

## Caroline Town Board Meeting Minutes of September 13, 2010

The Town Board agenda meeting held on Monday September 13, 2010 at the Caroline Town Hall was called to order at 7:04 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

Also present: Nellie Farnham, John Anderson, Cyrus Umrigar

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### Privilege of the Floor

**Nellie Farnham-** I was unable to be at the meeting last week and I would just like to urge you to support the law you are considering this evening. I think it wasn't until I was a town board member myself that I realized what percentage of our town budget goes for the maintenance of our roads in general in the Town of Caroline. And we all know we hold the Highway Dept to a high standard and we also know that they deliver on that, and that is particularly important for town safety. I see this particular law as a protection for the tax payers in Town of Caroline, that any individuals need to be doing work in these pertinences' that will effect our roadways that they will be kept to the same standards as we expect of our own highway department and that the cost associated with responsible parties will not fall to the tax payers of the Town of Caroline. So I guess I am saying I see primarily as support for not only the highway department but the tax payers. I will be interested in hearing your discussion this evening.

**Bob Anderson-** I just wanted to go on record saying I spent the afternoon filling in the washout at the end of our driveway with gravel because I was afraid if I did it tomorrow I would have to fly down to Washington and be given a environmental impact statement for me to behave in order to do it. I have a sense of where you are headed and I think you are making a mistake and I think you have been told by your advisor that you are about to enact a law that can't be enforced with the penalties that you have decided to use but I hope you are right.

**Cyrus Umrigar from Caroline Depot Road-** I don't want to take a lot of your time as this lady (Nellie Farnham) did to state her thoughts very clearly, so I just wanted to say I agree with everything thing this lady (Nellie Farnham) just said, I really don't think this law will effect things the way this gentleman (Bob Anderson) just said. I don't think it will have that effect at all because really there is a protection in place.

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### Town Business

**Barille II-** Barry Goodrich was asked to give the board an update so he gave a report. Phase 1, 2 and 3 are finished (construction) and they started phase 4 today. phase 4 has only One structure which will be done today. There will be modification of the streambed as they work toward the Buffalo Rd. bridge. Hydro seeding has been completed in the first 3 phases. Everything is in stable condition. Tree planting and live stakes will be the finish to the project. Revegetation will be planted by Soil and Water Conservation District. The trees are purchased and Soil and Water will plant them. Timeline for planting the trees and live stakes will probably start this week. Everything is on schedule and going as planned with no major problems.

**Level Green Road: Minimum Maintenance-** Cindy Whitaker, said we are talking about part of Level Green Road minimum maintenance which does not mean that we will not plow the road. There are several roads in the town which are minimum maintenance that are plowed. If someone comes along and wants to build in the middle of September and wants us to plow a road that are in no shape to be plowed then it gives us an option which will help save tax payers money. It keeps the highway department from having to work on the road on a time limit, from having to run out and work to get the road in shape for plowing, which would ultimately take the highway department away from other projects and regular snow maintenance. It was Cindy's understanding when she came into the job that Level Green road was already considered minimum maintenance because there are road

signs that indicate that it is, however she couldn't find supporting paper work. Having the road declared minimum maintenance does mean that plowing the full length of it will be done if possible. The seasonal sign will be removed with the minimum maintenance signs placed if approved. The State speed limit is 55 mph in any town road not marked. Cindy has had e-mail correspondence with Speedsville who has talked about putting up a snow fence. Don said for clarification that the Cindy is talking about making part of Level Green Rd minimum maintenance and the intention is to try and plow the whole length of the road. Cindy just wants to make sure that nothing will really change that it is just to make people aware of the condition of the road and what the highway department intentions are for caring for the road. Pete talked about the difference between seasonal use and minimum maintenance. Cindy said since the speed limit on unmarked roads is 55mph that it helps with liability issues. Don said minimum maintenance roads typically have steep areas and are difficult to plow.

For the record Linda Adams lives on Level Green road and likes the idea of trying a snow fence. She said she wondered if mixed signals will be sent to emergency response and if they couldn't get an emergency vehicle through the South end they could call the Highway Dept? Cindy said Speedsville wants the road declared minimum maintenance. Cindy has kept the road opened most winters, and she will continue to do so as well as she can. She can not send one of the large trucks over the hill because it would be too dangerous. If it is a bad winter then the highway dept will get plow as the road is assessable for them to do so safely. Linda asked if there is a problem with a neighbor? Speedsville will understand that it is their responsibility to choose the best route. Cindy will talk with them before the public hearing and everyone will beware of what the plan will be for plowing depending on the weather. A public hearing will be held first before any changes will go into effect.

**Dog License Fees-** New York State is requiring that all municipalities do their own dog licensing. The Town's will be collecting fees from all unspayed/neutered dogs as well as spayed and neutered dogs. The SPCA has been working with the TC Clerk Association about the use of those funds. The TC administration is talking about collecting those funds. The idea is to set up a spay and neuter program in this county. The monies would stay in this county and not go to the State as they have in the past. Resolution- next month. For the fund the amount collected would be spayed and neutered dogs increase to \$1.00 and unspayed/neutered would be \$3.00 (which is unchanged). This is required by State law. Minimums are not changing. We have to adopt a local law for licensing. Keeping spay neutering fee in the County can be done by resolution. Toby asked if this change starts the first of the year. Marilou replied- Yes.

