

Caroline Town Board Meeting Minutes of September 7, 2010

The Town Board agenda meeting held on September 7, 2010 at the Caroline Town Hall was called to order at 7:00 p.m. by Supervisor Don Barber.

Attendance:

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

Recording

Secretary: Marilou Harrington, Town Clerk; JoAnn Reinhardt, Deputy Town Clerk

Also present: Bob Anderson, Bill Podulka, Rebecca DeWitt, Jonathan Comstock, Irene Weiser, Lisa Wright, Tim Seely, Kim Whetzel, William Crispell, Michele Brown, Cindy Whittaker, Highway Superintendent, Cal Snow, Ann Boehm, Toby McDonald, Guy Krogh, Caroline's Town Attorney, Bendicht Pauli, Zan Gerrity, Inge Alexander, Mariara Morse, Anna Gibson, Luisa Johnson, Frank Brown, Terezka Korinek, Melissa Groo

Privilege of the Floor

Supervisor Barber opened the meeting by welcoming the public and inviting them to discuss the Excavation and Construction in Municipal Roadways and Highway Right-A-Way local law.

Public Hearing on Excavation and Construction in Municipal Roadways and Highway Right-A-Way: (see attachment 1)

Robert Anderson resides at 304 Blackman Hill Rd., Caroline: Bob had filed written comments on the proposed law with the Town Clerk, also sent a copy to each of the Town Board members regarding his concerns and he had sent a copy to the Town Attorney to be aware of his comments (see attachment 2). He said that one of his concerns in this proposed law is fundamentally, that as I see it, it might be an invitation of expensive litigation in some point in the future. If there were a benefit of insufficient size to flow from this law, it may be worth it, especially if we could expect a guarantee that future road damages would be paid by others and not by the Town of Caroline. It might not be a bad idea to risk litigation, if we need to defend the law to achieve the end. Bob said that he does not think this law will do that. He thinks the proposed law does not cover this. He said, It is not clear to me, first how a permitting process in advance of any construction or advance of road damage can guarantee repair of the roads possibly 5, 6, or 10 yrs down the line, but that connection is not clear to me. Unless the permitting process is used, a way to extract future promises from a variety of parties, (gas companies, and the exploration & development gas companies) will be adding considerable heavy traffic to our roads. In that, process is trying to warrant future responsibility through what could be an excess use of the permitting process. That concerns me. I am not interested in a long debate, whether this is a criminal or civil law or not. It is clear to me that, if you do not follow it (the law) you can be fined and put in jail. So whether we call it a civil law with criminal penalty or call it a criminal law, it does not matter because the result is the same. Particularly, when criminal law is a penalty, it is very important. Another concern Bob has is that there is language in this proposed statute which while it does not invalidate the statute grants, broad opened ended authority to town offices, code officer and highway superintendent will require more and more in a virtually never ending stream of demands from selected parties to whom pressure is sought to be applied. That can be fatal to the validity of the law because of the constitution and other statutory requirements. Say, that when you pass the law you have to enforce it against everybody in the same way and to the same degree, that then requires a pattern not revealed as an exclusive application of the law to one class of companies, or individuals. That means it needs to be made with even handedness across the board. That meant it is applying the law to towns people. I am concerned that the application of the criminal law to what may well be very incidental violations of the provisions of the law is over reach and over kill and unnecessary in terms the citizens of the town. If this law is adopted and if is applied in an uneven way, and if I am correct in my supposition that that might lead to litigation. This is a second important point to this kind of situation; if you adopted a form of this statute, it must be certain that there has been consultation with the town insurer to determine the existence and extent of coverage. I did have a chance to read Mr. Krogh's commentary on my comments mentioned about the fact that other towns have adopted similar laws

and that have not had a problem with litigation. The point that I would raise in response to that is that it has not been tested yet. No town in this vicinity have been subjected to the kind of traffic problems as foreseen for needing this law and in the end, the absence of that kind of stress there is no reassurance in the fact that there has not been litigation. The storm has not hit yet, has not gotten here yet. When it does that is when the test will occur. Finally, as I realize I am already over my time I suggest a couple of things that might be fix for this law. Ideally, I would like to see the law to go out the window. I do not think it should be a criminal statute and it is a criminal statue right now. I think we could tighten up the language that gives open-ended to authority to town officials, to extend the permitting process at will, and just spell out crisply that "here is what you need to do to get a permit". If you do it, you get the permit. The third thing I would suggest and this would be a big step forward would be to provide language in the statute to excuse sectionals; meaningless violations, minis violations, things that do not make a lot of difference, or does not harm anything. One way to do that is set a dollar value too simply to indicate that is someone did something without a permit and would of cost X dollars to remediate or less. This proposed law does not apply, does not have any thing to do with those kinds of minor violations. I might say incidentally if it would be adopted in the minis rule that could help to sharpen the focus against some of big violators, minis the focus on little violator having the need to prosecute some little violators in order to show that you are being even handed. Then you could point to the law and say the law does not apply to these minor violations. In addition, I hope that the board might consider that as one of the things to do trying pressing forward (with the proposed law.) I have some other points that I will save for Guy (the Town Attorney), as we go outside to have our debate out there. Thank you so much for your attention. (See attachment #3)

