from the Inter-municipal Recreation Partnership agreement upon a full calendar year's notice.

Now therefore be it

RESOLVED, that Town of Caroline agrees to renew the August 21, 2007 Inter-municipal Recreation Partnership agreement for an additional 5 years, expiring December 31, 2017 and further

RESOLVED, that a copy of this resolution be sent to the Recreation Partnership Board care of Tompkins County Youth Services Department at 320 W. State/MLK Jr. Street, Ithaca, NY 14850.

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

Resolution 102 of 2012

Gas Extraction Moratorium: County Planning under GML Section 239-L

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

Whereas the Caroline Town Board is required to have laws concerned with Land Use reviewed by County Planning under GML Section 239-L, and

Whereas such a review has now been done on the Gas extraction Moratorium Local Law by County Planning finding no negative inter-community or county-wide impacts,

Now therefore be it resolved that the Caroline Town Board rescinds resolution #76 of 2012, adopted March 16, 2012, which resolution purported to adopt Local Law #1 of 2012 "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.", and

Be It further resolved the Caroline Town Board, having received a 239 Review from Tompkins County Planning finding no issues of County concerns hereby adopts Local law #2 2012 "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."

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

Resolution 103 of 2012

Resolution Supporting State Senate Bill S4616 (Avella)/Assembly Bill A7013 (Sweeney) to Amend the Environmental Conservation Law in Relation to the Uniform Treatment of Waste

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

WHEREAS this bill S 4616 (Avella)/A7013 (Sweeney) would require hazardous wastes produced from oil and natural gas activities to be subject to the requirements for treatment of hazardous wastes; and

WHEREAS currently the oil and gas industry enjoys exemptions from New York State laws governing hazardous waste transport and disposal. Though a great deal of the wastewater generated by hydraulic fracturing meets the state definition of hazardous, it is not required to be treated as such; and

WHEREAS the oil and gas industry is not required to disclose the chemicals used in the hydraulic fracturing process but the following chemicals are often found in waste water resulting from the hydraulic fracturing

process: benzene, toluene, formaldehyde, salts, heavy metals, and radioactive particles; and

WHEREAS closing this exemption loophole will require hydraulic fracturing flowback and produced water to be monitored through a manifest system and that extra safeguards will be in place to avoid accidents and ensure proper waste treatment; and

WHEREAS such a designation will keep fracking wastes out of municipal treatment plants and the waterways leading to sources of drinking water.

THEREFORE BE IT RESOLVED that the Town of Caroline supports the immediate passage of the New York State Senate bill S4616 introduced by Senator Avella which is the same bill as Assembly bill A7013 introduced by Assemblyman Sweeney that would amend Section 27-0903 of the New York State Environmental Conservation Law. Further

RESOLVED this resolution be sent by the Town Clerk to Governor Andrew Cuomo, N.Y. Senate Majority Leader, Dean Skelos; Senate Minority Leader Sampson, N.Y. Assembly Speaker, Sheldon Silver; N.Y. Senators O'Mara, Seward, Nozzolio, Avella, Squadron, Kreuger, Perkins, Serrano, and Perrault; U.S. House Representatives Maurice Hinchey and Richard Hanna, N.Y. Assemblywoman, Barbara Lifton; U.S. Senators Kirsten Gillibrand and Charles Schumer; DEC Commissioner Joseph Martens; EPA Region 2 Director, Judith Enck.

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

Discussion:

Councilmember Weiser- the chemicals that are injected into wells as part of the hydraulic fracturing process, when transported by themselves are considered toxic. When the chemicals are mixed and injected together underground and when they come back out (because of these exemptions) they are not designated as hazardous waste by NYS and Federal laws. SGEIS does propose that the chemicals should be transported the same as medical wastes. Medical wastes have different tracking requirements than hazardous waste. Both require a manifest, however medical waste only requires it be kept by the company disposes of the waste, the transporter and where it is disposed of and is hardly ever disclosed to the public whereas hazardous waste has to be fully tracked and weighed and "every drop accounted for" and offers full public disclosure. This is a system to make sure that the waste is treated as hazardous material. This bill is one that may have a chance of getting through during this session, so there is a real push to try and bring it to the floor. The belief is that there will be enough votes to pass it.