**Dog Enumeration-** The board discussed different amounts and based on the budget and the amount of households in Caroline the amount decided on was a rate of \$4 per household surveyed and \$2.00 for each unlicensed dog identified, plus mileage at \$0.50 per mile. Jim Raponi came to speak with the board about being the dog enumerator. His main concern was being bitten by a dog who did not have a current rabies vaccination and medical bills. Don said since Jim was hired as an independent contractor that he would be responsible for his own medical care. Jim's other concern was the timeline for the project and if he got hurt and couldn't finish within that time frame. Don said the contract could be changed to allow for unforeseen circumstances arising.

Linda offered to help the Town Clerk with excel spreadsheets for a listing of the town residences to make the job easier for the dog enumerator. The Town Clerk will gather the information and meet with Linda to put together the information.

**Budget meetings-** Don away the week at the 18<sup>th</sup>. The last day we can hold a public hearing on the budget is November 4<sup>th</sup>. October 5<sup>th</sup> and 12<sup>th</sup> are the regular Agenda Meeting and Business Meeting. Two more meetings Oct 7<sup>th</sup> and 14<sup>th</sup> at 7:00pm. We can ask departments to address the board concerning their budget request. Don will ask the Speedsville Fire Company, Slaterville Ambulance to come in and address the board. Cindy Whittaker will also be asked to attend a budget meeting because the highway department holds is the largest part of the budget. Her budget submitted for 5 full time employees and one half time employee. Linda said Cindy does a great job keeping the budget inline. Pat Brehl brought the Food pantry budget in and gave it to the board.

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## Reports

### **Toby McDonald, Highway Superintendent's Report**

See attachment 1

**Don Barber, Supervisors Report**

Correspondence of Note:

1. Letter from NYMIR that rates for property, liability, and casualty insurance are decreased by net of 6%

Report:

1. Health Insurance Consortium: Goal is to receive our Certificate by October 1st and start covering on Jan 1, 2011 (need signatures from Cayuga Ht and Town of Dryden and receipt of \$1,223, 736 in capitalization reserves
2. Received some budget info still need most of the departments input.

**Health Care Consortium** – Eleven of the thirteen municipalities have signed the agreement. One of those municipalities is meeting tonight and will hopefully be authorizing their Mayor to sign and then the other municipality is meeting this coming Wednesday and they will offer it to their Town supervisor and then those two parts will be authorized. All municipalities, as in our abstracts has the capitalization fees included. After all the monies have been deposited the insurance will go forward from there and we should have our certificate by October 1<sup>st</sup>, 2010. Implementation won't be in place until the first of the year so the coverage won't begin until January 1<sup>st</sup>, 2011. Linda asked if the coverage was comparable to what those employees already have, and will the employees be able to view the coverage. Don said the coverage was comparable; and the employees can view the information on a website which he will share with the Town employees. Don said we have the rates for next year.

**Worker's Comp Insurance**-Pete asked about a letter to Speedsville Fire Department regarding Worker's Comp Insurance. Don said there as been a significant increase so he is asking the Town's insurance company (Bailey Insurance) to get some other quotes.

**Frank Proto, County Representatives Report**

Unavailable-at TC working on budget

**Dominic Frongillo, Town Board**

Planning board has invited a representative from the Tompkins County Planning Department to have a discussion about the difference between an Industrial Site Plan Review process and a Subdivision at this Thursday's (September 16<sup>th</sup>) meeting.

**Energy Independent Caroline**- Barry Goodrich gave the report- Prospective bidders/contractors looked upstairs in the Historic Town Hall. They couldn't view the attic because a ladder couldn't be located. The whole building will be evaluated prior to the future energy work to be done. The contractors also went to the Town Barns to see what work needed to be done there. Barry said they couldn't see between the rafters so there are not sure what to expect in that area. He doesn't believe this the energy part of the RFP. He discussed with the contractor's to be aware of moisture problems. There were 4 contractors. The contractor's will answer any questions as they arise. Bids are expected to be in around the 20<sup>th</sup> of this month.

**Linda, Adams, Town Board**

No report

**Pete Hoyt, Town Board**

No report

**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

#### Transfers

##### Resolution 9-3 of 2010

A motion was made by Mr. Barber and seconded by Mr. Frongillo to make the following transfers:

Resolved, the Caroline Town Board hereby authorizes the Supervisor to transfer 2010 funds as follows:

\$ 4,255.65 from General Fund Account A 1620.41 Town Hall Capital Reserve CE to  
General Fund Account A 1620.4 Town Hall CE

\$ 4,782.81 from General Fund Account A 1620.44 Solar CE to  
General Fund Account A 1620.4 Town Hall CE

\$ 222.58 from General Fund Account A 1990.4 Contingency to  
General Fund Account A 7310.4 Youth Services CE

\$ 230.03 from General Fund Account A 5010.2 Highway Admin EQ to  
General Fund Account A 5010.4 Highway Admin CE

\$ 37,000.00 from General Fund Account A599 Fund Balance to  
General Fund Account A 9060.8 Health Insurance

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

Discussion –Pete what is the 1<sup>st</sup> 3 accounts. 1<sup>st</sup> and 2<sup>nd</sup> Moved from solar account . 3<sup>rd</sup> we encumbered funds for health insurance 29 minutes

#### Approval of Abstracts

##### Resolution 9-4 of 2010

##### General Fund Abstract

A motion was made by Mr. Barber and seconded by Mr. Frongillo to approve payment for the General Fund voucher numbers 275 through 347 in the amount of \$174,860.23

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

##### Highway Fund Abstract

A motion was made by Mr. Barber and seconded by Mr. McDonald to approve payment for the Highway Fund voucher numbers 167 through 179 in the amount of \$9335.72.

