

State of New York
County of Fulton
Town of Caroga

Minutes of a joint work session of the Caroga Town Board and the Planning Board held Wednesday June 4, 2007 at the municipal building located at 1840 State Highway #10 at 7:00 pm.

In attendance were Supervisor Kane, Councilman Ralph Palcovic, Councilman Robert Sprung, Council Member Valerie Scribner, and Councilman Robert Sullivan. Members of the Planning Board in attendance were, Doug Smith – Chairman, Rob Miller, Ron Staring, Mike Voght, John Fenzl, and Steve Putman. Alternate members present were Karen Wheeler and Linda Pomeroy. Mike Heberer – Code Enforcement Officer was also in attendance. There were 25 members of the public in attendance.

Mr. Smith noted that this is a work session. The boards will talk among themselves; at the end of the meeting the public will have an opportunity to voice their opinions, concerns and issues.

- 1) The reading of the minutes of the last meeting (with Brad Dake) was waived.
- 2) Correspondence:
 - a) June 2, 2008 Leader Herald newspaper “Caroga trying to Strengthen Junk Ordinance.”
 - b) APA first notice letter for project # 2008-121.
- 3) No new applications have been submitted.
- 4) Old Business – Junk Ordinance review the procedures and enforcement

Mr. Heberer stated that there were “some quirks in the thing. We have a lot of repeat offenders.” “ In order for me to get to the ticket stage they have to be served a certified letter. So the first step is a first class letter. If they don’t respond to me in 7 days, I send them the certified letter. With the certified letter if they don’t pick it up the post office has to attempt to deliver it three times. I cannot serve a ticket. My time clock for serving a ticket doesn’t start until one of two things happen. I either get the letter back as un-picked up. Or I get the green card back as being signed. Until I receive one of those two things, I can’t go any further.” After he gets the green card back the person still has 7 days from the time they sign for it. “Have they not called me or have they not started with a progression that’s when we have the ticket served.” He noted it could take up to 15 days for the post office to attempt to deliver the letter. He noted that it is another week or two out to get the ticket before the judge. In the case where the person does not pick up the certified mail it could be a month before he actually gets a court date. “The repeat offenders know the system already. If they clean up their yard today, then bring in something more tomorrow the clock starts all over again.” He would like to get to the point that if he has dealt with a person before and they know the process and rule, “then do we have to go through the letter the certified and then the ticket? Can’t we get to the point of ticket at that point?”

Mr. Smith read the purpose of Local Law #2 – 2005. He noted that the board spent a year developing the local law, which was adopted in 2005.

Section 3 Purpose: The Town Board hereby declares that a clean, wholesome and attractive environment is of vital importance to the continued general welfare of its citizens, and that regulation of the deposit, accumulation or maintenance of junk regardless of quantity is hereby prohibited anywhere within sight of persons lawfully traveling public highways, trails, waterways or within sight of neighboring property. By adoption of this law the town declares its intent to protect the community from potential hazards to property and persons; protect and preserve our lakes, water, resources, wildlife and woodlands and to promote a reasonable quality of environment and aesthetics and to prohibit actions and conduct that tend to depreciate not only the property on which it is located but also the property of other persons in the neighborhood, the community generally and to further the goals of the comprehensive plan.

“Mike has these issues and problems that he has to deal with on a daily basis.” Mr. Smith noted.

Mr. Heberer stated that he gets complaints that the progress is not fast enough. “There is no time frame for the progress.” They are complying as long as they are continuing to work. “How long does it take for them to clean it up? There is not a time frame. It could be for god knows how long?” He stated that he receives complaints about the 3 old boats at the old post office. “In the junk ordinance we said that boats would be treated as junk vehicles. Later on in the ordinance we exempted seasonal vehicles from being part of the junk ordinance. A boat falls into the category of being a seasonal vehicle.” In conversation people have mentioned setting a number (limit) for seasonal vehicles. Keep in mind that some people own multiple parcels in the town and so a seasonal vehicle can be moved to another parcel. This includes ATV’s, travel trailers and snowmobiles. Mr. Heberer stated that construction equipment is exempted but he receives complaints on those as well. The law references these issue on page 5 Section 2 - Vehicles. Section 2.

