

## **Caroline Town Board Meeting Minutes of April 25, 2012**

Supervisor Don Barber called the Town Board Question & Answer session regarding the proposed local law regarding a Ban on Gas Drilling, held on April 25, 2012 at the Speedsville Community to order at 7:00 p.m.

### **Attendance:**

Don Barber, Supervisor  
Dominic Frongillo, Councilmember  
Linda Adams, Councilmember - Absent  
Aaron Snow, Councilmember  
Irene Weiser, Councilmember

### **Recording**

**Secretary:** Christine Wilbur, Deputy Town Clerk

**Also present:** Town Attorney Guy Krogh; and approximately 50 members of the public.

Supervisor Barber led the Pledge Allegiance to the Flag.

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### **Privilege of the Floor**

Irene Weiser introduced herself and other members of the Board, and noted that Councilmember Linda Adams is away and cannot attend this meeting. Copies of the draft language of the ban were distributed to those who wanted a copy and Ms. Weiser noted that it is also posted on the Town website and in the information notebooks that are placed around the town.

She discussed the process of proposing a local law and the purpose of this Q & A session regarding the proposed ban on gas grilling. This is not a public hearing – which is a formal step in the process of proposing a local law - this Q & A session is for residents to ask questions about the language of the law that may need interpretation from the Town attorney. Ms. Weiser asked the audience to not express opinions one way or another about the law, only to ask questions that might be of a legal nature. If residents have questions that are not related to the language of the law, the questions will be noted and considered at a later time.

She also discussed rules of the conversation –everyone must be respectful, state their name and residence, raise hands, speak up so all can hear, no side conversations, stand up when speaking, keep it short, keep to questions, no preambles. Follow up questions will be allowed - one per person - and there can be no argumentation.

Opinions and debates concerning the law can be taken up at the public hearing. This session is to answer legal questions about the implications of the law. Written comments to Board members can be mailed or e-mailed to the Town Clerk's office. All Board members will have access to these comments.

The Q & A sessions afforded for both the moratorium and the proposed local law to ban hydraulic fracturing is above and beyond what the law requires. State law requires some days of notice and publication of notice prior to a public hearing; however, the Caroline Town Board members feel it is important to have as much input as possible prior to a final vote. Board members will consider what people have to say and will weigh in on their decision. Mr. Tavelli asked if there were enough questions asked against the ban, would the Board reconsider their position. Ms. Weiser said yes, of course.

The Board will not answer questions nor deliberate tonight – this session is strictly to answer questions regarding the language of the ban. The Board will consider opinions and comments during the Privilege of the Floor section of Board meetings and at the Public Hearing – all prior to a final vote.

Supervisor Barber described the history of the moratorium and the proposed ban. He spoke about the ROUSE petition, which clearly represented a large amount of support to consider a moratorium and a ban on gas drilling and hydrofracking. As a result, the Town Board directed him to proceed and approached a pro-bono attorney to draft a proposed local law that was reviewed by the Town's attorney that is now being considered.

Mr. Tavelli asked what had changed from last year when the Board did not pass a resolution to proceed with this issue. Mr. Barber reported that two new Board members were elected that are both in favor of a ban on gas drilling and hydrofracking and this issue was once again brought to the table and a vote was taken that was

approved. Ms. Weiser reported that this issue was part of her platform when she ran for election, that her position on this subject was made very public from the start.

Mr. Barber reviewed the law and how it is constructed – similar to the moratorium that this is a prohibition of gas drilling, etc. He read pertinent sections of the law. He spoke of Ms. Adams' noted exception to the part of the law that speaks to economic impact – she feels there would be a positive economic impact to the area although Mr. Barber disagrees.

Mr. Taam asked who the pro bono attorney was and if there is any conflict of interest. The attorney's office is the Community Defense Council and there are no conflicts. Mr. Barber reported he consulted with the Town attorney and the NYS Association of Towns and neither felt there was any legal liability.

