

October 10, 2023

Supervisor Horr called the Regular meeting to order at 7:02pm. Roll call was taken, and found Councilperson Luce, Colella, Infantino, and Bacon present. Also present was Highway Superintendent James MacWhorter.

Guests include: Yvonne Smallwood, Charlie Perkins, Kim Coleman, Greg Nelson, Nancy A. Nice.

Pledge to the Flag followed, led by Deputy Bacon.

Supervisor Horr opened the public hearing on local laws # 4 Local Highway Excavation Law and #5 Moratorium on the processing, permitting, and construction of certain electric storage systems in the Town of North Dansville, at 7:04pm. Deputy Clerk Howe read the public hearing notice. There were no comments from the floor on either local law. Supervisor Horr kept the hearing open until the end of the meeting.

Privilege of the floor: None

Nancy Nice Town/Village Planning Board Chairperson requested the Town make the Planning Board the lead agency for the master plan. A motion by Councilperson Colella and a second by Bacon to appoint the Planning Board as the lead agent for the Master Plan. All in favor. MOTION CARRIED.

The Deputy Town Clerk presented the minutes from September 12, 2023, regular meeting, copy on file. A motion by Councilperson Colella and a second by Bacon to accept the minutes as presented. All in favor: MOTION CARRIED.

The Town Clerk's report for the month of September 2023 was presented, copy on file. The report shows monies taken in for the month were \$21,234.00 of which \$2459.72 was turned over to the Supervisor for placement in the appropriate account. A motion by Councilperson Bacon and a second by Infantino to accept the report as presented. All in favor. MOTION CARRIED.

Zoning/Code Officer's report for the month of September 2023, no report submitted.

Justice reports from Justice Werth, and Weidman for the month of September 2023 were presented, copy on file. The report shows monies taken in for the month were \$10,704.00, and \$3555.00, respectively. A motion by Councilperson Bacon and a second by Colella to accept the report as presented. All in favor. MOTION CARRIED.

Town /Village Planning Board: Minutes submitted for the September 26, 2023, meeting, copy on file. A motion by Councilperson Bacon and a second by Colella to accept the report as presented. All in favor. MOTION CARRIED.

Town/Village Zoning Board of Appeals: Minutes submitted for the September 25, 2023, meeting, copy on file. A motion by Councilperson Bacon and a second by Luce to accept the report as presented. All in favor. MOTION CARRIED.

Executive Summary report for the month of September 2023 was presented, copy on file. A motion by Councilperson Bacon and a second by Infantino to accept the summary as presented. All in favor. MOTION CARRIED.

Committee Reports:

Cemetery: Supervisor Horr presented a cost analysis worksheet for the cemetery. The Board has been discussing raising the cemetery rates over the past year. Supervisor Horr gathered financial information from surrounding cemeteries to make his recommendation to the board. A motion by Councilperson Infantino and a second by Colella to adopt the new cemetery rates as of 1/1/2024. All in favor. MOTION CARRIED. The rate analysis is below.

Town of North Dansville  
Greenmount Cemetery Rate Analysis

	<u>Holy Cross</u>	<u>Nunda</u>	<u>Greenmount</u>	<u>Mt. Morris</u>	<u>Supervisor Recommended</u>
Lots - Full	650.00	600.00	600.00	875.00	\$ 750.00
Lots - Cremation		300.00			\$ 750.00
Burial • - Full	550.00	600.00	650.00	800.00	\$ 800.00
Burial - Full Weekend	650.00	750.00	750.00	800.00	
Burial - Cremation	300.00	300.00	300.00	500.00	\$ 425.00
Burial - Cremation Weekend	350.00	450.00	350.00	500.00	\$ 475.00
Footers	Add 50% of Their Cost				

Highway: 10267 Cemetery Road: The Code Enforcement Officer suggested the Town make this a seasonal road and have the property owner remove the gate. Superintendent MacWhorter stated the road would need to be widened to allow emergency vehicles to access. Councilperson Colella will investigate what the Town would have to do to make it a seasonal road and address it at future meetings.

Airport: Supervisor Horr has paperwork for Amber Ferguson to have her wedding in 2024 on the airport grounds. The tenant is a Fixed Based Operator, so any fee for usage would go to them. Permission was given to the parties to hold the wedding there, but they cannot interfere with the airway, or runway.

The Fixed based operator lease will expire in August of 2024. Councilperson Colella would like this matter to be put on the March 2024 meeting agenda.

Finger Lakes Soaring Club have all contract updates. The club will vote on the contract at their next meeting. This item will be on the agenda for discussion and vote during the Monday November 13, 2023, meeting.

Recreation Area: The board asked the Town Clerk to schedule the removal of the portable toilets from Frontage Road Park for 10/31/23.

