

TOWN OF CAROLINE  
LOCAL LAW No. \_\_\_ of the year 2017

**A LOCAL LAW PROVIDING FOR A MORATORIUM ON ACTIONS  
SUBJECT TO SITE PLAN OR SUBDIVISION REVIEW  
FOR A PERIOD OF ONE-HUNDRED EIGHTY (180) DAYS**

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

**Section 1 TITLE**

This local law shall be known as “Moratorium on Actions Subject to Site Plan or Subdivision Review”

**Section 2 AUTHORITY AND INTENT**

This local law is a police power and land use regulation. It is intended and is hereby declared to address matters of local concern, including but not limited to, groundwater conservation, energy efficiency, greenhouse gas emission reduction and development of renewable energy resources.

This local law is intended to be consistent with and adopted pursuant to the authority granted to the Town Board under the New York State Constitution, and the laws of the State of New York, including but not limited to the following authorities: New York State Constitution Article IX, Municipal Home Rule Law § 10; Statute of Local Governments §10. The goals of the Town are similar to goals declared by New York State in policy statements, such as the New York State Energy Plan.

**Section 3 PURPOSE**

The Town Board wishes to review and study the Town of Caroline’s [Site Plan Review](#) local law and [Subdivision](#) local law to determine whether to propose standards, requirements, and design and mitigation guidelines to address water conservation, energy efficiency, reduction in greenhouse gas emissions, development of renewable energy resources, and other changes as may be necessary to further the objectives of the New York [State Energy Plan](#), Tompkins County’s [Energy Roadmap](#), Caroline’s [Comprehensive Plan](#) and the Town’s commitment to protect and advance the quality of life of residents; protect the unique natural assets of the Town; and make optimum use of existing and future investments in public services and infrastructure.

**Section 4 FINDINGS**

The Caroline Town Board finds, determines and makes the following declarations:

- A. Actions of the types subject to review in the Town of Caroline's Site Plan Review and/or Subdivision local laws and procedures, (hereinafter "Actions") may place heavy demands on energy use, public services, infrastructure and natural resources.
- B. The Town of Caroline 2006 Comprehensive plan identifies the following goals with respect to energy efficiency, reduction in greenhouse gas emissions, development of renewable energy resources, and protecting water resources:
  - a. Concerning Housing: "Widespread implementation of low-impact and energy-efficient building practices." (p. 7)
  - b. Concerning Open Space and Environmental Protection: "Preservation of water quality and quantity and protection against environmental degradation." (p 10)
  - c. Concerning Infrastructure and Services: "Increased energy conservation and use of renewable energy sources." (p. 12)
  - d. Concerning Business Development: "Encouraging businesses to protect air and water quality, reduce impact on traffic density and road quality, use clean and renewable sources of energy, and embrace sustainable business practices." (p. 15)
- C. Promulgation of regulations and/or design guidelines to conserve groundwater resources is important, timely, prudent and serves the immediate and long-term interests of the public.
  - a. Caroline residents and businesses are dependent upon groundwater and wells for life-sustaining water, and maintaining adequate water resources within the town is critical to protecting the general health and welfare of Town residents and the local economy.
  - b. For 3 consecutive years, precipitation in the Northeast has been below normal, and in the summer and fall of 2016, the Southern Tier, Finger Lakes and Western regions of New York State experienced severe drought conditions, characterized not only by reduced precipitation but also reduced groundwater levels. Precipitation this winter lags normal precipitation levels as well.
  - c. The Town of Caroline's Aquifer Protection Advisory Committee has been working with the New York Rural Water Association (NYRWA) to develop recommendations to protect the quantity and quality of our groundwater resources. NYRWA's test to determine sufficiency of groundwater at an Action's site is more detailed and exceeds the standards proposed in the existing site plan review law.
- D. Promulgation of regulations and/or design guidelines to promote energy efficiency, greenhouse gas emission reductions and renewable energy generation helps align Actions in the Town with the climate protection goals of New York State and Tompkins County, provides a timely response to a request from our local utility and serves the immediate and long-term interests of the public.
  - a. The New York State Energy Plan establishes a goals of 40% reduction in all greenhouse gas emissions and 50% renewable energy generation by 2030,

and has undertaken the [Reforming the Energy Vision](#) initiative to direct the energy utilities to support these goals.