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

### **Streetlight Fund Abstract**

A motion was made by Mr. Barber and seconded by Ms. Adams to approve payment for the Streetlight Fund voucher numbers 18 and 19 in the amount of \$421.00.

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

## Resolutions

### **Resolution 9-5 of 2010**

#### **Authorize the Town Supervisor to Sign Snow and Ice Agreement with County**

Moved by Mr. Barber; Seconded by Mr. McDonald

The Town Board authorizes the Town Supervisor to sign a Snow and Ice Agreement contract for 3 years with Tompkins County .

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

### Discussion before voting on **Resolution 9-6 of 2010 a Local Law entitled: Excavation and Construction in Municipal Roadways and Highway Rights of Way**

**Pete Hoyt** addressed the board and the audience: He will vote “Nay” as he feels the law shouldn’t include criminal penalties as he doesn’t feel it is either right or necessary. He said the burden to local people in terms of working on their driveways and such will exceed any benefit to the Town protecting it from whatever nefarious threat there might be from oil drilling companies. He has given it a lot of thought and spoken with other board members and he fully expects the law will pass but he will vote against it.

**Linda Adams**- does not support the comment that this law is “nefarious” trying to protect the tax payers from oil drilling companies. We have already had incidences where bull dozers have been brought in and unloaded. Logging operations that have done damage to the roads and right of ways. She feels that there is a good case for this law.

**Dominic Frongillo**- This law is very similar to what the County already has in place so we are just extending the same protection to Town roads. It seems pretty straight forward to him.

**Don Barber**- Wanted to address some of Bob Anderson’s comments and concerns about the proposed law(from the meeting of 9/7/2010 and his letter to the Town of Caroline) See attachment 2 (the proposed Excavation law) attachment 3a and 3b (John Anderson’s letter’s to the Town Board) and attachment 3, Supervisor’s response to John Anderson’s letter (attachment 3a).

The proposed Excavation and Road construction law is not a criminal law, it is a civil law which has criminal enforcement as a **potential** remedy for violations. Plenty of precedence in Caroline- Building Code, Stormwater, dog licensing, etc., and we are all familiar with Vehicle and Traffic law which is a civil law with criminal penalties.

This law is a general law separately and collectively expressly authorized by the Town Law, the Statute of Local Governments, the Municipal Home Rule Law, the NYS Constitution, the Highway Law, and the Vehicle and Traffic Law, and, to the extent it may regulate O&G activities- it is expressly authorized by the Environmental Conservation Law, at Article 23 Section 303.

The requirements in this local law are no more stringent than any other type of construction or building regulations; nor more stringent than many federal and state mandates affecting private property or the use of public property (e.g., stormwater, workplace violence law, code enforcement, etc. - the list is indeed endless).

The prediction as to legal flaws and inciting litigation have not occurred in any municipality that has such a law to date. Lansing, for example, has never had any litigation (and not even any administrative proceedings, ZBA appeals, or variance or waiver requests) on this law despite it being on the books for years. This type of regulation is actually quite common throughout NYS. I disagree that this law is an invitation to expensive legal

defense.

### **Criminal Penalties**

Regarding criminal remedies as enforcement mechanisms for their violation: All laws entail discretion, and deposit responsibility for the wise and necessary use of such discretion in the public officials charged with interpreting and enforcing these types of laws. For comparison, the NY statute that requires enforcement of Building Code places such discretion in a non-elected official called the CEO.

If the public officer in charge of interpretation, implementation, permit issuance, or enforcement acts beyond the scope of their authority, or if the Town demands "something" else in relation to a permit without there being a rational basis for such request, then, yes, of course, such request is subject to challenge. That is why the due process and equal protection provisions regarding appeals, waivers, etc., are built into this law.

Regarding open ended concern: This language occurs in most municipal subdivision and site planning processes and laws including the Town of Caroline's Subdivision law. These "catch-alls" exist as it is, is presumed that an application may arrive that presents unforeseen issues or facts.

So, while the underlying point is useful as it correctly points out that an unreasonable or illegal request or interpretation could lead to a challenge (the so-called hypothetical "overly zealous official" does exist), standing alone that fear does not invalidate all municipal laws and regulations that place discretion in public officials.

### **Rights of adjacent property owners:**

Most roadways in Caroline are highways by use, meaning generally that the adjacent landowner owns to the centerline of the highway, and the use of the roadway for highway purposes is a recognized public easement. Thus, doing work in the highway right-of-way necessarily requires that the underlying landowner consent - usually by a license or easement allowing access to their land.

It is completely inappropriate for a Town to issue a permit for a contractor to enter private land without proof that the contractor had a right to be there.

### **"Civil Rights" claims:**

The governmental action must create a concrete harm, under many civil rights statutes usually arises only in relation to a deprivation of property rights. Thus, this law, by requiring landowner consent actually protects the town by not permitting contractors to "take" private land (or rights in land) for improvements.

Further, this is not new legal concept - the NYS Highway Law already grants this authority to other levels of government.

### **Insurance-**

Most municipality policies will cover this type of action . I have a bit of experience in this area as I serve on the Board of Directors of our insurance carrier- NYMIR. But I did ask for a formal opinion and the answer was affirmative. This law doesn't create additional liability for the Town.

### **De minimus**

The references to enforcement for routine sweeping of driveway gravel seem overstated as that would not be "excavation" or "construction." Sure there are grounds for abuse - that could occur with any law. But let's look at the converse, Cindy has shared a partial list of incidents that have occurred during her tenure that her crew and the taxpayers perform to protect and save our public assets.