Cemetery: A motion by Councilperson Bacon and a second by Infantino to accept the September 2023 Cemetery report. All in favor. MOTION CARRIED.

A motion by Councilperson Colella and a second by Bacon to close the Public Hearing on local law #4. All in favor. MOTION CARRIED.

**RESOLUTION NO: ADOPTIONG LOCAL LAW NO. 4 OF 2023- THE LOCAL NO. 10-1-23 HIGHWAY EXCAVATION LAW**

Motion by Councilperson Colella

Second by Councilperson Bacon

Be it enacted by the North Dansville Town Board as follows:

SECTION 1: TITLE

This Local Law shall be known as "The Local Highway Excavation Law."

## SECTION 2: LEGISLATING FINDINGS AND PURPOSE

The Town Board has determined that there is a need to control all excavations of all Town highways and the land thereunder by all third parties other than the Town in order to preserve the condition and integrity of such highways. To do so, it is further determined that a permit process is required together with such conditions to insure that said excavations are done in such manner as to preserve the public welfare, and that the affected highways are returned to good condition thereafter. It is the purpose of this Local Law to establish such permit process and to prescribe the conditions therefor.

## SECTION 3: AUTHORITY

This Local Law is enacted pursuant to New York State Municipal Home Rule Law Section 10, New York State Highway Law Sections 140, 320 and 326, and New York State Town Law Section 130(7).

## SECTION 4: DEFINITIONS

1. HIGHWAY – Every street, road, highway and other public thoroughfare under the control of the Town of North Dansville Highway Superintendent, as more further defined in the New York State Highway Law definitions of “Highway” and “Town Highway.”

2. EXCAVATION – Any digging or other disturbance into and/or under the surface of a highway.

## SECTION 5: PERMIT PROCESS AND CONDITIONS THEREFORE

A. Except for the Town of North Dansville, its employees and agents, and except as otherwise provided by law, all persons and entities, public and/or private, must first obtain a permit from the Town Superintendent of Highways before any excavation of any Town Highway is commenced by any such person or entity. A true copy of the permit application form is attached hereto, all of the terms of which are made a part hereof.

B. Except in case of emergency, such permit shall be applied for and submitted to the said Town Highway Superintendent, either directly or through the Town Clerk, at least ten (10) business days before the excavation is to occur. In case of emergency, the application may be submitted to either said individual at any reasonable time.

C. The permit application shall include the following:

1. a. Entity Requesting Permit – The name and address of said entity and all contact information therefor.

b. Entity Performing the Excavation – If the actual entity performing the excavation is different than the applicant, then the name and address of the separate entity performing the excavation and all contact information therefor.

2. PURPOSE – The purpose for which the excavation is being performed.

3. LOCATION – The specific location of the excavation and a detailed, 3-dimensional, scaled diagram thereof.

4. DURATION – The duration of the excavation work, including date and time of commencement as well as the date and time that the affected highway area is expected to be completely restored to good condition.

5. TRAFFIC CONTROL – A detailed description of the methods by which traffic shall be controlled and/or diverted during said work.

6. COST OF REPAIR – The expected total cost to repair all damage to the surface and/or subsurface of the highway being excavated to bring said area into good condition.

7. INSURANCE – The applicant must provide for the application the following insurances in favor of the Town:

a. Insurance(s) indemnifying, defending and holding the Town harmless from all injury to person and damage to property associated or connected in any way with the excavation, in an amount of \$3,000,000 per person, \$6,000,000 aggregate per occurrence.

b. Proof of Workers' Compensation covering all of the excavator's employees and subcontractors, and their employees and agents.

c. A surety bond, or in lieu thereof a cash deposit, in an amount reasonably determined by the Town Highway Superintendent, to cover the probable expense to the Town to restore the highway and any adjoining public areas affected by said excavation, any unexpended balance to be refunded to the depositor.

d. Form and Content – All insurance policies and surety bonds shall be issued by companies authorized to do business in New York State and shall be in form and content acceptable to the Town's attorney.

8. CONDITIONS – The permit shall contain the following conditions and responsibilities of the applicant and excavators:

a. The excavation shall be done in such time and manner as agreed to by the Town Superintendent so as to be minimally invasive to the highway surface and subsurface, and to be as minimally disruptive to the traffic and the public welfare as possible.

b. All excavations shall be subject to the approval of the Town Highway Superintendent and may be halted or otherwise limited by said Superintendent at any time that he determines is in the best interest of the Town.

c. The applicant, actual excavators and subcontractors shall:

(1) Adhere at all times to all requirements imposed by the Town Highway Superintendent.

(2) Indemnify, defend and hold harmless the Town from all injury to person and damage to property arising out of or connected in any way with the excavation as well as to the restoration of the highway thereafter.