- b. The Tompkins County Legislature has adopted greenhouse gas reduction [goals](#) of 80% from 2008 levels by 2050.
  - c. The County's [energy roadmap](#) makes clear that we must substantially reduce use of all fossil fuels in order to reach the County's 80% greenhouse gas reduction goal.
  - d. The State's and County's greenhouse gas inventories conclude that residential and non-industrial commercial space and water heating accounts for at least 65% of the greenhouse gas emissions from those properties.
  - e. In NYSEG's January 23, 2017 [letter](#) to the Public Service Commission proposing alternatives to the West Dryden Road pipeline, NYSEG requested that Tompkins County municipalities use their authority to "pursue updates that would increase energy efficiency and the use of technologies to reduce greenhouse gas emissions."
  - f. The Town of Caroline has a proud history of actions that promote sustainability and climate protection. The Town's resolution to participate in DEC's [Climate Smart Community](#) initiative committed the Town to using its land-use authority to decrease community energy use and greenhouse gas emissions and to increase community use of renewable energy.
- E. It will serve the interests of the Town and developers wishing to undertake Actions here to have clear recommendations and design guidelines that detail the Town's expectations with respect to groundwater conservation, energy efficiency, greenhouse gas reduction, and development of renewable energy resources.
- a. New York State's Environmental Quality Review Act ("[SEQRA](#)"), and its implementing regulations, mandate the consideration of energy use, energy conservation, and the impacts of energy consumption as significant matters to be considered when weighing the overall impact of any project upon the environment. SEQRA is founded upon and includes important considerations pertaining to public health, building safety, energy efficiency, and overall impacts on the environment, and SEQRA can and does mandate solutions and mitigation plans whenever any such impact has the potential to have any moderate or significant negative environmental impact. The Town thus seeks to examine its review and approval process and standards for Actions to help assure that due consideration is given to all environmental impacts, from traffic to public health, and from building design and density to sustainable development initiatives or alternatives.
- F. It is anticipated that the Town Board's review, study and consideration of the matters requiring review as described in Section 3, including as further augmented by the findings of the Town in Section 4, can be completed within one hundred eighty (180) days of the effective date of this local law, and that modifications, if needed, can be drafted and properly adopted within that timeframe.

- G. The Town Board is concerned that protection both of the Town's interests, and the public health and welfare interests so implicated, including as described in Section 3, could or would be damaged or subverted if Actions were to be entertained or approved before the Town Board considers modifications to address these land use and public health and welfare issues.
- H. Accordingly, to address these issues, and to protect the public health, safety and welfare, it is the intention of the Town Board to prevent the consideration or approval of Actions during the limited time the Town needs to complete its study, review and consideration of local law revisions, and to adopt subsequent legislation.

## **Section 5    PROHIBITED ACTIONS**

For a period of one hundred eighty (180) days from the effective date of this local law, the Town Board hereby declares a moratorium prohibiting each of the following actions in the Town, regardless of the submittal or receipt of any application prior to the effective date of this local law, unless such Action is exempt under Section 6 hereunder:

- A. The consideration by the ~~Town Board or Site Plan~~ *Subdivision* Review Board of any site plan or special use permit, or the review thereof, for or in relation to any Action (whether a new land use proposal or a modification that triggers review and is therefore an "Action"), including any waivers, appeals, or variance reviews by such boards.
- B. Acceptance, consideration, preliminary approval or final approval by the Town of Caroline Subdivision Review Board of any Action or any application for a waiver or variance in connection with any Actions prohibited herein.
- C. The issuance of any permit by the Town of Caroline for highway utility work in connection with any Actions prohibited herein.