Article B shall not apply to the storage or placement on the premises of the following vehicles: Seasonal and recreational vehicles and or construction machinery and equipment if kept in a location not visible from any road, street, or highway, when practicable. An automobile taken off the road for winter.

Mr. Heberer noted the words when practicable in the ordinance. “When you have a lot 50 x 50 what is practical? Even if you own 10 acres “where practical” does that mean because you own one of these that you have to build yourself a road back in on that acreage so that they can’t be seen from the property?” He noted that we have blanket exempted about everything that is in the town. Mr. Heberer stated that certain things were pulled out of the original draft of the ordinance. Other municipalities tow their vehicles he noted. “After 10 days if you don’t hear from anyone about their junk vehicle it is hooked and towed.” They have to license it, register it, and insurance and get it inspected and pay the storage and tow fee before they get the vehicle back. Mr. Miller has a list of things that were removed from the original draft.

Mr. Smith discussed repeat offenders: Mr. Heberer noted that you can’t change the way people are used to living. “It is a never ending battle.” Some people won’t have grass on their lawn.

Councilman Sullivan asked if he was satisfied with the initial process in the first 30 days? Mr. Heberer responded, “that’s a legality we have to set a time frame and then I have to follow it up

with a certified letter. Where it becomes sticky is after the certified letter and the person goes to court. The next day they could bring something back in and the clock starts ticking all over again. That's where the problem is."

Councilman Sprung asked why he was having ticket served? Mr. Heberer responded, "trying to find people. It is easier for him (process server) to go and find them. He goes at 7 – 9 pm and gets them." Councilman Sprung asked if he ever makes contact with the people? Mr. Heberer responded most of the time there is no one there or they don't answer the door. Councilman Sprung stated that he could issue the ticket. Councilman Sprung noted the local law states a minimum of \$50.00 and maximum fine not to exceed \$350.00. It was noted that people are not getting fined in court enough to recoup what is being spent to get them to court. There is an imprisonment period not to exceed fifteen days in the local law. The board noted that penalties are determined by the court. Mr. Smith noted there were no fines established for 2nd, 3rd, or 4th offenses.

Councilman Sullivan asked if it is spelled out then the judge is bound to follow the law put on the books? Councilman Palcovic thought second occurrence in a calendar year shall be a \$500.00 fine, third occurrence in a calendar year.... Mr. Miller noted that the maximum of \$350.00 was set because over that amount then the classification of offense changes.

Mr. Fenzl asked how other municipalities deal with repeat offenders. Mr. Heberer stated that everyone is dealing with the same issue. He is going through this in the City of Johnstown. It is a common problem. At the entrance to the Town of Caroga one vehicle goes, a day later another vehicle shows up. Then the clock starts again, this happens over and over again. "If I could just walk up to him and hand him a ticket without the letters and keep doing that until we stop bringing them in."

Council Member Scribner noted that a self-help procedure might need to be instituted. This was in the original draft but pulled out. The boards discussed putting the language back in. "Cleaning up and towing was in there." Mr. Heberer stated.

Councilman Sprung asked if the law was re-written to include a minimum and a step fine there are procedures the town can take through the judicial court system. If he doesn't follow them we can do something about this. "You would file a judicial complaint." Something has to change he stated. "Making more laws that we can't enforce whether they are towing laws...is not going to do it. I had a basic junk law when I did this." "Junk cars are 365 days a year - they are like weeds. But I used to stop and try to make contact and be reasonable." He was successful 85% of the time.

Mr. Heberer stated that they get responses back from the letters, and the amount of tickets issued are on the lower end, but they are dealing with a lot of the same customers.

Councilman Sprung was in favor of a structured fine system to deal with repeat offenders. He would like to talk to the town attorney before getting into the towing issue. Mr. Heberer stated that he hasn't had any repercussions with towing in the City of Johnstown. He noted they are

mowing and removing trash and charging the property owner. Mr. Heberer explained a mechanics lean.

Councilman Scribner quoted from a Dept. of State publication on controlling junk. In some instances where the situation is determined to be a public nuisance the municipality can do abatement.

Councilman Palcovic noted that the town justice has compassion.

Linda Pomeroy noted that there was recently an article in the Schenectady Gazette on junk cars in Amsterdam. She noted that if nothing is done in a few days there is a significant fine. Mr. Heberer noted that Amsterdam is working with the City of Johnstown. In Johnstown last year they towed 80 vehicles.