(3) Perform all work in a good, workmanlike manner, and complete all work and restoration of the highway as expeditiously as possible.

(4) Restore the surface and subsurface of the highway as well as any other public property disturbed by the excavations to good condition as determined by the Town Highway Superintendent in accordance with such specification as he determines. To the extent this is not fully completed, the Town can use the surety bond, or deposited amount, to complete said restoration. To the extent the bond or deposit does not cover the full restoration of the Town, the applicant, actual excavator and all subcontractors shall be individually and jointly liable for all expenses incurred by the Town to complete same.

9. SIGNATURES – The applicant, actual excavators and all subcontractors shall sign and be responsible for all requirements of this permit.

#### 10. PERMIT FEE AND CHARGES

a. The permit fee shall be \$25 for each excavation.

b. In addition, if any such excavation is required to be reviewed by the Town's Engineer, as determined in the sole discretion of the Town Highway Superintendent, all of the Engineer's fees shall be paid by applicant in advance and/or at such other times as Engineer requires.

#### SECTION 6: ENFORCEMENT AND PENALTIES

A. TREBLE DAMAGES – Any person or entity that excavates any Town highway without first obtaining a permit as required herein shall be liable to the Town for treble damages incurred by the Town pursuant to Highway Law Section 320 to enforce this Local Law, stop the excavation, and restore the highway and any other disturbed public surfaces to good condition, including all legal, engineering and other professional services to accomplish same.

B. CRIMINAL PENALTY

1. Any person or persons convicted of violating any provision of this Local Law shall be guilty of a violation. A conviction of a first violation is punishable by a fine of not more than \$500 or imprisonment not to exceed three (3) months, or both. A conviction of a second violation occurring within a period of five (5) years is punishable by a fine of not less than \$500 nor more than \$800 or imprisonment not to exceed six (6) months, or both. A conviction of a subsequent violation occurring within a period of five (5) years is punishable by a fine of not less than \$800 nor more than \$1,000 or imprisonment not to exceed nine (9) months, or both. Each week that a violation continues uncorrected or is resumed shall constitute a separate additional violation.

2. The Town Highway Superintendent and County Sheriff are hereby authorized to issue and serve appearance tickets with respect to any violation of this Local Law. The Town Attorney shall prosecute all such violations.

C. In addition to the penalties prescribed herein, if any use of Town Highways is made or threatened in violation of the New York Highway Law, the New York Vehicle & Traffic Law, or other Local Law or ordinance of the Town, the Town Highway Superintendent may, in the name of and on behalf of the Town, at the Town Board's direction, seek all remedies allowed pursuant to such laws or ordinances.

D. In addition to the penalties and punishment herein, at the direction of the Town Board, the Town Attorney may maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or restrain any violation of this Local Law.

E. In all cases the violator(s) shall be liable for all of the Town's professional fees, including but not limited to all attorney's fees, court costs and disbursements incurred by the Town to enforce this Local Law and to recover all sums the Town is entitled to by this Local Law.

F. The Town shall also be entitled to seek any other legal remedies allowed to the Town by law.

SECTION 7: INCONSISTENT PROVISIONS

To the extent, if any, that any provision(s) of this Local Law are inconsistent with any other of this Town's Local Laws or ordinances, the provisions of this Local Law shall prevail.

SECTION 8: SEVERABILITY

If any part or provision of this Local Law or the application thereto to any Person or circumstance shall be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other Persons or circumstances.

SECTION 9: EFFECTIVE DATE

This Local Law shall take effect upon filing with the New York Secretary of State.  
Roll Call vote: **A YES**; Supervisor Horr, Councilperson Bacon, Luce, Colella, Infantino  
**NOES**; NONE. MOTION CARRIED 5 TO 0.

A motion by Councilperson Colella and a second by Bacon to close the Public Hearing on local law #5. All in favor. MOTION CARRIED.

**RESOLUTION NO: ADOPTIONG LOCAL LAW NO. 5 OF 2023- ESTABLISHING A MORATORIUM ON THE PROCESSING, PERMITTING, AND CONSTRUCTION OF CERTAIN ELECTRIC STORAGE SYSTEMS IN THE TOWN OF NORTH DANSVILLE NO. 10-2-23**

Motion by Councilperson Colella

Second by Councilperson Bacon

Be it enacted by the North Dansville Town Board as follows:

**SECTION 1: PURPOSE AND INTENT**

The purpose of this Local Law is to protect the public health, safety and welfare of the residents of the Town of North Dansville and to maintain the status quo as to certain electric storage systems, as the present zoning regulations in the Town do not adequately address this type of use. The moratorium will stop the processing of applications for, and the issuance of any permits, certificates of occupancy and approvals for certain land uses relating to electric storage systems, including but not limited to solar farms. The moratorium is for a period of one (1) year, allowing the Town Board to analyze and determine potential appropriate revisions and amendments to the Town of North Dansville Zoning Code concerning this use.