## **Section 6    EXEMPTIONS**

The following Actions are exempt from the above-described moratorium and the terms and requirements of this local law:

- A. Any Action that has received final approval or conditional final approval from the Town Board, the Site Plan Review Board, or the Subdivision Review Board prior to the effective date of this local law.
- B. Any traditional Agricultural Action that is protected under Article 25-AA of the Agriculture and Markets Law by being exempt under the Town of Caroline's subdivision or site plan review procedures and laws.
- C. Traditional single family residences and accessory buildings that are to be constructed and emplaced upon an existing lot that are of a size, character, and design

as to not trigger review under the Town of Caroline's subdivision or site plan review procedures and laws.

- D. Any other ministerial building or other permit action that does not trigger review under Town of Caroline's subdivision or site plan review procedures and laws.
- E. Any appeal or review seeking a variance or waiver in relation to an Action that has already been approved and which meets the requirements of Sections 6(A), 6(B), 6(C) and 6(D), as applicable, above.
- F. Any Action or matter for which a waiver is granted under Section 7, below.

## **Section 7      WAIVERS**

Any applicant and any property owner may appeal to the Town Board for a waiver of and exemption from the moratorium requirements of this local law (a "Waiver") and, upon good cause shown, the Town Board may grant such relief, or so much relief as said Board may determine to be necessary and appropriate, pursuant to the requirements of this Section.

- A. In determining an application for a Waiver the Town Board shall consider the following factors:
  - a. Whether there is or will be an unnecessary hardship to the petitioner which is not self-created and which meets the following requirements: (i) the alleged hardship relating to the property in question is unique and does not apply to other applicants or lands or areas of the Town generally; and (ii) the harm to the applicant is not outweighed by the harm to the public generally should the Waiver be granted; and (iii) the Waiver, if granted, will not alter the essential character of the neighborhood or other area in the vicinity of the Action in any materially adverse manner; and (iv) whether the petitioner can clearly demonstrate by detailed written "dollar and cents" proof the inability to obtain a reasonable return for the entire parcel (and not just the site of the Action) unless the applicant is granted a Waiver.
  - b. Whether the need for a Waiver is based in whole or in part upon a lack of maintenance or repair of the property or any improvements thereupon, including consideration of the extent to which the existing improvements are aged, decrepit, obsolete, run-down, outmoded, or in a state of disrepair.
  - c. Whether the site of the proposed Action is affected by an exceptional topographic or other naturally occurring condition as supports a Waiver.
  - d. Whether the Waiver will: (i) result in the loss of irreplaceable recreation, scenic, and other natural resources and sites; or (ii) impair specific public health factors such air and water emissions, traffic, noise, dust, odors, solid waste generation, and any other nuisance which may produce a moderate or substantial adverse environmental impact; or (iii) cause or contribute to a loss of property values; or (iv) not cause any extraordinary public expense, such as, but not limited to the opening of public highways or the extension of utility infrastructure, including

- non-traditional single family residential water supply and septage-sewerage treatment facilities (e.g., non-traditional private single-user residential wells or septic systems as approved by the Tompkins County Department of Health).
- e. Whether the applicant had submitted a substantially complete application for review of an Action prior to the effective date of this local law.
  - f. Whether the proposed Action proposes to: (i) implement best management practices to mitigate greenhouse gas emissions from water and space heating, such as use of efficient electric-sourced heating appliances; and (ii) conserve groundwater resources, such as grey-water recycling and use of low-flow fixtures that exceed current building code requirements; and (iii) maximize opportunities for on-site renewable energy design or generation in a manner as may or will offset at least 50% of the anticipated electric consumption demand for the site or Action; and (iv) reduce overall energy use and ensure high energy efficiency, such as using building envelope and insulation measures that exceed current building code requirements by at least 15%; and (v) mitigate transportation related greenhouse gas emissions, such as providing electric vehicle charging stations, public access park-and-ride spaces, or other mode-share transportation designs or facilities.
- B. Waiver application and review procedures under this local law are as follows:
- a. An applicant shall submit a full statement explaining each and all bases upon which a Waiver is sought, and such statement shall be in writing and shall address; (i) the matters set forth in Section 6(A); and (ii) all information that would be required if such Action were to be preliminarily reviewed as an Action, specifically meaning that if the applicant seeks subdivision review a reasonably detailed draft proposed sketch plan or preliminary subdivision plat shall be submitted, or for site plan review a reasonably detailed proposed preliminary site plan shall be submitted, with the goal and purpose of such submission being to inform the Town Board of the size and scope and potential impacts and benefits of such Action.
  - b. Unless submitted in writing and verified as the complete application by the applicant, the Town of Caroline shall have no duty to review an application as only substantially complete applications may be reviewed for a Waiver.
  - c. All applications shall be filed with the Town Clerk, who shall submit copies of such applications to the Town Board and Planning Board.
  - d. Within 40 days of the certification by the applicant that the application is complete, the Town Board shall conduct a public hearing upon said petition. There shall be at least 5-days' notice by publication and posting of the date, location, and purposes of such public hearing, and at the public hearing the applicant may present evidence and testimony and statements in support of its application, and any member of the public wishing to present evidence on the proposed application or Waiver shall have an opportunity to be heard.
  - e. Within 20 days of the date the public hearing is closed the Town Board shall render a decision in writing upon the application for a Waiver. Such decision shall either deny, grant with conditions, or grant such Waiver without conditions, and the basis for the determination(s) so made shall be summarily explained in such

