

Caroline ATV Information Meeting Minutes of October 24, 2018

The Caroline ATV Information Meeting held on October 24, 2018 at the Brooktondale Fire Hall at 7:15 p.m.

In Attendance: Mark Witmer, Supervisor
John Fracchia, Councilmember
Irene Weiser, Councilmember
Cal Snow, Councilmember
Megan Barber, Councilmember – Absent
Guy Krogh, Town Attorney

Recording Secretary: Jessica L. Townsend, Deputy Town Clerk

Present: 32 people of the public attended

Introduction

The ATV meeting started with Irene Weiser by thanking everyone for coming. Introduced Guy Krogh, Esq. the Town of Caroline attorney.

Mr. Krogh was asked to come to discuss the use of ATV and UTV's on public highways. The rules are pretty restricted. The Attorney General and the Courts have specific rules to keep ATV's off the road. The question becomes how to you get networks in place without violating the law and doing it in a way to be respectful to others. The DEC says they are not good for the forest, they chew up the ground and cause erosion. There is an ongoing battle at state level legislation; one part is for expanding the use of ATV's and make it more lenient, the other part is for the ban of use. Mr. Krogh further explained that he is here to give an overview on Laws that exist and to try and help answer questions from the public on state law guidelines. He takes no political position on the issue.

The general rule is that ATV's are not intended for lawful use on municipal highways. A municipal highway is a public or private road (less restricted on private) that is a public highway. A public highway includes low maintenance road and seasonal roads. New York State says you can cross roads to get from one side to the other but there are rules involved including coming to a complete stop, etc. but it is fairly basic. New York State, including the Attorney General, says you cannot use them to get to parking lots, or anything other than getting to a trailhead access to which is otherwise impossible to get to other than the road. So, the rules are restrictive, but towns have flexibility with land that they own to open roads to ATV use. The advantage that most ATV clubs have is that most have responsible and regulation rules in place. You can have a town authorize a segment of town roads for ATV use to get from trailhead to a private trail, but the trail must be open for the general public use. If the town does not establish in its record of review in adopting a Local Law or Ordinance to open segments of its town highways does not establish

that it is otherwise impossible to get to a trail other than the use by a public highway, then the Local Law itself is invalid.

Discussion

The discussion with the audience started with a resident stating that in August he visited/stayed in Lewis County where the whole county is open to ATV and UTV's. State roads are off limits, but other town roads are open throughout that county. Mr. Krogh replied that he has not studied that county but there are many factors that could explain why other counties have roads open to ATV/UTV's. One example is that those may have far more trailheads where people must use the roads to access them. Here in Tompkins County and the Town of Caroline, there is a lot of state forest where you cannot ride, and the enforcement here could be tougher. Another member of the audience added that up north they are doing it, but it may not be valid, they just accept it. The state opposes it, but the town write's a law and the enforcement understand it and they accept it.

Mr. Krogh added that this particular area has more walking/biking trails than ATV trails. Up north, they have different laws. Suggests starting by requesting 3-4 trailheads where it is necessary to have the road opened to ATV's/UTV's and go from there.

A gentleman stated that a resident in Caroline just got a ticket recently from riding on state land. The fine itself was \$7.00 and a surcharge fee of \$93.00.

Councilmember Irene Weiser asked general questions to get informed how ATV's and UTV's operate. Some basic questions included; how fast do they go? Can they maintain speed to keep up with the traffic on a road? Will they be driving down the middle of the road like a vehicle or riding along the shoulder of the road? Etc.

Audience member Don Mix answers that they ride down the side of the road, just as the bicyclists do.

Ms. Weiser also inquired asked about headlights and brake lights. Also wanted to know the difference between an ATV and UTV.

Audience members answered that they are equipped with high-beam and low-beam headlights and have brake lights. Some UTV's have a windshield and seatbelts, and the difference between the two is the weight. UTV's are much heavier than ATV's. Mr. Krogh added that the vast majority of those sold today are capable of being registered as a vehicle and legally being operated after dark on a highway, they just not permitted on highways yet.

It is required to have ATV's and UTV's registered and insured. Discussion then began about the trails that these operators of ATV's maintain these trails, they have to pay for registration and insurance for their machines and bicyclists from all areas come and ride these trails and are not required to do or pay anything.

Maps were created by the ATV Riders Club and distributed at the beginning of the meeting. The maps show sections of highlighted roads that they are requesting to be opened for ATV's. Dots on the map represent each trail head. They are asking to open certain town roads in order to get to the trails they already have. Discussion followed of specific roads and the trails.

Town Board members looked over the maps with the audience and talked about specific roads (such as Ridgeway Road, Bald Hill Road, and White Church Rd) and all the trails that are on those roads they want to use.

It was said that some people are going to ride the roads regardless if it is legal or not. But they would like to do it legally. That's why they are asking for the town to create and pass a Local Law to allow them to do so. Further discussion regarding the DEC and how they are the ones that give these riders the tickets.

Cindy Whittaker explained that her and her husband have owned an ATV since 1985. They have paid for registration and insurance for all these years and are only legally allowed to ride around the land they own. ATV's can run between \$10,000 and \$15,000 and they are forced to ride in circles on their 4-5 acres of land.