It was noted that in lots of towns after the garage sale weekend is a cleanup day curbside. Mr. Smith was in favor of the town truck going around on a schedule to get this done once or twice a year. Councilman Palcovic noted that many properties were cleaned up during the HUD program. Mr. Sprung noted that trash should be separated. Mr. Heberer quoted "one man's junk is another man's treasure." The Town board thought the cleanup days in Caroga are very successful.

The next issue discussed was progress – time frames. Mr. Heberer – "I can't really issue a ticket if they are complying." He asked the boards if they wanted to set a number of days to comply. There are a couple of places in town where the people are working on it but you don't see a dent being made, "but they are working on it." Councilman Sullivan asked if any of these people were handicapped? This was not the case Mr. Heberer responded.

Councilman Sprung wanted to make sure whatever is put on paper is reasonable to the judge. Mr. Heberer asked what is reasonable progress? Councilman Sprung went back to the judge's opinion as that is the last stop. "You can write all the laws you want..." Council Member Scribner thought Mr. Heberer could determine how long it should reasonably take to clean up a property. Councilman Palcovic stated it has to be black and white - 15 days? Did the town want to put a limit on it? What if there was a hardship? Councilman Palcovic stated that was up to the judge. Mr. Heberer noted that people are cooperating but they are not doing it fast enough for their neighbor. Mr. Heberer follows what he does in Johnstown in Caroga. "As long as they are making some sort of progress then they are trying to comply and I work with them."

Mrs. Wheeler noted that in the ordinance it states in Section 4 Notice to Comply (4) A demand that violation or nuisance be removed or placed so that to as to be in compliance with the law within seven days after the service or mailing of the notice. "We discussed this when we wrote it that seven days as long as they were complying and contacted the office and working on it that we would work with them." Mr. Heberer stated. "Before you give them the ticket legally I have to have their signature on the certified mail card." Most times he has compliance or a phone call within the seven days.

Inspections (vehicle) were discussed. Mr. Heberer noted that DMV gives them a temporary 15-day inspection. There is one case of a vehicle having no rear end for which the owner showed Mr. Heberer an inspection sticker. The sticker has to be on the window it was noted. Mr. Heberer stated that was not his part of the law.

Mr. Smith asked what the recommendations were? Mr. Putman thought a 15-day time frame should be set. Mr. Heberer stated that the city attorney won't look at a ticket unless it has due service – a signature on that card. Mr. Smith wanted to establish a fine for a second offense.

Councilman Sullivan wondered if the certified letter could be issued immediately for a second offense. Mr. Putman suggested taking a dated photograph of the property once the vehicle was removed so when they re-gather things the town has evidence.

Mrs. Pomeroy noted that on page 6 of the Local Law it talks about towing vehicles. Mr. Heberer restated that the process has to start all over again no matter how many times they know about the junk ordinance. The code officer has tracked a vehicle on four different properties before he could issue a ticket. He noted that the property owner is responsible for removal of the vehicle.

Councilman Sprung asked board members – supposing we change the language, restructure the fines, and add the towing, if this doesn't get followed should we find out what our recourse is to make it happen? Mr. Heberer noted the local law was a work in progress and that down the road things would need to be revisited.

It was noted that when people go to court they were fined only \$25.00 or the vehicle is removed before court and no fine is given. Mr. Smith thought the law should be tweaked. The loopholes need to be fixed. Councilman Palcovic stated that the judge “could not have input on the ordinance because then he is the judge and the jury.”

Exemption of seasonal vehicles was discussed. Mr. Heberer is getting a lot of complaints about snowmobiles, and construction equipment. In the beginning of the local law they are going to be treated as junk vehicles but then on page 5 they are exempt in article B. The seasonal vehicle was reviewed. “Seasonable Use: A use carried on for only part of the year.” Mr. Sullivan stated he could show you vehicles that have never been used in 4 – 5 years. “Does that put them in a different category?” The word operable was suggested. But Mr. Heberer questioned who was going to have 13 boat towed to the water to see if they float? There is a gray area that needs work.

Mr. Heberer noted that seasonal vehicle permits are available.