The following questions and issues were raised by various attendees:

- Dan Signore spoke that his gas lease on his land expires April 22 – is there a follow up on his part that he should consider, or is it automatically renewed or does it end if he does nothing. Mr. Krogh replied – yes, he needs to do some things, and described the process. The first step is to write a letter to ask to surrender – if they say no, then there is another option. About half of the leases are released in the first step, and others are released in the next process.
- Becky DeWitt, referring to the findings in section 3, general reference –regarding air quality: she understands from other parts of the country some toxins are released into the air that do not smell and can't be seen. If gas drilling is permitted in Tioga County, isn't it possible that our air quality would be affected and is there any way to put in place a process to check air quality? Mr. Krogh reported that the engineering aspect not a legal question and probably would not be economically feasible. There are standards – the EPA monitors and NYS has a detailed set of regulations regarding air quality. The State and Federal regulations expressly encourages the municipalities to adopt stricter air quality control standards. The Town would have authority to wade into area – but would be complicated & expensive. There is an environmental engineer in Cortland.
- Pat Dubin had some questions regarding the hardship exception section – section D – about applying for a hardship exemption – what they have to do...then “may” or “shall” include – confusion – needs to be “shall” not “may or shall”. Mr. Krogh had changed that – the reason the determination of a hardship – if traditional zoning, this type would be called a “use” standard. Has to do with definitions of the law – his concern – some of what is required in further section of D are well outside of the scope of a “use” variance. It is a safety valve. It is a Board decision. Next question – the Board will have 62 days to rule on it – could be a very short period of time. There could be lots of applications. Mr. Krogh said that is a general guideline – it could be greater or lesser – 62 days is a recognized/valid time line – it's a safe number to pick – what is a privilege and what is a right – what is being pursued – a variance is considered a right. It behooves a decision for a citizen.
- David Fisher – owns contiguous land to town border. Question is Section 6 – going to ban sub-surface drilling – is it intent from crossing town lines? Mr. Krogh says it's as written – establishes a line – could be an open question – more complicated – some have not yet been looked at by the courts. Ultimate solution is State court. There is an engineering process that can detect where the drilling is taking place. Board intent is to stop at the town line. Legal authority – municipal home rule laws, related to 10<sup>th</sup> amendment of the constitution. Described options the town can determine. Right now, towns can regulate mining process – specific process – towns have authority to determine boundary line.
- Mr. Barber asked about other issues the courts have not yet dealt with. Mr. Krogh reported the main areas are: 1. Any type of ban, the courts haven't made determinations that may or may not affect interstate commerce; 2. To what extent a partial or complete “taking” of gas from a property. A difficult question – NY has antiquated system of determining owners' rights – do you have the right to the gas underneath your property – not answered in NYS as yet; 3. Pre-emption questions – described interpretation of laws in other areas – are we regulating industry or use of land? Not clear. 4. What right do towns or counties have regarding issues that are not regulated – ie worker housing, construction of

drilling pads, pipelines, and open gaps – continuing questions.