Adopting this law best protects the public investment in the roadway and the safety of the travelling public.

This law levels the playing field between residents live on County and State Roads with those on Town Roads, also between homeowners that get building permits and businesses that do not, and it removes the requirement that they must hire an approved contractor to install the culvert and driveway entrance.

I fully support this law and believe it is our responsibility to enact it.

**Bob Anderson** – Said he wanted to simply respond by saying “Thank you Don for taking the time to respond to my concerns. It was beyond your obligation to respond in that detail and I appreciate it very much. The record will benefit from having your point of view set forward in that way. My point of view is on the record already. I

have had my say... thank you very much.”

**Don Barber-** Replied by thanking Bob for bring his wisdom and experience to the board, that it was appreciated.

**Linda Adams-** I have heard some folks in the community (third-hand) that this law is somehow going to be a back door for landowners to limit the activities of gas drilling. It is very important that it is not put out to the community that way. For folks that have already signed leases with total surface access agreements have probably already answered the homeowner activity on their land. So I would just caution the community that the sign off by the landowner may have already has superseded by what homeowner’s have signed with gas companies.

**Resolution 9-6 of 2010**

**The Caroline Town Board adopt a Local Law entitled: Excavation and Construction in Municipal Roadways and Highway Rights of Way**

Moved by Mr. Barber; Seconded by Mr. Frongillo

**Be it enacted by the Town Board of Caroline as follows:**

**SECTION 1: TITLE & APPLICATION; FINDINGS** - This Local Law shall be known as “Local Law Number 2 of 2010”. Local Law Number 2 of 2010 hereby repeals any prior Local Law or resolution that is inconsistent herewith. Local Law Number 2 of 2010 applies only within the Town of Caroline Tompkins County, New York. The Town of Caroline hereby finds and declares that the provision of safe travel and the maintenance of safe public highways and roadways are of paramount importance to the public. Further, highways are costly to build, repair and maintain, and the Town of Caroline expends substantial resources annually to maintain, repair, preserve and protect such public highways. Thus, based thereupon, and upon the authority granted to the Town of Caroline under and pursuant to Town Law § 64, Highway Law § 136, Articles 39, 40 and 41 of the Vehicle and Traffic Law, and §§ 10(1)(a)(6) and 10(1)(a)(12) of the Municipal Home Rule Law, the Town of Caroline adopts this Local Law to preserve and protect highways and related rights-of-way, and to ensure safe travel for all persons traveling there upon.

**SECTION 2: DEFINITIONS** – The following terms used in this Local Law shall have the following meanings:

A. APPURTENANT STRUCTURE – “Appurtenant Structure” means any temporary or permanent structure or construct, other than a roadway or road surface, within the area of any Highway, including those structures, constructs, and devices located or installed over, upon, or under any such Highway, including, but not limited to, signs, traffic control devices, waterlines, utility lines, communications lines, culverts, ditches, drainage ways, manholes, fire hydrants, curbs, driveways, guardrails, bridges, bridge supports and railings, fencing, and often also including driveways.

B. DEFAULT – “Default” shall mean (1) any violation of the terms, requirements, or conditions of this Local Law; or (2) the violation of any terms or conditions of any Permit; or (3) performing any work, Construction, or Excavation not referenced in any application; or (4) performing any work, Construction, or Excavation upon any land, Highway, or Appurtenant Structure not specifically identified in the Application or the Permit issued by the Town of Caroline.

C. CODE ENFORCEMENT OFFICER – “Code Enforcement Officer” shall mean the Code Enforcement Officer appointed by the Town Board.

D. CONSTRUCTION – “Construction” means the building, installation, repair, or replacement of any Appurtenant Structure.

E. CONTRACTOR – “Contractor” shall mean any person or entity, including any landowner or private citizen, that proposes to perform Excavation or Construction under, in or upon any Highway, or any Appurtenant Structure related to any Highway.

F. EXCAVATION – “Excavation” shall mean any work, process, or construction that proposes to or does alter the surface of any Highway, or which affects the soils or any Appurtenant Structure of or under any Highway, including, but not limited to, pavement cuts and culvert installations, and also including road surface work and paving.

G. FEE – “Fee” shall mean any charge or cost imposed or due under or as a result of this Local Law. Fees may be updated, changed, or amended from time-to-time by resolution of the Town Board of the Town of Caroline.

H. HIGHWAY – “Highway” shall mean each, every, and all public streets, public sidewalks, public roads, public alleys, and public highways within the Town of Caroline that are Town of Caroline highways by use, highways by dedication, and/or highways by implication, including the paved or finished surfaces thereof, all signage, all ditches, culverts, drains and drainage ways, all utility and similar structures and appurtenances, and all land, improved or otherwise, within the bounds of the highway rights-of-way.

I. HIGHWAY SUPERINTENDENT – “Highway Superintendent” shall mean the elected or appointed Highway Superintendent of the Town of Caroline and/or designees of each such person who are given specific written authorization to act for such Highway Superintendent under this Local Law.

J. PERMIT – “Permit” shall mean any permit required under or pursuant to this Local Law.

K. SECURITY – “Security” shall mean: (1) a cash deposit delivered to the sole custody of the Town of Caroline to secure and guarantee performance under any Permit and compliance with this Local Law, free of reservations, restrictions, conditions or claims; or (2) an unconditional letter of credit approved by the Town of Caroline or (3) a performance, completion, and indemnity bond approved by the Town of Caroline; or (4) a Certificate of Deposit irrevocably assigned to the Town of Caroline in an approved amount; or (5) any other form of undertaking as approved by the Town of Caroline; or (6) any combination of the foregoing approved by the Town of Caroline.

