

**Danby Town and Planning Boards
Minutes of Special Meeting
October 17, 2011**

Present:

Supervisor: Ric Dietrich
Councilpersons: Leslie Connors, Kathy Halton, Dan Klein

Excused:

Dylan Race

Others Present:

Town Clerk	Pamela Goddard
Town Attorney	Guy Krogh
Delta Engineers	Steve Mesmer
Code Office	Sue Beeners
Bookkeeper	Laura Shawley
Highway Sup't	Carl Seamon
Planning Board	Anne Klingensmith, Robert Roe, Naomi Strichartz, Joel Gagnon
Public	Ted Crane, Gay Garrison

Town Board Budget Review commenced at 6:34pm

There was a discussion about shifting funds from the Attorney line to the Community Council request, to help cover costs for youth programming. There was also a request from the Code office to increase the hours of the code assistant from 20 hours per week to 30. The cost of this increase will be partially offset by a cut in the Storm Water Coalition dues.

The Board also discussed allocating funds from the fund balance to the pension reserve. This included a discussion as to whether there was any benefit to shifting allocations now or later. A concern was expressed regarding known costs of drafting local laws—which should be complete in 2012—and assuring that sufficient funds are budgeted for those costs. Shawley advised the Board that it would be acceptable accounting practice to review the budget partway through the year and move money between budget lines as needed. In addition, money may be shifted by Board resolution from the fund balance to reserves at any time in the year.

Set Budget Hearing

There was agreement not to make further adjustments to the budget. The bookkeeper requested a date which would allow some final electronic review by the State Comptrollers Office. The budget needs to be passed by mid-November.

RESOLUTION NO. 104 OF 2011 - SET BUDGET HEARING

Resolved, that the Town Board of the Town of Danby sets a hearing for the proposed 2012 Town of Danby Budget for November 7 at 6:30pm, at the Danby Town Hall.

Moved by Klein, Second by Connors.

In Favor: Connors, Halton, Klein, Dietrich

The Meeting of the Danby Town and Planning Boards was opened at 7:00pm.

Road Use Law Discussion

Supervisor Dietrich opened Q&A with Delta Engineer Steve Mesmer and Town Attorney Guy Krogh. Members of the Town and Planning Boards asked how would the Road Use Protection Law work in “real life”? Given the understanding that there are limits to stopping usage of public highways, what options does the Town have? How does the Town determine haul routes and limit industrializing Town roads?

Krogh and Mesmer addressed these concerns, providing legal and engineering responses. There are land use rights (zoning) and road engineering/traffic safety elements to the issue. This law does not address zoning concerns, but is designed to protect Town highways.

Mesmer gave an overview of the process that begins after a developer has acquired the requisite permits from the DEC. The Town has the right to determine that a road is inappropriate for heavy impact construction or hauling activity. A determination would be based on engineering specifications—baseline traffic/road safety, structures (culverts, bridges, etc.), geometry (curves, slopes, etc.), and surface capacity. In a case where road repair/stabilization is needed, companies must use Town-specified methods. Mesmer outlined sample specifications.

If a specific road is determined to be inappropriate for heavy usage, the Town can disapprove a haul route. It has been determined, in other legal opinions, that it is permissible for a municipality to limit haul routes to state and county roads, as long as there are valid connections between state highways. Access to Town roads would then be limited to local supply and delivery. Municipalities can not close roads to all traffic, except in extreme circumstances. Danby only has control of Town roads. Designating haul routes is a coordinated process between the Town and the NYS DOT. The Town would have the right and power to refuse a request to improve roads or to have a road used as a haul route, but would have to have good rationale for that determination.

Companies involved in high-impact uses that require the use of a specific road would have several options: to challenge determination in court or to address reasons for determination.

Ownership of a road is sometimes determined through “highway by use” and could be limited to the traditionally traveled portion of the road and that portion of the roadside maintained for the highway. Companies do not have eminent domain right over property which contains a “highway by use.” A company would need to acquire the rights from all of the land owners along the road in question. Alternately, a company could pay private landowners to build a new road. This would then trigger Danby’s Road Excavation and Stormwater regulations.

There were questions about permitting and cumulative impacts. The Law regulates projects, not the haulers. The developer is responsible for all permits, fees, etc. Cumulative effects are figured into the engineering thresholds. Thresholds, not necessarily regulation, trigger review. Use Regulations will be determined on a case by case basis.

Minimum use will be determined by the Highway Superintendent. Road use which triggers high impact thresholds, and resulting permits, haul routes, road improvements, would be determined by the Town Board. [There was an unanswered question as to whether there would be a public hearing in these cases.] Analysis and evaluations of specific roads will be done on a case by case basis, as the specific need arises. Most truck traffic will fall under “baseline traffic” and not trigger this law.

Who is responsible for issuing citations? State Sheriff patrols and the Highway Supervisor.

A question was raised regarding “Road Use Agreements” as compared to complying with the Road Use Law. Mesmer gave a short history of RUAs vs. RULs in Pennsylvania and New York. The current template RUA, included in the RUL package, seeks to be fair to both sides while protecting the roads. This RUA mirrors performance specifications in the DEC rdSGEIS. The same analysis is used for an RUA as would be triggered by the RUL. Industry will almost always choose to use an RUA as being simpler to manage and more legally binding. Mesmer stated that it isn’t about money for the large companies, but rather about time. Krogh and Mesmer explained that, while there is a

model RUA in the Road Law package, any final RUA will be individually drafted to the particular project.