- Milt Taam – his land borders Tioga Co. – he is a member of Tioga Co. landowner’s Coalition – might lease his land to Tioga Co. – subsurface rights – question to Board – what would be a negative impact to the Town of Caroline? To Mr. Krogh – Section 7 – penalty and fines – would that apply to him? No prohibition to signing a lease – not a violation of the law. Mr. Krogh described how the number of days (in violations) is determined. Defined as exploration or production, and other activities that would be defined as a violation of the law. Who would enforce this law? One of the Town Building Inspector’s responsibility is to enforce local land use laws
- Joe Wikki, from Speedsville, asked if the Board read the letter from the past Town Board member about splitting the town – that the ban could or would be applicable to only part of the town? This could help to avoid some possibly lawsuits. Mr. Krogh said it is possible to have the ban affect only a portion of the town – but it is a very complicated procedure and there has to be a rational basis – relative and uniform and not just because some residents want that. It needs to be about the positive and negative impacts of the land in question – it would amount to a land use regulation – not just a local issue – regional impacts.
- Irene Weiser –would that be considered zoning? Mr. Krogh – zoning is the best way to regulate land use. The exercise of government power is always an infringement on personal rights – that’s what government does – negative or positive. If there is a basis to draw a line that can’t be random. Dominic Frongillo asked if zoning is a general decision of the people? Mr. Krogh said it is a combination of those who want it and identify what the community wants as part of the comprehensive plan.
- Mark Gregrow – can residents decide by existing landlines –like Speedsville? Mr. Krogh said yes.
- Tony Tavelli - it’s stated (in the Ban language) that the Town of Caroline does not have industrial activity...there has been. Mr. Krogh said if they have occurred – that section should be amended. Does it weaken the Comprehensive Plan? Mr. Krogh – if there was an activity, there could be no legal challenge if not allowed now – unless there was a grandfathered right.
- Carol Leigh – from Speedsville, had a question regarding Fire Department funding. If drilling were to come about, how would the economic impact to the Town – negative or positive – affect the future negotiations between the Town and the Fire Department? Mr. Barber reported that if drilling were allowed, the only monies to the State would relate to DEC permit fees, which wouldn’t affect the Town budget. The impact on the Town budget would be very little. Any monies expended by the Town related to gas drilling would be monies in the general budget not in the fire department budget.
- Mary Alice Kobler – does not know why the Town (couldn’t hear her) – Mr. Krogh – there are mandated controls with zoning – special rules protecting wetlands, animals, etc. Dividing a geographic region is essentially zoning – but this is not a zoning law – not all the bells & whistles that go along with zoning. Mr. Tavelli had a follow up question (couldn’t hear) – Mr. Krogh – legislature needs to enact a law – opinions of politicians don’t matter until it’s a law.
- Michelle Brown – is there a way to protect our resources when neighboring areas have drilling, etc. ie water sources, property & property values, etc.? Mr. Krogh –not sure what a person can do to prohibit what your neighbor does. To the extent to protect resources – water & wildlife - belongs to the State of New York. We are limited what we can do – watershed areas. To a certain extent, the State has control over water – not a lot the private citizen can do – except challenge in court.
- Liz Evett – there has to be a rational decision to divide land, she feels hard to figure out how “Speedsville” could be different than her land. How could there be a rational reason – what would process be? Mr. Krogh – not sure, history of land use, resources to try and figure out – a policy question? There are arguments that air and water pollution do not recognize property lines, etc. There are reasons to distinguish one piece of land from another. Public health & welfare – what is in the best interest - a decision of the board. All opinions need to be weighed.
- Bill Crispell – hard time hearing – simple answers – everyone uses energy – all in this together – room for all – important to all – our future of our descendants – need to be on same page.