**SECTION 3: PROHIBITIONS** - No firm, utility company or provider, transportation corporation, communications or cable company, or other person or entity shall conduct any Construction or make any Excavation, cut, or breaking in, or otherwise open any Highway or sidewalk for any purpose whatsoever, including, but not limited to, the making of any driveway connection or the installation or repair or replacement of any culvert or other Appurtenant Structure, without a Permit issued pursuant to the requirements of this Local Law. No Contractor may perform any Construction or Excavation in, upon, or under any Highway, nor construct, repair, install, or build any Appurtenant Structure, without a Permit. No Contractor or other person or entity may spread, place, or distribute any substance upon a Highway or within a highway right-of-way unless done pursuant to, and in compliance with, a Permit.

- A. In the case of an emergency any person or entity already having or possessing rights to any Appurtenant Structure within any Highway may effect such emergency repairs as are reasonably necessary; but such person or entity must thereafter apply for a Permit upon the next business day.
- B. This Local Law shall not apply to the installation of mailboxes and newspaper boxes.
- C. This Local Law shall not apply to Excavation, Construction, or other work performed upon, under or within Highways and related rights-of-way by the Town of Caroline, including Excavation, Construction, or other work upon Appurtenant Structures.

**SECTION 4: PERMIT REQUIRED** – All Contractors are required to obtain a Permit from the Town of Caroline prior to performing any Construction or Excavation in, upon, or under any Highway, or before constructing, repairing, installing, or building any Appurtenant Structure. Each Permit issued by the Town of Caroline will be valid only for a stated period of time. Permits are not transferrable or assignable by any act or by operation of law. If the Permit expires, a renewal Permit may be issued by the Town of Caroline for an additional fee of \$ 10.00 upon such additional or other terms, Security, or restrictions as determined in the sole discretion of the Highway Superintendent.

- A. When a common Construction or Excavation project involves more than one firm or Contractor, including public service companies and transportation corporations, those Contractors shall together designate in writing a lead Contractor who shall be responsible for obtaining a Permit, acting in compliance there with, and for compliance with the terms and requirements of this Local Law. Despite the existence of a lead Contractor, all such other persons and entities shall be and be deemed Contractors under and pursuant to this Local Law.

**SECTION 5: PERMIT PROCESS** – Contractors must submit a completed application for a Town of Caroline Permit upon a form provided and approved by the Highway Superintendent to the Code Enforcement Officer. The Highway Superintendent may develop and utilize one or more types of forms for Permit applications as based upon any reasonable standard, such as, but not limited to, the type of work to be performed (e.g., “culvert permits” or “driveway or curb cut permits” or “excavation permits”, etc.). All Permit applications shall contain the following information or materials:

- A. Project drawings and specifications for any Excavation or Construction as required by the Highway Superintendent, including, where applicable surveys and/or plans sealed by a New York State licensed engineer or architect in compliance with, *inter alia*, the New York State Education Law.
- B. An application Fee.
- C. If the Contractor proposes to do work or perform any Excavation or Construction upon or under any land outside of the Highway, the written consent of the owners of each such parcel of land shall be provided, and such written consent must recite that such owner has reviewed the proposed Excavation or Construction drawings and specifications and consents to, or otherwise permits, such work.
- D. Whenever required, a completed Environmental Assessment Form (“EAF”) shall be submitted by the Contractor pursuant to the provisions of the State Environmental Quality Review Act and its

implementing regulations at 6 NYCRR Part 617 (together herein, "SEQRA"). No Permit may be issued until the SEQRA review process has been completed.

E. A Stormwater analysis of the impacts of any excavation or construction or installation project upon the Highway and its Appurtenances. Such analysis shall follow the requirements of Town of Caroline Local Law # 2 of 2007 "Stormwater Management and Erosion and Sediment Control Local Law, and/or shall comply with the terms of (i) the New York Standards and Specifications for Erosion and Sediment Control manual, commonly known as the "Blue Book", and, as applicable, (ii) the State Pollutant Discharge Elimination System ("SPDES") General Permit for Construction Activities GP-02-01 or GP-02-02 (each and all as now exist or as hereafter codified, updated, changed or amended). Any information and any Stormwater Pollution Prevention Plan ("SWPPP") shall be designed to contain any increases in stormwater and prevent any erosion of the Highway and any Appurtenances, as well as prevent stormwater pollution and sedimentation.

F. The required amount(s) and type(s) of Security.

G. Construction and Excavation start dates and completion dates.

H. Any other information the Highway Superintendent may require, including, but not limited to, traffic control plans and proof of a right to enter any private property.

**SECTION 6: WINTER WORK** - During the "winter work season," which is hereby defined as November 15 through April 1, annually, Permits will generally be issued only in the discretion of the Code Enforcement Officer and generally only for emergency work. In the event that a winter Permit is issued, the following temporary remediation and other requirements apply:

A. All Highway shoulders shall require additional materials and compaction as determined by the Highway Superintendent.

B. Temporary pavement and road surface restorations may be made by (i) the placement and compaction of a minimum of two layers of dust-bound crushed stone, each of a compacted thickness of four inches on the prepared sub grade, followed by a layer of bituminous concrete, winter mix, six inches in compacted thickness, on top, or (ii) as otherwise required by the Code Enforcement Officer.