Bill Podolka resides at 152 Caroline Depot Rd., Caroline: I am glad that the town is proposing this law to help protect the taxpayers of this town. I glad you (the Town Board) came to the agreement, that in which no one wants the taxpayer to foot the bill to fix something or to take care of something down the road. So I think we are all in agreement on that. Not only is the gas company drilling a wake up call to all towns around here. Big industries have big impacts and we ought to be prepared to have a double playing field here to a clear what these bills produce. I am glad the town is trying to set up a nice even end-set of statutes. The reality is the sound of regulations is a dirty word. Realistically, things to do happen and things do go wrong and I have surely have heard example of other towns. A hole in the ground that a car fell into, I do not know the details, but things do happen. People cut corners and people make mistakes. Therefore, it is important to have something set up to help protect all of us for those kinds of things. The things I like about what this law does, is clearly making the contractors responsible to provide funds for the town to do it. So it sets up monies for inspections and the town is ready to do that. Read out of the contract. Assuming the contractor is liable to for all of his activities and any problems that occur, compensations, none of that is going to fall back onto the town reducing the town liability. I think it is clearing limits the town from liability and protecting public assets, like roads from washouts. I really like the provision of the law of spreading substance on roads. There have been occasions of getting rid of waste matters. In addition, the town realizes the roads are unstable surfaces and the town has to fix the problem before it washes onto someone property. As for drawings and specifications, owners have to be notified that it is happening and some cases it actually necessary because the property owner owns his own land and the town owns the road surfaces and the ditch. It is great that there will be enough notification and it requires an assessment form. I think it was a well put together. There are a couple of things I heard, the intent is to apply is to everyone with the impact of the gas companies from civil to criminal penalties. If I do something wrong then I receive a fine. If I am not going to pay it. I have to face the potential of going to jail- this is not much different from other penalties we face today in other areas of our lives. Maybe it will make a difference to make someone pay the fine. I do not think that will be a huge issue across the truck companies coming here right now. The reason for flexibility in the long terms are the same. Realogy, geology, roads surfaces are not the same, trying to specify all things. But if you review all the promises of the law in all of those cases it is necessary, needs to happen and it overall reduces problems instead of increases what the town now faces. Thank you.

Rebecca DeWitt resides at 215 Speed Hill Rd., Caroline: I just wanted to speak to one aspect of both Bob & Bill mentioned that has to do with the criminal component. I have read in other states and here we are talking of the gas & drilling industries but you know it should certainly apply to any industry that is coming into town. I agree with that, but I have read in many incidences where gas & oil companies would rather pay the fine than rather to have to change in their way of doing things. So I really agree with Bill that there should be a bigger stick as far as non-compliance. And so, I do want to speak in favor of that. The roads in our town (I do not need to tell you, you know that many of them are treacherous), the possibility of trucks turning over because they did not make a curve of the road, you know, that potential really exist. Therefore, anything we could do to plan for that

or anticipate for that it could be an issue in our town. You know, many of our roads are not paved with the asphalt and have needed to be fixed. But you know now with these big huge trucks coming through the roads are going to break down easily, and the curves will break down too. So I just wanted to speak in favor of strong penalty for non-compliance if they don't take care of the clean up and make the area ready for safe travel, etc.

Jonathon Comstock resides at 114 Bald Hill School Rd., Caroline: I want to express my gratitude. I just think it is very important preparation for many changes in the terms of the town activities, businesses. I did read the draft on-line this afternoon and the part of fact to aim at all regulations seem a little bit scary. I did not find very much in it (proposed law) that seemed overly burdensome. In other words there were waivers for things like mailboxes and news paper boxes that were exempt from these regulations. I just feel it is very important preparation and preparing the town into not being imposed upon by any of the number of possible activities in the future.

Irene Wisner resides at 334 Brooktondale Rd., Brooktondale: I too very much appreciate the assessment of this law in the ways that will help protect all of us for as tax papers in this community making payments of damages that we have not caused. With that said, can I ask a question, or just is it for comments only?

Don Barber, Supervisor responded: You can ask a question but you might not get an answer today, it could be a question that we (the Town Board) will have to think about and discuss.

Irene's questions: My question actually springboards off from what Mr. Anderson had said in which has to do is "How is this law formulated?" "And whether there were models that you used that were derived from laws that were tested?" I feel really strongly, as I appreciate, because as well as putting laws in place it is really easy, putting solid tested laws in place, and that is what is important. In addition, into the extent of this law was it perhaps derived from other places in some statutory record or case record having the challenge of these would be very beneficial to us? I encourage that, and I am wondering if, whether or not, that was considered in the writing of this (proposed law)?

Don Barber, Supervisor responded: I do not know if this has been tested in a case, but I do know that this law and similar laws have been written across the State and also in this County. And they have been on the books for years. This law takes it's authority and mirrored what already exist in the statute for state roads & county roads, which run through our town. So if anyone wanted to do any roadwork or put a driveway in, or cut a pipeline on a county or state road they would have to get a permit to do that. Therefore, this evens the playing field for all those in the town. Therefore, for the base of this is Highway Law Section 136, which exists for county roads currently, it is not a stretch of Town Law and this law is not creating a new law on untested territory. Other municipalities and other towns have adopted this law. And finally the only other comment I want to make on this is, I'd like to make is the supplement of GEIS for the Hydro-fracking which tells local governments that it is their job to protect the their roads and directs us to be working in this area. We have reason to be working on it not only for gas drilling, but for current activities in the town.

Irene commented that she feels very strongly putting in place a solid law. Irene supports the spirit of the law and finds it bases on strong evidence.

Lisa Wright resides at 346 Rice Road, Caroline: It appears that on the base of this law it is accessible and pro-active. It seems that responsible companies should not mind complying with the law. In which it seems to protect the little man in a little town uses. What Mr. Anderson said that this might be a concern an invitation to expensive litigation in the future. I would like to know more about that. I would like to hear on how that works? In addition, if this law shows co-arbitrary in excessive use of the permitting process then I would like more about that as well. I think it is important that the town board let us know more on how that is interpreted. But on the face of it - it does seem like a pro-active and sensible law.

Tim Seeley resides at 120 Burns Rd., Brooktondale: I just wanted to comment on all the good talks about both the legality of this law and what it is composed of and a lot, about what we are trying to look forward to in the future. I just wanted to state that this is already happening in our town now. When I was on the town board I'll give you two examples: where our highway superintendent came in with reports that she needed to go to this road to fix damage left by logging companies. When a ditch with a large rainfall vent washes out the road (because of a construction project) and the crews have to go out and fix that, it should not be the Town's responsibility. Now let us talk about what Bob said, about setting a level. I think if we go down that road, we need to think long and hard. I do not know what the repairs cost us, but I am guessing it was thousands of dollars.

In addition, the highway budget in our town makes up 2/3 of the budget approximately. I think of taxes, I do not want to have to pay for someone else's problem when they damage our private/public property. I just wanted to point that out. It's not just in the future, but we have this occurring now. Secondly, as for being civil or criminal law, if I were to cause damage to any other town property it would be a criminal offense. I do not know why causing damage to our roads, when the taxpayers would have to pay for it should be considered a civil penalty. It is causing damage with taxpayer's money to repair these roads then it is criminal offense. I am glad you (the Town Board) are working at it, and hopefully will find a way to pass it.