- Ken from Berkshire – all use gas in one way or another – ban usage – we are contributing to someone else's' pollution – we should ban the use.
- John Confer – monitor funding of lawsuits coming out of this process – monitoring – hired only on funds that came out of fracking. Monitoring needs to take place prior – who would pay for it? Board needs to consider some monitoring to have a baseline. Would Board pay for air and water quality monitoring? Mr. Snow spoke of some water testing that is currently being done. Began a couple of months ago - he described where the tests were being conducted (by Cornell University) and what is being tested for. Mr. Confer asked if the results would be publicized. Possibly. Testing is currently being done without charge to the Town (six areas are being monitored).
- Anne Boehm asked about air quality testing – maybe through a grant or competition –communities can apply – precedence to minorities and those who spend time outdoors.
- Bev Liddington – if we pass the ban – and New York State approves drilling, who pays for the dogfight? Mr. Krogh – ultimately the Town. How funded? Out of general fund.
- Dominic Frongillo – what would some reasonable costs be if the Town were challenged? Mr. Krogh – between \$40-\$60,000. Those areas that already have a ban – only 2 suits so far. Industry may be waiting to see. Fully contested – \$30-\$60,000 in State, double in Federal court.
- Cyrus Umigar – If drilling is allowed, air & water quality at risk, sickness, property values down – who pays for that? Why should I pay for pollution caused by my neighbors? Mr. Krogh – goes back to cost-risk to having, and cost-risk not to have...highway cost, litigation – financial impact – those things need to be weighed out - not one good answer.
- Why doesn't the Town wait to see how lawsuits go? Mr. Barber indicated it would be a strategic decision, that the more information and planning we do now, will assist us in the future.
- Many reasons for suits - a simple local law – a ban – can it be repealed? Can Board act quickly – what's process for undoing? Mr. Krogh – same process – by local law – could be very simple – one sentence.
- Milt Taam – could there be liability on Town if undoing a law – suffering damage & expense? Mr. Krogh – could make a claim – but would be weak - in theory probably, but remedy is to challenge the law. Not realistic.
- If Town does a ban, but the State says you can't ban – does ban get dismissed? It would be a law that is unenforceable.
- Irene Weiser – if we enact a ban, before Dryden appeal – if appeal is overturned – what happens to our ban? Can permitting happen if ban is no longer valid – then if the overturn is appealed, etc., etc. Mr. Krogh says it happens all the time. He described what the process would be at the point. Controlling precedent. Injunctions? Would take into account another appeal.
- Jonathan Comstock – We have a moratorium in place now for a year, and then a ban is passed (before the end of the moratorium year), is the moratorium still good? Mr. Krogh – may or may not – stands on different legal ground than a ban.
- Unit of land – if 50% of people in that area want drilling – they create a unit – a permit to drill – if part or all of that – can they drill? Mr. Krogh – no. What if 640 acres spills into town of Caroline – from Tioga Co. – could develop up to the boundary line. Mr. Krogh talked about what makes a valid unit.
- Tony Tavelli - the “taking” of gas – has never been developed or tried – but if a unit – question is what has been taken – you do not own the gas under the land – you are selling the right to go get the gas. There is a video made by an Attorney from Albany – explaining of how it's done – she (?) will send it to him (Tony).
- Michelle – (could not hear question) – asked for and received definition of “unit”.
- Lil Hoffmire – Berkshire – pro-drilling resolution – land & people already being taxed; described financial benefits; doesn't believe government should regulate land use – we need the money.

- Becky – what people choose to do on their property affects neighbors;
- Jill Flannery – what has Mr. Krogh done that isn't included in the moratorium – Mr. Krogh – not directly – TCCOG is doing a lot of the work; the Board is doing some work – probably not to attorney until later stages. What has Board done toward process of moratorium? Ms. Weiser listed the items being worked on - industrial site plan review law being considered; contracted with consultant (Planning Board); road preservation law – committee formed & working; process of forming an aquifer protection committee; pipeline issue is being worked on by TCCOG; critical environmental areas that are not being addressed. Working toward the effort to protect our resources – why so quick on the ban? Mr. Snow - a ban is more valid if put into place before permits are applied for; the other consideration is that this is a big deal and want to put in the time and effort – not in a crunch. Mr. Frongillo – 6 items being worked on; what if ban is passed – could ban be set aside if seemed right for the community – yes, if new information. Mr. Krogh - described the process of the appeals – there seems to be a consensus – 18-20 months – then decision – who knows how long.
- Pipeline issue – if need to be brought through the town of Caroline? CU and Milliken Station changing to natural gas? Bring it from far away? Why not here? Mr. Barber – regulated by public service commission – typically not by a town. No local laws that prohibit – but address the size of the lines.
- In Brooktondale, there are natural gas lines and springs - what if there was a big leak in natural gas lines? There already is danger underground – but they are regulated and tested periodically.
- John Confer – there was one that blew up near his house.
- Someone wanted to know why sections of the draft ban were underlined. These are sections that may be different versions than currently in the notebooks or on the website.

Hearing no other questions, the meeting concluded at 9:35 PM.

Respectfully Submitted,

Christine Wilbur  
Deputy Town Clerk