Another definition that needed to be defined was what is seasonal, what's recreational? ATV can be used all year long but is considered seasonal, trailers? Councilman Palcovic suggested operable and intact. Mr. Heberer said another person would have to be hired just to keep track of boats, snowmobiles, and trailers in this town. “Everybody's got five or six. What about the 1968 snow machine with weeds growing through it and the guy walks out and puts a plug in it, throws some gas in it and pulls it and starts it then what do you do?” That is the problem.

It was asked if the corridors could be regulated more so than the rest of the town. The Town board members were not in favor of that.

Mr. Heberer used the term “seasonal recreational vehicle.” People are allowed one unregistered plow vehicle. Mr. Heberer stated that his office sends 18 – 20 letters per month. Out of those 15 –16 will comply. One or two will wait until the certified letter arrives. He is not in court every month. Mr. Heberer asked the boards to come up with some ideas on how to deal with repeat offenders and the question is should we define progression? Boats are an issue too, but he has big shoulders he will deal with that.

Public Comment:

Judy Welker -was concerned with the property behind the new post office. There are piles of junk there. Mr. Heberer responded, “How many times have I talked to both of them, Sandy?” They will make a little progress... that is a progression problem.

Jack DeWeese asked if the \$50.00 fine covered the expenses to do the process. Mr. Heberer stated that it covers materials it doesn't cover the man-hours. Mr. DeWeese thought the fine should be raised.

Jim Selmsler – thought the second offense should be addressed. He thought it should be revised to the maximum limits.

Councilman Sprung heard on the news about a \$1000.00 fine in Ohio for not mowing the lawn. Mr. Heberer noted that there is a NYS property maintenance code that says the lawn is not to be more than six inches.

Scott Horton – was encouraged to see the boards working together. He thought there has been some progress on cleaning up the town. Keeping the word out there may encourage people to clean up their property. He noted that the definitions need to be worked on. He was in favor of having people putting up fences.

Councilman Sprung was pleased with the public support at this meeting.

Mr. Heberer is looking for a way to cut back on the first service notices. A two part non carbon paper may be used. The first part would be left at the property the day he visits. He wants to make sure that would count as the first service.

Richard Woods asked Mr. Heberer if in discussing violations with the people did they have any input as to cleanup time. Mr. Heberer noted that people say to him they are going to work on it. He tells them “as long as we're making steady progress then I'll work with you.” “ The minute the progress stops then I'm done working with you.” Mr. Woods suggested in discussion Mr. Heberer and the resident could agree to a limited amount of time to clean up, and it should be in writing with a fine at the end of the agreed time. Mr. Heberer stated that the neighbors complain because it is not being done fast enough.

Mr. Fenzl also thought that an agreed time frame might work. Councilman Palcovic did not think this would be enforceable in court.

Councilman Sprung has faced these same situations when he was code officer. When people were finally brought into court they were still given more time.

Mrs. Holliday suggested setting a limit of 15 days after a certified letter has been received to remedy a violation. The first offense should be \$100.00 the second \$200.00. She asked about progress next to Shutts Service Station. He is complying Mr. Heberer stated.

Mr. Fenzl suggested a petition to the judge.

Mr. Healy appreciates the efforts the town is making. His family has been here for years, but doesn't vote here. They want to see progress happen faster.

Mr. Knapp suggested having the violation notices go out after the snow has melted. He remembers when neighbors helped neighbors. His family has had a lot of health problems and it is difficult for him to clean up on a time schedule. There are more important things in life he noted. A sign should be posted at the entrance of town – “you have to have an income of so much money to be able to meet all these code enforcements that you guys want.” He is saddened to hear he would only have 15 days to fix a vehicle when he is on Social Security. He stated that one of his neighbors dumps their cans and garbage in the creek beside their house and covers it with dirt.

It was noted that hardships would be taken into consideration.

Mr. Horton thought a time frame should be adhered to. “Enforcement is separate from the law.” Discretion can be used to enforce the ordinances.

Mr. McLain asked if the town board could pass a resolution that if a person was going to have multiple cars and boats then they must be a licensed dealer. Then the zoning board could deal with the situation. He noted that there are places where construction equipment has been sitting around for two – five years and never moved. If he person proves they are in business then they can have it. He suggested having a town constable.

Mr. Smith thanked everyone for attending the meeting. The next step is to come up with some ideas and go from there.

The meeting adjourned at 8:30 pm

Respectfully Submitted,

Linda M. Gilbert – RMC
Town Clerk