C. No frozen material shall be placed in excavation areas.

D. Daily inspections may be required and, if so, paid for by the Contractor. Whenever required by the Code Enforcement Officer, the Contractor shall perform any needed repairs or maintenance within 24 hours of receipt of any notice requiring the same

E. All Temporary repairs shall be maintained by the Contractor until a permanent repair is made. The Contractor must monitor the site and perform repairs within 24 hours notice of the Code Enforcement Officer.

F. As early as spring weather permits, the excavation area shall be inspected at the expense of the

Contractor and a permanent repair shall be made by the Contractor. Where required, in the reasonable discretion of the Code Enforcement Officer, the permanent repair may require re-construction of the road base or other re-construction requirements.

G. Notwithstanding anything which may appear to the contrary in the Permit or this Local Law, the Contractor assumes all responsibility for the safe maintenance of the subject work site(s) from November 15 through April 1, and further assumes all liability for damages resulting from, or in any way connected with, the subject work and work area during this period.

**SECTION 7: REVIEW OF APPLICATION; FEES, ESCROW DEPOSITS, SECURITY AND INSURANCE** – The Code Enforcement Officer shall review each completed and submitted application within 30 days. Any application may be rejected if:

- A. The details, specifications, or drawings are incomplete or lack specificity.
- B. The proposed project, work, Excavation, or Construction is or will be harmful or injurious to any Highway as determined by the Code Enforcement Officer.
- C. The application has incomplete or inadequate stormwater controls, if required, or an inadequate SWPPP as required by Town of Caroline Local Law #2 of 2007 “Stormwater Management and Erosion and Sediment Control Local Law.
- D. The proposed Contractor is unable to meet the Security requirements of the project and/or this Local Law.

The Code Enforcement Officer shall, for each application, determine and set an amount of Security and liability insurance that must be posted and/or provided by the Contractor prior to the issuance of any Permit. The Security shall be in such form and amount as determined by the Code Enforcement Officer. The insurance shall be procured, paid for, and provided by the Contractor, who shall maintain general all-risk liability, completed operations, and workers’ compensation insurance coverages, each in the minimum amount of \$1,000,000.00. Each such coverage or policy shall name the Town of Caroline as an additional insured and waive any subrogation rights as against the Town of Caroline. For any Construction or Excavation that will be performed in phases, that will require multiple inspections, or that will require the review of any engineer or other paid consultant (such as, but not exclusively, to review any SWPPP, surveys, engineering or design plans, etc., if and as required), the Code Enforcement Officer may require the establishment of a Fee, inspection, and review escrow account (“FIREA”) to be funded periodically by the Contractor in amounts deemed reasonable by the Code Enforcement Officer to ensure that adequate funds are available to pay for the costs of such Fees, inspections, and reviews. The Town Board of the Town of Caroline may establish, by Resolution, standardized FIREA schedules for permits and other required reviews, inspections, and reports created, performed, reviewed, or filed under, in accord with, or in furtherance of this Local Law, which schedule shall (i) be limited to such amounts as are reasonably estimated as the administrative and other costs and expenses incurred by the Town of Caroline in connection with any matter arising under this Local Law, and (ii) be reviewed at least once every year by the Town Board of the Town of Caroline to assure that the fees remain reasonable in light of actual and generally incurred costs and expenses associated with Fee, inspection, and review requirements.

**SECTION 8: PERMIT ISSUANCE** – The Code Enforcement Officer, upon the receipt, review and approval of any application, shall issue a Permit for such work upon such terms as determined in the reasonable

discretion of such Code Enforcement Officer. The Code Enforcement Officer may require that special conditions be met as deemed necessary, in his or her discretion, in conjunction with the work, Excavation and/or Construction to be performed on, in, or under any Highway or Appurtenant Structure. The Code Enforcement Officer may issue a revised or amended Permit at any time to correct any error or omission, to require or reference a change in the scope of work or the project specifications, to address the encountering of unforeseen surface or subsurface conditions, including weather, or for any other reason.

**SECTION 9: ENFORCEMENT OFFICER** - The Code Enforcement Officer is hereby authorized, directed, and designated to enforce the provisions of this Local Law.

**SECTION 10: PERFORMANCE** – The Contractor may only perform work, Construction or Excavation as authorized by the express terms of the Permit. In performing such work, Construction or Excavation, the Contractor shall:

- A. Preserve and protect all roadway surfaces, the Highway, and each Appurtenant Structure from needless destruction or alteration.
- B. Commence the work, Excavation, and/or Construction, within 20 days of the date the Permit is issued, and there after perform the work, Excavation, and/or Construction, and all backfilling, tamping, repair, and restoration work, as one continuous operation to complete the same by the earliest practical date. As soon as the Contractor becomes aware that Construction, and/or Excavation may not be completed by the completion date stated in or required by any Permit, the Contractor must notify the Code Enforcement Officer to apply for a new permit. No work shall continue past the permit completion date.
- C. Restore and repair any affected Highway and Appurtenant Structure to the current requirements.
- D. Maintain at all times safe crossings, barricades, coverings, warning signs, lighting, and any and all other safety devices, structures, or procedures as may be required by law or regulation, the New York State Department of Transportation, OSHA, or in the exercise of diligent care.
- E. Maintain at all times the Security and insurance coverage(s) required, and to pay, whenever requested, any FIREA deposits.
- F. Perform the work, Construction and/or Excavation in such a manner and at such times as to not interfere with, or to minimize, any obstructions to the safe flow of traffic.
- G. Prevent stormwater pollution arising from any site or other Excavation or Construction, including through the proper installation and maintenance of short-term and permanent stormwater management practices and, as and if applicable, compliance with any SWPPP and/or any SPDES Permit conditions or requirements.
- H. Perform all backfilling and tamping with materials specified by the Highway Superintendent, which materials shall be free from clay, loam or silt, and which materials shall be moistened and mechanically tamped until thoroughly compacted.