Kim Whetzel resides at 2935 Slaterville Rd., Caroline: I am an operator of 16 Class A trucks here in the Town of Caroline and thorough out Central New York. I have on occasion gone to different forums and spoken about big trucks. Big trucks are a way of life for all of us. Very few things in your home are not touched by a truck. I am, my business is the way our society operates. I think this law already appears to be drafted to try to head off gas drilling companies. Maybe they are a problem, maybe not. Many things about the gas industry, hydro-fracking and all the things that go with it because maybe there is gas in our area that might be exported, there is a lot of hysteria surrounding it. Many facts that have been thrown around when you dig into them, are not so factual. It is more to scare people. I hope that the Town of Caroline is not being taken in and going down that same road. I remember some years ago, on the Landon Road a retired minister from Brooktondale wanted to put in Mobile Home Park. "Oh my God, a mobile home park". Everybody was all up in arms and we created local law against mobile homes. To regulate mobile homes, you had to pay this and curb that and all these sort of things. Everyone was all happy because he did not go through with it. I was approached because I was an operator that owned property across the road at that time and wanted to know what my feelings were about it. I didn't think it was anything to get excited about because as a septic contractor for this county for 40 years there was no way that that type of soil would support that many mobile homes. We would have to scale it way, way down if there was a need to proceed. However, the regulations went into effect and the man did not do it for whatever reason. Then the next thing came along was cell towers. "Oh, my God cell towers in every backyard! It would foul the whole landscape." Next thing you know we have a cell tower. Now regulate cell towers. I think the only cell towers that are in the Town of Caroline are actually the ones set up by the county. And the Town made some effort to try to call that off, but I don't think they were successful and ultimately the county did whatever they wanted to do. So it has left the rest of us that want to be involved in that industry and some how operate a tower with no available means. I want to know how to have a newer, higher, bigger tower than I have had for the last 30 years to operate my business. But I have to put up thousands of dollars for a fee and have to put more thousands of dollars for the Town of Caroline because there maybe something that they want to look into before I do my project. I think the Town was kind of over reacting on a lot of this stuff, for someone who has to work within the perimeters of these rules and regulations. Mr. Seeley mentioned about damage to the roads, I say it is inevitable. And no roads are built to handle as much of the traffic that is on them and they are no different than the roads in Dryden, Lansing or any other place else you go to. Look in the next State, south of here, next one east, west, wherever you want and they are not any different. It is not the boogiemans causing problems, it is just the wear of the road. I think to make this law have criminal penalties in it, is bit of an extraction to make it more cumbersome for someone to get a driveway culvert put in. It does not affect you who already have a driveway in, but it does affect people who might want to have a new driveway, it affects them greatly. So I would really ask the town to take a good hard look at it and see if this is really real or this a little of the boogiemans component in here? Thank you.

William Crispell resides at address: I sat on this board about 8 years ago, back a long time ago. I am kind of disappointed to spend time here, but I really do not have time to spend here tonight. Trucks are in unavoidable for everybody here. Everybody hates trucks. How is people going to have timber, sell the timber so they can pay the taxes without a truck for the truck hauling them. Do you want them to drag the logs down the road? Go to PA where they have hydro-fracking. They have 10-ton limit road signs on every road. Let us go buy some signs to put on these roads with a 10-ton limit, then the contractors are going to run truckloads on these roads to go fish out that gas down there and water and anything else, gas, whatever they do. So have these permits put on these trucks, permits they have to carry inside these trucks to allow them to drive on these roads. The cement does not make these roads no stronger, no wider, no tougher, allows but it allows them to ride on it. Let us go buy those signs - I don't know what they cost. We will pay for them. This is inevitable. It is coming. It is going to put some monies into the town and then taxpayers realize the deception is real. Down in PA driving one hour south from here and you will see what is going on down there Yeah you hear a lot of stuff and reports on it. Nothing different from the Gold Rush years ago. Workers come in and take part of the gin mills, spend money, we don't

have a gin mill in the Town of Caroline, well we do have one (Laughter). They don't have to drive all the way for it to get their sales taxes on the gin mill. There does have to be some sales tax on that bar room. I do not spend any time in it so. I pay enough tax -highway use tax when I run my truck - I pay registration tax, fuel tax to run my trucks over to pave these roads, we got a good highway superintendent and good highway crew to build roads. Let us build roads instead of bedlum.

I am disappointed tonight of the board in which I am part of it. I come here to speak how I feel about it. If you want to give up on trucks then lets put up a big sign up "No Trucks allowed". That means fuel trucks, grocery trucks, even the trucks that bring in the caskets. I guess we do not have no undertaker here in Caroline, Do we? We can get rid of the trucks, the garbage trucks. No body makes garbage here - do they? We are not allowed to burn our garbage anymore - Are we? You got to pay money for some truck to haul it away. Where are they going to go with it? Lucky we do not have a landfill in our backyard. I had one in front of my farm up there for years. I would go down there and shoot rats. Someone come along and covered it up. Do not dump garbage anymore. Mr. Shevalier? comes along years ago when I was on the board they tried to band boozle him out of town because he had a few cars sitting along the road and people go along and pick up these junk cars and carry them away for us. I stood up for him. I would go there to buy parts for my car and my truck and tractors. Mr. Shevalier pays his taxes. Mr. Shevalier lives in our town. Mr. Shevalier puts his britches on just like I do and just like all you people, one leg at a time. Put these laws in and we can break them. It is hard to prevent. Or we can keep the trucks out. I do not care, I am of retired age, I do not have to work. I get zapped and pay enough taxes. But I got to pay my land taxes. I got to let the log truck in. I do not let the milk truck in anymore. I am sorry this is the way I feel. Thank you.

Michelle Brown resides at 232 Speed Hill Rd. in Caroline: – I just did not see a thing that says that we are not going to let trucks in town. Just that if they damage something that they have to pay. That seems totally fair to me. Yes, Gas Company is making a lot of money - why should our taxes go up so that somebody else can make more money. I guess that is all I have to say about it.

Anita Alexander resides at 88 Yapple Rd in Caroline: I just didn't see any thing that says that we are not going to let trucks in town. Just that if they damage something that they have to pay. That seems totally fair to me. Yes, gas companies are making a lot of money - why should our taxes go up so that somebody else can make more money. That is all I have to say about it.