A concern was raised about lack of a definition of “Town Road” in the draft law. Gagnon made a suggestion language to the effect, “under jurisdiction of the Town, except county and state roads” be included to clarify. Krogh agreed to making the addition. This led to a discussion about road swaps between the state, county, and towns.

There was a question regarding language of section 5c(i) which specifically addresses gas drilling vehicles. Krogh answered that Towns are specifically empowered to protect roadways and many vehicles used in this industry are oversized vehicles which will trigger the law. He asserts that this language also helps address some pass-through traffic. Krogh described this section as a “redundant backup.”

There was a questions about logging activity in relation to this law. According to Krogh and Mesmer, small scale logging activity related to reasonable and and safe agricultural practices would be exempt. Large scale commercial logging activity would trigger this law. There could also be seasonal triggers on some roads.

Beeners described 1990 highway specifications and 2002 minimum use regulations for Danby roads. She posed the question of which specifications would be used in relation to restoration in this law. It was advised that this would be currently evaluated on a case by case basis and that Danby’s road specifications need to be evaluated and updated.

Consider Resolution - DEC Gas Drilling Regulations

Halton explained the purpose of a draft resolution, based on an identical resolution from the Town of Ulysses.

RESOLUTION NO. 105 OF 2011 - RESOLUTION TO REQUEST THE NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION OR NEW YORK STATE LEGISLATURE TO RETRACT THE RELEASE OF HYDROFRACTURING REGULATIONS UNTIL AFTER THE REVISED DRAFT SUPPLEMENTAL GENERIC ENVIRONMENTAL IMPACT STATEMENT IS FINALIZED.

Whereas the revised draft supplemental Generic Environmental Impact Statement (sGEIS) is currently under review; and

Whereas the Department of Environmental Conservation concurrently released the proposed regulations that will govern high volume hydraulic fracturing for natural gas; and

Whereas Towns, Villages, Cities, and Counties were unaware that both documents would be released at once and are taxed with the enormity of reviewing the 1000+-page sGEIS alone much less two lengthy and complex documents; and

Whereas the Town Board of the Town of Danby feels it imperative that the revised sGEIS be properly finalized PRIOR to drafting regulations **as the sGEIS should impact how the regulations are written.**

Whereas small rural municipalities in the center of the Utica and Marcellus Shale gas deposits are staffed sparingly and have little to no support to help them address the additional work required for these types of reviews.

Now Therefor be it

Resolved that the Town Board of the Town of Danby requests that either the DEC Commissioner or the New York State Legislature require the DEC to retract the draft regulations governing high volume hydraulic fracturing AFTER the sGEIS is finalized in order to incorporate comments from the sGEIS review and to allow time for municipalities to properly absorb the vast amounts of information and respond accordingly.

Moved by Halton, Second by Klein.

In Favor: Connors, Halton, Klein, Dietrich

Set Public Hearing - Local Law #4 of 2011

The Town Board discussed setting a public hearing for the Road Use and Preservation Law. Krogh advised that concerns could be simply addressed and corrections made in a short time. He

stated that the law was sufficiently ready for setting a public hearing. A local law needs five days for legal notice. Krogh advised that there are no other involved agencies.

The Board determined that a public information meeting is not needed. The Highway Department will engage in outreach to inform local haulers and answer questions they may have.

RESOLUTION NO. 106 OF 2011 - SET PUBLIC HEARING - PROPOSED LOCAL LAW #4 - LOCAL ROAD USE AND PRESERVATION LAW

WHEREAS, the Town Board of the Town of Danby is considering adoption of a Local Road Use and Preservation Law, said law being designed to protect the various Town Highways by requiring those that engage in certain industrial, commercial and construction operations that have heavy traffic, known and defined as above-baseline "Concentrated Traffic," notify the Town of haul routes and the size, weight, and types of vehicles, and the number of vehicle trips to and from a site or along a Town Highway. The Town then conducts a haul route analysis and determines whether the proposed route is safe and acceptable, and whether the proposed Town Highway usage, based upon engineering analyses of Town Highways, is to be allowed, including whether the roadway geometry, strength, and other features require any upgrades and/or post-completion repairs or restoration, and including provisions for the posting of a bond or other undertaking to guarantee the proper repair, restoration, or remediation of the Town Highway;

NOW, THEREFORE, IT IS

RESOLVED, that the Town Board of the Town of Danby declares itself as lead agency and such consideration of adoption is being treated as a Type One action under 6NYCRR Part 617.6 of the implementing regulations for the New York State Environmental Quality Review Act (Environmental Conservation Law Article 8); and it is

FURTHER RESOLVED, that the Town Board of the Town of Danby schedules a public hearing to consider adoption of the aforesaid Local Law for November 14, 2011 at 7:00pm; and it is

FURTHER RESOLVED, that the Town Board of the Town of Danby directs the Town Clerk to transmit copies of the local law to all potentially interested agencies.

Moved by Klein, Second by Halton.

In Favor: Connors, Halton, Klein, Dietrich

Adjournment

The Meeting was adjourned at 9:18pm.

Pamela S Goddard, Town Clerk