I. For all Construction or Excavation work that will impair the provision of any public utility, water supplies, or effect any closure or partial closure of any Highway, it shall be the duty of every Contractor to give at least 72 hours' advance written notice of the work and the effect thereof to all persons, entities, or municipalities owning property or any Appurtenant Structures within 500' of the vicinity of the proposed work. Proof of due notice shall be filed with the Highway Superintendent at least 48 hours prior to the commencement of the proposed work.

J. The Contractor shall provide prior notice to each and all utility companies, public service companies, and municipalities of the proposed work, Excavation, or Construction, and to have such company or municipality mark or otherwise identify the location or course of any underground or other utilities. No work, Excavation, or Construction shall commence until all utilities and underground appurtenances are so marked and the rules and regulations of the New York State Public Service Commission and the "Dig Safely New York" program have been fully complied with.

K. All Appurtenant Structures shall be built, repaired and installed in accordance with all applicable laws, regulations, and rules, including, but not limited to the New York State Manual of Uniform Traffic Control Devices.

L. The Contractor shall preserve, protect, and maintain (including maintenance of the distribution of) all utilities encountered or affected by or during performance of any work, Excavation or Construction.

**SECTION 11: REVOCATION OF PERMIT; DEFAULTS** – A Permit may be revoked by the Code Enforcement Officer after notice to the Contractor (or other permittee) for any violation of any condition of the Permit, for the violation or of any provision of, or non-compliance with, this Local Law, for the violation of any provision of any other applicable ordinance or law relating to the work, or for the existence of any condition or the doing of any act constituting or creating a nuisance or endangering the lives or properties of others. The following terms and conditions shall apply to the revocation of any Permit and/or the occurrence of any Default:

A. A Contractor may be granted one period of three days from the date of the notice to correct the violation and to proceed with the diligent prosecution of the work authorized by the Permit before said Permit is revoked. Written notice of any such violation or condition shall be served upon the Contractor or his agent engaged in the work. The notice shall contain a brief statement of the grounds relied upon for revoking the Permit.

B. Notice may be given either by personal delivery thereof or by registered United States mail addressed to the person notified.

C. When a Permit has been revoked and the work authorized by the Permit has not been completed, the Highway Superintendent shall cause such work as may be necessary to be performed to restore the Highway to as good a condition as before the Construction or Excavation work was undertaken. Such performance and work may be undertaken by the Highway Superintendent's employees and staff, or by any independent contractor hired by the Town of Caroline to perform such work. All expenses and costs incurred to restore the Highway shall be recovered from any posted Security, or if the same is inadequate to cover the costs and expenses thereof, then from the Contractor.

D. The failure of any Contractor to cure any Default or cure any conditions stated within the above-

referenced notice within such three days shall be a Default that shall entitle the Town of Caroline to collect and utilize any Security or FIREA deposit for any purpose related to the Contractor's Permit, including, but not limited to, the repair of any damage, the completion of the project, or the hiring of any third party to complete the project. No default, nor the completion of the project by any third party or the Town of Caroline, shall relieve the Contractor of any obligation or expense imposed under this Local Law, or as may otherwise be imposed by any other law or regulation.

Notwithstanding the foregoing terms, conditions and requirements, whenever the Highway Superintendent believes that there is any emergency, the Highway Superintendent may issue a "stop work" order. Immediately upon receipt of the same each Contractor shall cease work, secure the worksite, and immediately adhere to and complete all safety inspections and procedures as may be required by law, regulation, or the terms of the stop work order. Work may only re-commence upon the written revocation of the stop work order by the Highway Superintendent.

**SECTION 12: INSPECTIONS** – Until the Construction or Excavation is completed, the Town of Caroline may furnish and charge for an inspection for each day that such work is in progress. Inspections shall be made for the sole purpose of verifying compliance with the Permit or for verification that the materials and processes used will result in a finished job that is consistent with Town of Caroline specifications. No inspection is made for the purposes of reviewing, recommending, or verifying safety practices. Safety compliance and safety inspections are and shall be and remain the sole responsibility of the Contractor. The Fee for each such inspection shall be adopted by resolution of the Caroline Town Board and shall be promptly paid upon request.

**SECTION 13: RESTORATION** – After performance and/or completion of any work, Construction or Excavation, the Highway and each Appurtenant Structure shall be repaired and restored in a permanent manner satisfactory to the Highway Superintendent and/or in accord with Permit requirements. To the extent possible, any repair or restoration must match the original Highway or Appurtenant Structure in type, color, structure, materials, grade, and texture, in compliance with then current applicable specifications there for. Upon completion of the work and after restoration pursuant to the terms of this Local Law, any remaining amount of any deposit or Security shall be returned or released, as applicable.