Second round of comments:

Rebecca Dewitt: You know - I certainly don't disagree. Trucks are necessary to our way of life. What I do not - I wish I had the numbers here in front of me - but the numbers of trucks that will, if natural gas drilling is approved and the State hands out permits, a number of trucks will be coming in to our town but not only , in many incidences carrying hazardous materials. You know it is going to intensify our traffic in ways that I do not think we can anticipate. So I just wanted to make the comment that we appreciate what trucks do for us in this society. I know I do. I just strongly believe that we need protection and particularly when you hear about trucks turning over and spills and all kinds of things that could cost hundreds of thousand of dollars to make right. So - thank you very much.

Tim Seeley – I just wanted to say - I read this law fully - twice maybe. I do not see anything in here that limits or regulates trucking moving on or over our roads. This is about excavating our roads, about digging them up, or making a connection to that. I think right now it, if I was to apply for a building permit - I was going to put in a house put in a driveway, I think I would need to, as part of that process, go to the town & highway superintendent and propose my plans to put in that driveway. So that I have the proper culvert and know that the drainage was going to work. I think what this (law) really does is, it takes it out of that realm and puts into activities that are going to take place in our town or are already taking place in our town that don't fall under that structure. This will make sure people who are, or having contractors putting in roadways or driveways (maybe it is truck entrances, maybe it is not), that they are doing the work with someone making sure that it is being done properly. That is all I have to say.

Don Barber, Supervisor comment: I would like Cindy to respond to clarify what the culvert policy is and I will let her talk.

Cindy Wittaker, Caroline Highway Supervisor comment: It is basically the same thing this law says, but not everyone who comes to John Daniels, the building inspector is suppose to come to me or be sent to me when they

apply for a building permit. Just last week I happened to be at the Gravel Road, a road that we do plow and there are two driveways. I called John and said "John did you get anyone that came in for a building permit for these two lots? John said " No, Why?" I told them there was 2 driveways and John said, "Oh no, they do". I cannot run around and check every place, but it happens all the time that I find someone working without a permit. Or you will have, (not all contractors many contractors are usually good,) but we have had few come in to town and put a driveway even under the permit process and they will run their bulldozer right in the middle of the road. In addition, they do not care if the pavement is 20 years old or 2 hours old. And they run it across the road, do their thing, and load it back up. We just had that case in the last month a new home going in and the road is not evenly paved but it is in good shape. They rode the dozer right off the bed and tore the road all up and we had to go and fix it. I have, as long as people want to pay taxes, as long as the board wants to put money in the budget I have no problem fixing the roads. That is sort of, what I do. Laughter

Bill Podulka: I just want to make sure (Tim mentioned this) that if you want to get a building permit for a driveway, you have to get some approval. There are certain activities that this law closes a loophole on. Gas drilling being one of them that they might not need to get a building permit as I understand for that driveway. Correct me if I am wrong. So this closes that loop hole that they do have to come to town the same way that a homeowner does - to say this what we are going to do and here what going to be. Let's get everything right. It closes a loophole more than anything else.

Cindy comment: If the State sells firewood now (I have dealt with the State Law long enough) John Pliancy? With the DC, He would tell them before they take a log off they will have to contact the highway department because we have had in the past where they will put logs in the ditch, just drive over the logs and then they leave. They do not even bother to take the logs out. So DC with a private owners have had problems where they've logged it and they come in put whatever to get or if it's dirt they'll just fill the ditch in.

Cal Snow resides at Buffalo Rd., Brooktondale: Presenting the law - How is it (the law) going to be enforced? It seems it should be enforced by the Highway Supt. It seems like a bit of a stretch to have that individual enforcing this law. It is a huge responsibility for anyone to enforce a law like this. What is the steps beyond how it is being enforced, and then who assesses the criminal charges and the charging of the responsible parties. Usually there is a lot of finger pointing. It is just a question.

Ann Boehm resides at 280 Speed Hill Rd., Caroline: Before I looked at the law and I could not clarify this by myself. Someone summarized it for me over the phone and mentioned that landowners in a case of a drill site will have to sign off on it (I do not know what you call it) the culvert, the road, the communication, private road, town road? And I have to think there may be incidences that somebody who has signed the lease may have second thoughts about it. What kind of problems does that creates if I'm right about that? Is it an underscoring of landowner liability? On the other hand, if the landowner wishing to get out of the lease does not sign then does that give the other party (that is the gas driller) who wants to build that private road a reason to come after the landowner? I just wondering there will be moments where some people get really caught - hung up on that particular issue and will become more vulnerable. Am I understanding it correctly or is it an exaggerated concern?

Don Barber commented: I do not know if it is an exaggerated concern. As someone mentioned earlier that the roads are there to use, and the town does not own the land on it, or beneath the road. If the road is changed, if it becomes wider for any reason then where ever that takes place those property owners are giving up their right to that land and they need to sign off. The question you are raising is if someone has leased the land and then the gas company has to come out and put a road on the property, what happens if they will not sign off. I am not sure how that plays out. I'm not sure if the town has a role in that. I think it's between the gas company and the property owner. But it will be a question we can pose to our attorney so that we are clear on that as we work through this process in to answer questions.

Bill Crispell: I have some building coming up on my property. I haven't read this law - this law like somebody said: Who is going to enforce it? If I want a driveway put into my home, do I have to talk to Mr. Daniels about it this not? Before the law ,all I had to worry about was getting a permit from John Daniels saying if the driveway was wide enough for fire trucks and any other emergency vehicles to get through. Now if I want to put a driveway in, what does it have to be to fit into the law?

Cindy responded: The fire company has to sign off on the permit for insurance reasons. The county has their own process and I believe it even costs money if you want to go through the county.

(Bill continued for an extended period voicing his opinion about the law and taxes in general, most of the recording was unintelligible (too much background noise). He summed up by saying that he has broken laws in the past and that is how he learned about them.

Toby McDonald: I have a question I need clarification. This is what I see as really as the crux of this whole law. We heard from Bob Anderson about his belief that the affect of this law will result in discriminatory enforcement and that we were opening up a possibility for this to happen. If this law is not enforced in an evenhanded manner throughout the town, does that emasculate this law?