Councilmember John Fracchia stated that ATV laws are very restricted by New York State and any state law supersedes any town law. Audience members said that they do it anyway. And so, he asked, what does it matter if they open the roads? Mr. Fracchia added that he is in support of this idea, but it needs to be done carefully and legally. Has concerns about liability. Mr. Krogh states if the town board were to write and pass a Local Law that it would have whatever protections that are allowed. There are parts of legislation that are making this exact argument, that the law is too restrictive, but there are parts that continue to agree that the laws are necessary. Making strategic choices on day one can lead to a lot of success on day ten. Council member Cal Snow referred to the map and stated that it showed that the ATV Club was asking to open about 1/3 of town roads and wondered if that was too much to start with. Mr. Krogh answered that the standard is not based on the percentage of use, the standard is based on whether or not riders can get from a place where they have a trailhead adjacent to a highway, that they have permission to ride, has to be a public trail, cannot be private or restricted only to certain people, it doesn't matter the percentage of use on a highway, you just have to meet the possibility standard. The Attorney General has said these vehicles are not intended to be used on highways, only allowed incidental use of the highway under these standards (Vehicle and Traffic Law Section 2405).

Resident Pete Hoyt asked what the risk would be to the town if it went ahead and passed a law to open some roads to ATV use. Attorney Guy Krogh answered that it is not risk free. Recommends that the Town Board open a few roads, if it's successful, try for a few more. It is not a good idea to do an "all or nothing".

Supervisor Witmer asked if there was a rule for how far you can travel on a town road to get to a trailhead. Town attorney answered that there is nothing specific written. The Town Board will

have pass a Local Law to be riding legally. The solution here really is in Albany, not here in the Town, but there is always a middle ground, you just have to find it.

Resident Tony Tavelli referred to the map and sees an issue on South Road. There are numerous trailheads throughout the length of the roads and thinks that would be a target for failure. Both sides of the road is state land. Mr. Krogh acknowledges that the DEC is very hostile to these machines on State land.

The Town Board has to ultimately make the decision to proceed. Someone needs to come up with a plan and make a judgement call on what roads they want open to ATV's and UTV's.

Councilmember Irene Weiser asked about procedures that they would need to notify residents if they open roads. Attorney Krogh answered that the Town Board must hold a public hearing and from there they would have to decide if any special restrictions they are adding to law such as noise, time restrictions, etc.

Someone asked if the Town Board was for proceeding this or if they are against it?

Councilmember Irene Weiser spoke that right now she is feeling like on certain roads (less populated, less traveled, blind curves, and other areas where ATV's pose a risk.) she isn't necessarily against it, but she has concerns. Needs more information on town liability and insurance but doesn't want them on town roads that are highly traveled, high speeds. Sees the danger in that. That is what she is thinking as of now.

Questions regarding ATV's and accidents on a road that gets opened, is the town responsible? Mr. Krogh answered that the Town would have special liability above that which it has for highways generally. He also stated that the Town has a responsibility to address and avoid dangerous conditions.

Guy Krogh suggests being specific on what sections of what roads they want open. Start with five roads and prove why it is impossible to get from trailhead to trailhead and go from there. Take the map they presented and prove the necessity to use that portion of road to get to a trailhead and if/when that's successful, bring forward further roads that you would like to have opened.

Councilmember John Fracchia introduced himself to the audience and gave his thoughts. He hears some receptiveness to this. He understands the position of the people that want/need some of these roads open to get to the trails they want to use. States let's figure out what roads, map them out and get it done.

Question from the audience regarding winter months and whether there will be rules or guidelines of when the snowmobiles are out will the ATV UTV's use be cut off (4 inches of snow or more..?) Resident Don Mix thought that if the trail is private and cannot be groomed, and you

have permission to ride, you should be able to ride. Mr. Krogh states that if it is a private trail it's the landowner who determines if the trail is opened or closed.

Resident Bob Mix asked what makes a private trail a public trail? Attorney Krogh answered if it's a private trail, the landowner decides if it is an open trail to the public. There are special laws that are written to protect the landowner from liability issues. Residents would know which trails (and town roads) are open to the use of ATV's by the general public by writing it into the local law, if passed.

Supervisor Mark Witmer is concerned about the impact it would make to the people that live on these roads that are being considered.

Guy Krogh suggests that the riders present good arguments, prove where it is impossible to get to some of these trailheads without the use of the road; give the town board the tools to do their analysis and work with them to avoid the impacts that might cause some people to say no. Start gathering the proof and go from there.

Resident Scott Whittaker explains that he doesn't believe anything is going to change by passing this. Residents have been doing it for years and doesn't believe that if there are 3-4 riding now by your house on a weekend, opening those roads aren't going to create 100 people going by every weekend. The whole argument is based on these riders wanting to ride legally and avoid getting a ticket.

Bob Mix asked the town board members that were present what the next step is. Supervisor Witmer asked for a proposal from the Riders Club and they will go from there.

Information Session ended at 8:45PM

Respectfully Submitted,

Jessica L. Townsend, Deputy Town Clerk

Clarification by town attorney Guy Krogh on the minutes of the meeting (11/13/18):

The only correction I have to the ATV meeting minutes is that I would note that, as to town liability, I said the Town would have no special liability above that which it has for highways generally—the Town has a duty to address and avoid dangerous conditions. Thus, as I see it, that answer later explained Irene's observation and the questions and discussions about blind curves and other areas where ATVs might pose a risk.

Not a big deal one way or the other, only that as written it looks like I said there is no liability at all and that is not accurate, true, or correct.