**SECTION 14: WAIVERS** - Where the Code Enforcement Officer finds that, due to the special circumstances of a particular case a waiver of certain requirements is justified, a waiver of any one or more requirements of this Local Law may be granted. In all cases, no waiver shall be granted unless the Code Enforcement Officer finds and records in writing that:

- A. Granting the waiver would be keeping with the intent and spirit of this Local Law and is in the best interests of the community.
- B. There is no adverse effect upon the Highway or any Appurtenant Structure.
- C. There is no adverse impact upon the ability to safely travel upon such Highway.
- D. There are special circumstances involved in the particular case.
- E. Denying the waiver would result in undue hardship, provided that such hardship has not been self-

imposed.

F. The waiver so requested or granted represents the minimum necessary degree of variation from the requirements of this Local Law or the Permit.

**SECTION 15: OFFENSES; PENALTIES; ENFORCEMENT** - Any Contractor or other person or entity that violates any of the provisions of this Local Law shall be guilty of a misdemeanor punishable by a criminal fine between \$500.00 and \$2,000.00, or a sentence of imprisonment not to exceed 15 days, or both. Each week of continued violation shall be and be deemed a separate offense. For the purposes of conferring jurisdiction upon courts and judicial officers such violation shall be deemed an unclassified misdemeanor and all provisions of law relating generally to misdemeanors shall apply. In lieu of the foregoing and at the election of the Town of Caroline, any violation of this Local Law shall subject any Contractor, person, or other entity or party to a civil penalty of not less than \$100.00 and not more than \$500.00 for any first violation, and to a civil penalty of not less than \$250.00 and not more than \$1,000.00 for any subsequent violations, with such penalties to be recovered in a civil action in the name of the Town of Caroline. The application of any sentence or penalty shall not preclude the enforced removal or prevention of any prohibited conditions or violations of the Permit or this Local Law. Nothing in this Local Law shall prohibit the Town of Caroline from seeking any other relief as may be provided for or allowed by law or in equity, or be deemed to effect an election of remedies by the Town of Caroline. Any fine or penalty provided for in this Local Law is intended to be in addition to, and not in lieu of, any rights or remedies the Town of Caroline may have in such circumstances.

**SECTION 16: APPEALS** - Any aggrieved person or entity may appeal any action or determination of the Code Enforcement Officer to the Town of Caroline by filing a written statement setting forth the reasons for such appeal. Upon receipt of such appeal, the Caroline Town Board shall hold a hearing within 30 days and, after a review of all evidence, shall affirm, modify, or annul the appealed from action or determination.

**SECTION 17: ARTICLE 78** - The actions and determinations of the Town of Caroline, and its elected officials, employees, and agents shall each be deemed "final determinations" for purposes of Article 78 of the New York Civil Practice Laws and Rules ("CPLR"). Notwithstanding this, standing under said Article 78 of the CPLR shall only be appropriate after the exhaustion of any administrative appeals as provided for in this Local Law.

**SECTION 18: LIABILITY AND INDEMNITY** – The Contractor assumes sole responsibility for the worksite and all related or adjacent areas and lands and agrees to assume all responsibility for any injury or damage that may or does occur as a result of any Excavation or Construction and any related work, including, but not limited to, traffic control, grubbing, paving, clean up, remediation, or restoration work. The Contractor, to the fullest extent permitted by law, shall indemnify and hold the Town of Caroline harmless from and against any, each, and all losses, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity (all together hereafter, "Claims"), including, but not limited to, reimbursement to the Town of Caroline any amount expended for any and all experts', consultants', attorneys' and engineering fees and expenses arising from or in relation to any Claim. The Town of Caroline shall not be liable or responsible for any injury to persons or damage to property due to any acts or failures to act under or pursuant to any Permit or this Local Law unless it is proven to a reasonable degree of certainty that such injury or damage was solely caused by a willful or intentional act of the Town of Caroline.

**SECTION 19: CONSTRUCTION WITH OTHER LAWS** - The provisions of this Local Law shall not diminish or impair the right of any other governmental agency or body to require that any act be taken or avoided. No variance, permit, grandfather rights, law, code, resolution, procedure, or rule pertaining to zoning or land use shall supersede the requirements of this Local Law. This Local Law is intended to supplement and augment the

requirements of zoning and land use regulations and rules, as well as the rules of other governmental bodies and agencies, relating to the preservation and protection of highways and public rights-of-way, and to ensure their continued safe operating condition.

**SECTION 20: SEVERABILITY; INTERPRETATION** - If the provisions of any article, section, subsection, paragraph, subdivision, or clause of this Local Law shall be adjudged invalid by a court or other tribunal of competent jurisdiction, such order or judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this Local Law. Any such invalidity shall be confined in its operation to the clause, sentence, paragraph, section or article thereof directly involved in the controversy in which such order or judgment shall have been rendered. Section and other headings are for reference and convenience only and shall not be deemed or construed to limit or define the requirements of clauses set forth there under.

**SECTION 21: EFFECTIVE DATE** – This Local Law shall be and become effective immediately upon filing with the New York Secretary of State.

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

**Resolution 9-7 of 2010**

Moved by Mr. Barber; Seconded by Mr. Frongillo

The Town Board will hold a Public Hearing on the Preliminary Budgets for 2011 on Thursday, November 4<sup>th</sup> at 7:00pm and further resolve that the Agenda meeting for the month of November will be held at that meeting also.

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

**Resolution 9-8 of 2010**

Moved made by Mr. Hoyt, Seconded by Mr. Frongillo

The Town Board authorizes the Town Supervisor to sign a contract agreement for a dog enumerator for the Town of Caroline.

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

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Adjourn

On a motion by Mr. Barber and seconded by Mr. Hoyt, the meeting adjourned at 09:08 p.m.

Respectfully Submitted,

Marilou Harrington, Town Clerk