Guy: Well there is more than one question in there so I will answer the first one. Whenever you issue regulations by either state or county mandate or under your own regulatory scheme, building permits, subdivision reviews, and any other permits, including dog permits, hunting licenses, etc, whenever your issuing some type of permit engaging in regulatory activity the overzealous bureaucrats abusive power monger we have seen it on tv, we know who those people are. There is always the chance that you are going to run into that hypothetical character. So it would be incumbent on the town to make sure that the people who are issuing and reviewing permits are doing so in a level manner. In other words, not requiring a person who they likes to give them a b and c and then the other person who they don't like and ask them to give them d, e, f and g. There does need to be a rational relationship between what is required for the permit and the nature of the project under way. If those persons, a and b were posing identical actions they both wanted to do the exact same type of excavation within the highway right of way then they need to be treated similarly with variation only for things you can't foresee. Things like topography storm water runoff, what is the drainage in the area, are there protected issue in the area little and things you can't see from place to place. But you certainly can distinguish between someone who wants to put in a culvert for a home, a relatively simple thing and somebody who wants to jack under the driveway to put in a 20 inch sewer pipe. Those are 2 very, very different types of projects that have very, very differential impacts. The person who puts in a sewer pip or gas pipe and is going to jack under the road way is creating a much greater hazard for the traveling public, is engaged in a much more complicated project form an engineering perspective, etc.. There are basis upon which you can make distinctions in operation based upon what those operations are. Just as in enforcing the building codes, when someone is proposing a certified truss system, you have to look at what that truss system is rated to see if it works but you are also allowed to devise a rafter system and build it your self as long as it carries wind load, snow load, ect, it can be ok, there is an interpretive function that every public official goes through in reviewing any type of permit, regulatory action ect. So knowing that there is this zealous official that might be out there and hopefully who will never be employed in your town, you know the law tries to build in some protections for that. In other words, knowing that someone can step on what are protected rights of citizens to receive a permit if they comply with the permitting requirement. How can that be interfered with by an obnoxious bureaucrat. We all know it can happen. So the law was written to try to build in waivers and variances and exceptions in appropriate cases for things that aren't really necessary. You don't really need a complete site plan to put in a culvert. But you would if you're talking about putting in and you're talking about crossing 42 roads with a pipeline. They are just very different operations. So hopefully through an appeal or waiver process both of which are in that law, if there is an unreasonable or irrational decision or something demanded that doesn't bear reasonable relationship to the purpose of this law, then it would go thru that appeal process or thru that waiver process. And before you end up in court the town board would be able to say "whoa" this is not something were going to fight about. I don't think the land owner or the applicant here is making an irrational request. I don't see the need for topographical studies for an 8 inch culvert. So having those built in helps prevent the worst case scenario of a law suit. In my opinion.

Toby: OK. And the other question was about building in a de minimus rule.

Guy: Well it depends what you're targeting that rule at ... damage?

Toby: One of Bobs' arguments is it was as small as stating that this person could be in trouble with this law for going out and shoveling some gravel back into potholes at the end of the driveway. And I'm not sure what the point is where the law becomes enforceable and at what point its not and I guess that is what I'm asking. ...If you think it would be possible to build something into this or if it doesn't even need to be stated.

Guy: I would hope that in terms of enforcement there would some rationality applied in terms of the officer who is looking at it, to say, you know what you shoveled gravel in a pothole, even if we assume it does meet the definition of excavation gravel in a pot hole...not an issue. My problem, I guess my question would be if you're going to have a de minimus rule, what is de minimus, not the number, but what's de minimus? Is it the action of

the landowner? Is it the cost of reparation? What is it? Is it okay to not get a permit even though you know you need one simply because you don't anticipate that you're going to cause any damage and where is that line and how does that avoid the problem of discretion because two people looking at something that is indeed de minimus or may not likely disagree.

Toby: One of the things we're going to be hearing against this rule, law, is that small actions can lead to an infraction of this law.

Linda: People want to know how to apply it

Toby: People want to know whether they can go out and push some gravel around at the end of their driveway whether that's okay or not, or whether they stack up some stones around the end of their culvert which has been there for years and they decide to stone their culvert if that's okay. This is what we're hearing from people who are not on board with this. And I guess what my question is, is how do you satisfy those voices coming and saying I am not really comfortable with this because you have the ability to jump on me if I go out and shovel some gravel around at the end of my driveway.

Guy: You can list other exceptions to the permit requirements so that the spreading of a certain amount, less than a cubic yard or what ever is rational to preserve an existing driveway. You could add as many variations on a theme if you wish. You could give the permitting authority the ability to determine when a permit is required and when it isn't. I don't know if you solve the discretion issue. I know what you're getting at again, I get what is "de minimus" "at one point. I believe someone had said if it doesn't cause a certain amount of damage, if it cost you less than x to go fix it well I could do a million dollar project and do no damage. Well I am not sure that would be the proper way to tackle the problem. If there are issues that this law should not touch then I think that the thing to do is try to identify a reasonable range of specific instances you could add in, or leave it to the discretion of the permit issuing officer as to automatically issue a waiver for minor things.

Toby: Well I'm comfortable with that as long as we don't end up with a circumstance that you eluded to earlier where we get tyrannical permitting person

Guy: Well in theory you have the same problem with your building permits, if you get a tyrannical building person they could just refuse to issue permits until you comply with the technical letter of the energy code, which if you are familiar with the energy code can be difficult to comply with in certain respects. So I think what it really takes is that you have reasonable people exercising you know being fair. And I don't know that you can write fairness in as a standard for someone's mindset, how they look at their job. I think the thing to do would be to see what types of situations come up, if there's something that occurs frequently such as in zoning where they have a set back requirement, and they find they have a hundred people coming in to get variances because they want to put a shed in their back yard. Well we don't need to be reviewing all that, so let's change it. As things go on and you find things that are subject to waiver because they should just not be in the local law you amend it. You let experience dictate how to make it fair, how to make it better. If you want to take a stab at identifying as many of those areas where you think your not looking to really regulate

Dominic: It might be a good idea to look at other towns experiences with this type of law and ask what they have exempted from it.

Don: Lansing?