Supervisor Barber- asked Councilmember Weiser is this bill retroactive to wells already permitted? To which she replied she didn't know. Supervisor Barber said because there are already wells that are hydrofracked which then the question would be if the chemicals used were not hazardous (like Clorox bleach and dawn dish soap) would they automatically be considered under the bill? Councilmember Weiser replied that if the chemicals used were on the list of what was considered hazardous materials then they would be considered.

Councilmember Snow- Had a question about a part of the resolution that read; **WHEREAS** the oil and gas industry is not required to disclose the chemicals used in the hydraulic fracturing. He

asked Councilmember Weiser isn't this part of the SGEIS? Councilmember Weiser answered, They may have to disclose to the State but they may not have to disclose to the locality. Supervisor Barber said that it is true that they are not required to disclose to the locality.

Resolution 104 of 2012

Town Board Work Session on Proposed Local Law on Gas Drilling Ban

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

Resolved, the Town board will hold a working session on May 24th from 7pm-10pm at the historic Town Hall. The session will be about working through the finding statement of the ban local law and their impacts for accuracy and completeness and the impacts about carve out decisions and hardship.

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

Resolution 105 of 2012

Establish the Aquifer Protection Advisory Committee

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

Whereas, the Caroline Town Board recognizes that the Town commissioned a study of our two largest aquifers which has been completed and

Whereas those aquifers have both confined and unconfined sections and

Whereas the recharge areas of confined sections are not defined as specific delineated areas and

Whereas, several local laws exist for aquifer protection and State Statute provides local governments with the authority to protect aquifers,

Now Therefore Be It Resolved that the Caroline Town Board hereby establishes the Caroline Aquifer Protection Committee whose charge is to:

- Develop an understanding of the powers available to local governments to protect aquifers, and
- Review existing local laws in Caroline and Aquifer protection laws from other municipalities, and
- Develop an understanding of the vulnerable areas of our major aquifers and other smaller aquifers that could benefit from a protection law and a map delineating these areas, and
- If appropriate, draft a local law recommendation that describes the purpose, areas to be protected, and the power to be exercised by the Town. The Committee may use the services of the Town Attorney, if authorized to do so by resolution of the Town Board, and

Be It Further Resolved that the following persons are appointed to serve on the Caroline aquifer Protection Committee: Greg Clark of Coddington Rd; Sue Kinchy of Flat Iron Rd; Hilary Lambert of Dryden; Todd Miller USGS and author of aquifer studies, a representative from SWCD, and Irene Weiser is liaison from Town Board, and

Be It Further Resolved that the Town Board encourages the Planning Board and Watershed's Committee to each appoint a liaison to this committee.

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

Resolution 106 of 2012

Time Warner Cable

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

WHEREAS, the Town of Caroline is provided cable service by Time Warner Cable; and

WHEREAS, the Town of Caroline recognizes the advantage of cooperation with other municipalities with regard to negotiating cable franchise issues; and

WHEREAS, the Town of Caroline is interested in exploring, through the Tompkins County Council of Governments, the possibility of entering into an agreement with other municipalities to form a Consortium to negotiate, on behalf of the Town of Caroline, a renewal franchise agreement with Time Warner Cable; and

WHEREAS, the intent would be to form a Consortium with the authority to conduct public hearings, conduct surveys, and engage in all activity, within the limits of applicable State and Federal Law, that is necessary and appropriate to negotiating a renewal franchise agreement for its member municipalities; and

WHEREAS, the Consortium may be charged with analyzing the financial, technical, and legal issues related to cable television regulation to enable the member municipalities to reach sound judgments in exercising their regulatory authority with regard to such matters as cable television rates, franchise fees, and nature and quality of service; and

WHEREAS, all members of the Consortium would individually reserve the right to approve, disapprove, or amend the franchise agreement so negotiated on their behalf; and

NOW THEREFORE, it is

RESOLVED, that the Town of Caroline does hereby express interest in exploring the possibility of forming a consortium of municipalities to negotiate on its behalf for the renewal of its franchise agreement with Time Warner Cable; and it is further

RESOLVED, that the Town of Caroline does hereby reserve the right to refrain from joining the consortium should the terms and conditions of joining the consortium prove to be unacceptable to the Board.

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

Adjourn

On a motion by Councilmember Frongillo and seconded by Councilmember Aaron Snow, the meeting adjourned at 9:30 P.M.

Respectfully Submitted,

Marilou Harrington, Town Clerk