written decision in a manner as reasonably explains the bases for the decision. Approving a Waiver is and shall not be considered or deemed an approval or recommendation of the Action, which shall still be required to undergo any site plan or subdivision or other required review, including under SEQRA.

- f. All determinations as to the criteria set forth in Section 6(A) shall be weighed and the Town Board shall balance the overall interest of the petitioner with the overall interest of the Town in effecting the goals of this moratorium and the goal of preventing harm to public health and welfare. The Town Board's determination shall be discretionary and the grant, conditional granting of, or denial of an application for a Waiver shall be and be deemed a legislative determination of the Town Board to the fullest extent permissible under CPLR Article 78.
- g. No Waiver may be granted in consideration of or due to the alleged or actual pecuniary or other loss or expense incurred by any applicant in connection with any applications or documents prepared or submitted under or in relation to this local law or any hearing hereunder, and all applicants and other persons proceed with applications, surveys, site development designs, expenses, and engineering and other professional fees at their sole risk and expense.

#### **Section 8      VALIDITY AND SAVINGS**

If any provision of this local law, whether as written or applied, shall be adjudged by any court or tribunal of competent jurisdiction to be invalid or unenforceable, such judgment or determination shall not affect, impair or invalidate the remainder of this local law and shall be confined in its operation and interpretation only to the circumstances, persons, and provisions of this local law directly involved in the controversy in which such judgment or determination shall have been rendered, and such invalidity or unenforceability shall not be applied to other persons or circumstances. If such provision may not be so saved then it shall be deemed severed from this local law and the balance hereof shall survive.

#### **Section 9      LIMITATION UPON TOWN LIABILITY**

The Town, and its officers, employees, and agents shall not be liable or responsible for any injuries to persons or damages to property due to the Town's actions, or failures to act under or pursuant to this local law unless it is proven to a reasonable degree of certainty that such injury or damage was a primary cause of such injury, loss, or damage and was principally caused by a willful or intentional act of the Town, its officers and agents. This provision shall be construed and applied to the maximum extent permitted by law, does not waive any sovereign or governmental immunity of the Town, and does not create any theory or claim of liability where none exists at law or in equity.

#### **Section 10    ARTICLE 78**

Any person aggrieved by any decision or determination of the Town Board in respect of the application of this local law or the issuance or denial of a Waiver hereunder, may have said decision or determination reviewed by the Supreme Court in the manner provided by Arti-

cle 78 of the Civil Practice Law and Rules. This provision shall not, however, expand the jurisdiction, scope, or applicability of said Article 78, create a right of standing where such right does not otherwise exist, or waive any claims, rights, or defenses the Town may have regarding questions of law or fact pertaining to the judicial and legal concepts of ripeness, standing, timeliness, governmental immunities, or of any other matter. Further, all administrative remedies and appeals must be fully exhausted before any Person may commence any proceeding under said Article 78.

**Section 11    EFFECTIVE DATE**

This local law shall take effect immediately.

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