Dominic: Exactly. They have had this on the books for a while.

Guy: The culvert application is for example a very, very fast simple type of permit application. Jacking under the road for a water line is a little more complicated. It involves competent contractors, the water department. There hasn't been a non compliance problem in Lansing since the highway superintendent went out and filled up a ditch that was literally dug into the side of a very, very busy residential road. It was literally cut into the side of the road to get to the water line and that was done without a permit. He went out, left a note on the bulldozer and said see me, you need a permit. That ended the problem town wide instantly. He went and got a permit. But there are pretty basic permits in Lansing, it's not really any different than getting a building permit. You want to do some type of excavation or construction in a highway right of way that town (Lansing) took the position of "we're here to make sure our roads are protected and that our citizens and other people that are visiting our town have safe travel. And we can't do that if anyone can go out and chop up the road anyway they want and there's not permit system, there's no penalty there's no consequence." So exactly what they've exempted or what they don't look at

I couldn't tell you because in, I don't know, 8 or 9 year there hasn't been a legal issue that has come up in regards to that law. Most often it is dealt with in the form of basic culverts or in the tapping of water lines. There is not that much construction that occurs in roadways.

Dominic: Thank you. That answers my questions.

Bob Anderson: Could I ask Guy a question or two?

Don Barber: You can ask the board a question, and we can ask Guy a question.

Bob: With respect to this statute, am I clear that it has nothing to do with post construction damage to roads and the question of who is responsible for paying for that? As I understand it, this law is a permitting statute and that gives permission to someone to do a project. The only way the question of future payment for damage resulting from the project at hand or any other activity that that party that's seeks the permit might engage in could only arise from negotiations over the permit. As an example-"We'll give you the permit if you promise for ten years to pay for all damages that are accruing against this particular set of roadways, whatever they are, what ever routes that the truck company trucks take." There seems to be a misconception that this law guarantees that lets use the dirty word the gas companies will pay for road damage. And I don't think it does.

Don: Well I'm going to ask Guy about that. We can ask him about post construction and how that will play in to the bigger picture. But this law has nothing to do with highway oil or gas trucking industry damaging our roads. It has to do with someone going in with a shovel or good strong finger nails or some kind of mechanical equipment to our road surface and damaging it. So driving over it is not implicated or discussed or managed in any way with this law but the question you asked about post construction is one that I only assume that you're getting a permit to do it in the way is prescribed and once you've done that your liability is gone. The town takes care of it from then on. If we let someone cut across our road it's almost impossible to perfectly rebuild that section so that it will not slump in the next rainy season. Its guaranteed to settle. And it will do that for the years and years. I think that is not what we are asking for if someone cuts across the road for ten years to keep filling in that depression continues to generate. So we will ask Guy that question and if that is something we need to cover, then we will cover that.

Guy: I would simply say it is not a roadway preservation law. It is not about excessive use damaging the subsurface of the roadways. This is about a permitting process for people needing to or who want to place infrastructure in or within the highway right of way. So what can it touch? It can touch your standard culverting system. I don't see any change in the county or town level, its just a permit that's issued along with your building permit. It could touch gas pipe, it could touch skid paths, bridges, things that are moved logs over roads. It would prevent people from dumping spoils or creating bridges and not removing them. So I don't know, I don't see the law touching on the right to travel or the right to use of the roadway, what I see it touching on is regulating people who build things on the road way. As far as forever on the liability hook I see the law acting just as you sort of summarized. They have their permit, they would get instruction, they would get post construction completion and that would end it. They would restore it to the required level of the law and that would be it. And if frost heaves I think what you are saying is once a ditch always a ditch. There is not a provision in this law to make them keep coming back again and again and again. If you wanted to try to put something like in the law that it would be a really significant change. What you would really be doing is having some sort of guarantee of the work and your talking about longer term bonds and then your getting into talking about something that's a little more onerous than permitting. Your getting into permitting and guarantees and I don't thing that was the depth of focus that the various municipalities and counties were looking at. They were preventing people from taking a ditch and just cutting across the middle of the road and then just hand tamping a little black top over some gravel and saying there back to normal. I don't know if that answers the question, but I do see once the project is closed out, its done. Once you put your culvert in properly, its inspected, your done. There's no open permit process, there's nothing to do. If someone does something negligently they won't be released, they won't get their permit closeout.

Don: Thank you. Any other comments?

Pete: I got a question. Directed to you or Cindy or Guy. I'm not sure to whom to ask about the culvert policy we already have in place. Cindy if this law were adopted, what would become of that culvert policy? For example, the current culvert policy says that you must hire a contractor off an approved list. This law contradicts that policy. So I'm kind of asking Cindy how you feel about that

Cindy : Well I take it that with this law that John will get most of the work. Am I right that the building inspector will be doing most of the permitting process?

Pete: I'm asking under the current policy, Peter Hoyt couldn't put in a culvert for himself or anyone else unless I am on the list and I'm not on your list. If this law were passed then as long as Peter Hoyt met the objective criteria then you would not be able to prevent him from putting in a culvert for himself or anyone else.

Cindy: As long as its done properly.

Pete: I think that correct.

Cindy.: One good example not far from here, and I don't want to get into where it is, but the homeowner put in a road/driveway where the road needed ditching. The homeowner brought his house in on wheels and he called me and said you got to come and look at this ditch we got a problem. So I went up and looked at it, he put a gas line in along with NYSEG, (and I don't know why NYSEG allowed it), but the bottom of the ditch was high and he had the gas line coming out of the bottom our road going into his lawn this going across the top of the ditch. You had to step over the gas if you were walking up the ditch line, along with the electric line. He wanted me to do something. He put his electric line and his gas line in the ditch so that it was sticking up a good foot and a half

Toby: Does he hook that up or does NYSEG?

Cindy: I have no idea and but that's what happens. Right here locally.

Toby: I thought NYSEG brought the utility right to the side of the house

Cindy: I was shocked. I thought I never thought NYSEG would leave something that dangerous in the ditch. They wrapped it with caution tape.

Pete: Could I follow up with one other thing with Guy, maybe if we have a minute? One of the things that really disturbs me about this law is the criminal penalty. My theory has always been if you do something to hurt another person that is a crime if you do something that is going to cost another person money then the argument is in fact about money. You have financial relief whether it is through the courts or whatever. Now is it not possible to put sufficient teeth into a civil remedy so that the example somebody gave if the maximum fine is \$1000 bucks it might be a lot easier to just flout the law and write the check for \$1000 and go on your way? So I think it is reasonable to try to defend against that, but I don't feel comfortable that with having criminal penalties for what is essentially an argument about money which is what this is. So how can that be rectified? Bob suggested take the criminal penalties out. How would we protect against a fine that is to trivially small that someone that has sufficient resources would just pay the fine?

Guy: Well, if your going to get into the world of environment clean up I think the record is pretty clear, you can't rely on a civil penalty to enforce them to clean it up because it is cheaper to pay the fine. But I guess I really give a comparative basis if a code enforcement officer were to issue a compliance for someone who was not in compliance with the building code, lets say it was for something simple as they were mandated to renew their permit and they failed to do so. In the state of New York that is a criminal violation of the civil building codes and the fine is up to \$1000 dollars per day for each and every day that the violation exists. So compared to other forms of regulatory violations this is pretty mild weather civil or criminal enforcement is in this law and which should be selected for each case is a matter for the town board and the enforcement officer. My view of it is that almost all should be sought for civil violations unless you have aggressions situation or you have a repeat offender who is just not getting it. Whether that would happen I don't know, because I am not the person who has to decide how to enforce it. But you can have civil or criminal or both. The reason...historically towns, villages, cities, the state, they almost all if you look at all the different types of zoning and code enforcement and storm water requirements they almost all across the board is criminal enforcement. In this state and elsewhere. Why? Because technically criminal doesn't cost the town anything because it falls under the county legislation for the district attorney county legislation section 700. The theory is we don't have to have a town prosecutor because the state has mandated a county district attorney. The problem with a lot of rural counties which is Tompkins county is that the DA will not prosecute civil violations. So you see a lot of rural counties will not prosecute criminal violations of local laws. You will not see the DA appearing to prosecute for not renewing their dog license. They won't appear on zoning cases. They won't appear on any number of matters that fall under town law as opposed to state law. There position is we only have enough resources to deal with crimes. Murders, drug deals and things like that. So the problem is that it sprung up regionally when you get out to places like Syracuse

where the DA pretty much does everything because it is a much denser population. If you have only criminal enforcement and the DA isn't going to enforce it then what do you have largely nothing so actually civil enforcement came as a remedy of a lack of enforcement by the county. Could you devise a system of civil enforcement that takes care of violators? Sure you could, but understand that civil enforcement is also more time consuming and more costly than criminal enforcement. It's a different judicial process.

Pete: One could argue that that is a way to protect people's freedoms, but we can debate that outside. To follow up on the question I think Calvin asked lets just say the laws adopted with the criminal penalties, someone has to issue an appearance ticket, John Daniels is not a peace officer, how would that work?

Don: Same way it does with the building code

Pete: How does that work?

Don: The sheriff serves it the paper it goes to the judge

Pete: So John Daniels would call up the sheriff and say we've got a guy putting a culvert in and I told him not to so please come out and give him a ticket, is that the way works.

Cindy: Appearance ticket.

Don: But you'll get a cease and desist because he is working in a public right of way.

Pete: Who issues that?

Guy: On a philosophical point I agree with you, using the power of criminal sanctions is one of the stronger arms that the town has. Whether that is necessary for those repeat offenders or aggressive offenders, someone who is just flouting the law, that is the legislative decision for the board. But yet it is a power that could be abused, and needs to be used very carefully.

Kim: In the last three years someone came on my property and maliciously. The State police picked him up. We wanted to have him prosecuted but the DAs office said we don't have time for that kind of thing. It was a criminal charge but they said we don't have time for that. So this gets back to what your attorney is saying; covered in part, maybe we may think that the Town of Caroline has something going on but we (the DA's office) doesn't have enough dollars and manpower to prosecute that sort of thing. Just food for thought. I was absolutely blown away when they refused to prosecute in my situation. Had someone that came on my property, criminal mischief, the whole 9 yards, admitted to it, and they went to follow up on it and the county said you know we got drugs, we got rapes, we got murders, we got that, we don't have time for this, so the system doesn't always work. We ought to take a peek at that. I don't know how it will happen to someone working in a road right of way. I work through out Central NY working town road ways, County road ways, State road ways. The way the State handles it, is you buy a bond when I work on their roadways. But the State also sells that bond so they got a little more they can scrap up a little bigger pile of cash, maybe not today, maybe in years past, but they sell you a bond and that is how I put in water lines and that sort of thing. However, the criminal aspect of it, I think there is something to be looked at there and maybe you will not have anybody in the County backing you up. I don't know.

Don: Asked if there were any other comments on this public hearing. Hearing none, I will call this hearing closed and thank you for spending part of your evening with us.

End of Public Hearing 8:25 pm, Agenda Meeting resumed at 8:35 p.m.

Reports

Toby McDonald, Town Board

See attachment 3

Dominic Frongillo, Town Board

Energy Independent Caroline- We have been issued an RFP, and corresponded with NYSERDA around in order to comply with our grant for \$29,000 for a construction waste plan. We are confident that they will give us the go ahead soon with the contracts, so we issued an RFP to a number of firms and other energy contractors throughout the region. There will be a site visit and a bidder's conference, which is tomorrow at 10:00am with

Barry and Steve. This for the energy upgrade for both the historic town Hall and the Highway Department they will do a walk through at both buildings. They will be available to answer our questions and then the bids will be due in the next few weeks. The Buildings and Grounds Committee will review the bids and make recommendations to the Town Board. Don said everyone should be aware that all bidders may choose not to bid on the entire project and may select the parts of the project they wish to bid on. Some projects may be outside their skill set or they may not be certified to do.

Solar Data- Rob Garrity from Finlo along with the webmaster Katy Nicholson is putting the solar PV data on line for Towns people to be able to view.

Peter Hoyt, Town Board

Pete had a question after talking with Bill Crispell regarding where the topsoil came from for the lawn in front of the annex building. The concern is it came from a ditch because it didn't appear "screened". Don answered that the topsoil was not screened before it was put down but SDM Landscaping did go through and screen the dirt 2 times, removing stones and any other materials, they also broke up any lumps of dirt and then they graded the lawn area. The other concern Pete shared was that the job was not bid out locally and Don corrected him by saying it was bid out locally and Toby added it just was not awarded locally. There was a significant difference in price between the local bids that were much higher than SDM's Landscaping. The board opted to go with the bid that covered all the requirements and was at the best price.

Budget-Pete hasn't met with Brooktondale Fire Department about the budget as of yet. He will meet with the Slaterville Ambulance Company in the very near future.

Linda Adams, Town Board

No report

Town Business

Subject

Excavation and Construction in Municipal Roadways and Highway Rights-of-Way proposed local law.

After the public hearing ended, the board continued the discussion. Pete still wanted the criminal penalty part of the law excluded. Linda said people are mistaken about the purpose of the law, feeling it has to do with trucking and gas companies and no other construction issues. Toby added that people were polarized beyond where they should have been. Linda was impressed with the fact that other towns have had this law on their books 8-9 years without any major problems. Toby doesn't see any reason to remove the part about criminal penalties from the proposed law. Don said you are almost always exposed to criminal penalties no matter whether you drive and speed or whether you don't follow the laws.

Snow & Ice Agreement: Don addressing the board as far as next week's agenda: Snow & Ice Agreement with the County that he has a couple of copies to pass around for anyone to review. The agreement is for the Town of Caroline to plow County roads. There are no changes from the current agreement. Cindy is in agreement with it. Don has to be authorized to sign it. Dominic asked if the miles were adjusted in this contract. Don explained that the contract covers time & materials. And that the agreement is dated to be effect into 2013 (it's a 3 year agreement).

Slaterville Ambulance and Brooktondale Fire Dept Budget: Pete commented that he wanted to talk to Beth Harrington about funding through the Ambulance Company. Don said there was a big jump last year because of some state mandates. In the past the Town Board encouraged the Ambulance to charge for their services and they did not want to. Other municipalities who charge to an Ambulance ride usually pay but for those persons who can not pay for it, they didn't get charged.

Many individuals have medical insurance coverage and it covers the Ambulance services so why should the taxpayers pick up that cost? Toby commented on the procedure they have to follow with all the paperwork with the towns and insurance companies. The hospital restocks the town ambulance with many of their supplies for free. When the ambulance charges for services to the individual, the hospital will not supply them. There's many clerical tasks that the ambulance does not want to do, if they start charging. There was a discussion with everyone regarding charging the Town of Dryden for Slaterville Ambulance services is being encouraged. Don is

going to ask the Ambulance Co. to come in and talk to the board in the October.

Budget Discussion: Don is making everyone aware that they will be discussing budget next week.

Tree Removal: Don asked Jim Goodell (the landowner) that 1/2 of the tree is fallen on his property and 1/2 on the Town's property (next to the Historic Town Hall). He contacted 3 arborist for an estimate and the best estimate was \$650. He agreed on that and the town will pay 1/2 of the cost.

Fireworks: Don Barber has received calls from all over the county because the permit wasn't issue. Some Town's people have offered to be an intermediary but Don said the Town Board is ready to meet anytime the other parties want to come to the table. Guy and Don received a call from the head attorney from the Dept. of Labor, Pico, regarding the permit. After a lengthy discussion with Pico, he said he would not want to go against us in court because we have a good case. Pico suggested calling the Attorney Generals office to get a clarification. Guy has drafted a letter which was sent to the Association of Towns and one of their attorney's experienced in this type of case. He asked Don for the timeline. He will send Don information later this week and after the board reviews it will be sent of to the Attorney Generals office. Pete asked what exactly we are asking for to be done. Don said essentially the question is, do we only have to do with the permit what the dept of labor has on their website. The Attorney for the Association of Towns reads into it that we are completely within our rights.

Dog Control: - New York State Ag and Markets is requiring that all municipalities do there own dog licensing The Town's will be collecting fees from all unspay/unneutered dogs as well as spay and neutered dogs. The SPCA has been working with the TC Clerk Association about the use of those funds. The Tompkins County is talking about collecting those funds for use in a spay and neuter program for this county. The monies would stay in this county and not go to the State as they have in the past. For the fund the amount collected would be spayed and neutered dogs increase to \$1.00 and unspay/unneutered would be \$3.00. This is required by State law.

Some of the details for the payment for the dog enumerator is \$4.00 per household and \$2.00 per unlicensed dog and .50cents per mile.

There was a discussion about Jim Raponi and what is needed to help with his job being the dog enumerator. Jim has spoken with the dog enumerator from Dryden and was told he would need a dog whistle, mace, an ID badge, a yellow vehicle light and magnetic signs with the "Town of Caroline Dog Census" for his car.

Mobile Home Park Law: the Town attorney has suggested changing the subdivision law and adding in the parts of the Mobile Home Park Law. The board discussed the subject of the changes and the language that would need to be changed if incorporated into the Sub-Division law.

Approval of Minutes

Resolution 09-1 of 2010

Minutes of Agenda Meeting

A motion was made by Mr Barber and seconded by Ms. Adam,s to accept the minutes as amended of August 3, 2010 as submitted by the Town Clerk.

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

Minutes of Business Meeting

A motion was made by Mr. Barber and seconded by Mr. Frongillo to accept the minutes as amended of August 10, 2010 as submitted by the Town Clerk.

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

Minutes of Public Hearing Meeting

A motion was made by Mr. Barber and seconded by Mr. McDonald to accept the minutes of August 24, 2010 as submitted by the Deputy Town Clerk.

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

Agenda Items

Discussion and Action Topics

- Transfers
- Approve Abstracts: Highway, General, Lighting
- Resolution Authorizing Supervisor to Sign Snow and Ice Agreement with County
- Vote on Adoption of Excavation and Construction in Municipal Roadways and Highway Right-of-Ways
- Discussion of Contract for Dog Enumeration
- Establish Budget Workshop dates in October
- Budget Process Discussion
- Discussion of Benefit Changes for Part-time Employees

Adjourn

On a motion by Don Barber and seconded by Dominic Frongillo, the meeting adjourned at 10:45 p.m.

Respectfully Submitted,

Jo Ann Reinhardt, Deputy Town Clerk

Marilou Harrington, Town Clerk