**SECTION 2: LEGISLATIVE FINDINGS**

The Town of North Dansville Town Board does hereby find that without a temporary halt on the processing, permitting, and approvals for certain electric storage systems land uses there is the potential that such uses could be located in unsuitable areas within the Town and/or on particular lots without adequate dimensional regulations in place. The potential for the unsuitable location of and lack of proper dimensional regulations for, such uses would have materially adverse and irreversible impacts on the Town. The Town Board also finds that it is in need of time to perform the necessary analysis of the potential types of electric storage systems facilities that could be located in the Town. By maintaining the status quo regarding such uses the Town Board can provide for the planned orderly growth and development of the Town.

**SECTION 3: MORATORIUM IMPOSED; APPLICABILITY**

For a period of time of one (1) year following the effective date of the adoption of this Local Law, no application may be processed, and no permits, certificates of occupancy, approvals, denials, determinations or interpretations may be issued or granted for any land uses relating to electric storage systems, including but not limited to those related to any facility designed to store electric power to be marketed, sold or used for other than the power demands of the improvements on the property on which such facility is located. Not included within the scope of this moratorium are electric storage systems facilities designed to store electric power solely for the use of the improvements located on the same property. This Local Law shall be binding on the Town Board, Planning Board, Zoning Board of Appeals, Building Inspector, all Town officials and employees, and any applicant or real property owner in the Town of North Dansville desiring to apply for or receive a permit, certificate of occupancy or approval in the Town of North Dansville. During the period of the moratorium, the Town Board shall endeavor to complete all reasonable and necessary review, study, analysis and, if warranted, revisions to the Town of North Dansville Code. During the period of the moratorium, no applications will be accepted, nor permits, certificates of occupancy or approvals issued, which would authorize development within the Town for land uses relating to electric storage systems as described above.

**SECTION 4: TERM**

This moratorium shall be in effect for a period of one (1) year from its effective date. This Local Law shall be subject to renewal for a cumulative period of up to an additional six (6) months, if necessary, by Resolution(s) of the Town Board.

**SECTION 5: EFFECT ON OTHER LAWS**

To the extent that any law, ordinance, rule or regulation, or parts thereof, are in conflict with the provisions of this Local Law, including all provisions of Article 16 of the New York State Town Law

concerning special use permit, site plan, building permit and certificate of occupancy procedure and requirements, this Local Law shall control and supersede such law, ordinance, rule, or regulation.

#### SECTION 6: WAIVER

Owing to the limited scope and duration of this moratorium, there is no provision being made in this Local Law for any waivers to its applicability. However, the Town Board may, but is not obligated to, promulgate regulations by a Resolution of the Board authorizing a hardship waiver process to this moratorium.

#### SECTION 7: SEVERABILITY

If any clause, sentence, paragraph, section or part of this Local Law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall be confined in its operation to the clause, paragraph, section or part thereof directly involved in the controversy in which said judgment shall have been rendered, and the remaining provisions shall remain in full force and effect.

#### SECTION 8: EFFECTIVE DATE

This Local Law shall take effect immediately upon its filing with the Secretary of State in accordance with the New York Municipal Home Rule Law.

Roll Call vote: **A YES;** Supervisor Horr, Councilperson Bacon, Luce, Colella, Infantino  
**NOES; NONE. MOTION CARRIED 5 TO 0.**

Review of monthly payroll summary/registers and bank statements: Town Clerk presented a copy to all board members, Reconciliation Summary of Banking Accounts and Bank Statements (General, Highway, Airport, Water District and Trust & Agency) for the period ending September 30, 2023, for their review. The materials were e-mailed to the Board members.

McWhorter Road: Supervisor spoke with an Engineer from LaBella, who is the contractor that worked on the project at LMC for the creek land erosion project. He stated that there would not be a grant available for this project. Supervisor Horr will meet with LaBella and see how much the project may cost and how we can stop the land erosion. Supervisor Horr will communicate with Donna Didas after he meets with LaBella.

Year end audit: Supervisor Horr is still submitting information to Lumsden McCormick, LLP. This should be completed by the end of November.

Building Maintenance: Supervisor Horr is talking to someone to be an on-call maintenance person.

American Towers: Supervisor Horr gave the board members a financial worksheet on the rental contract for the cell towers on McFadden Trail. American Towers want to adjust the financial terms of the Tower Site's contract. The options were discussed among the board members and was decided not to make any changes to the contract. A motion by Councilperson Colella and a second by Bacon to turn down the offer from American Tower. All in favor. **MOTION CARRIED.** Supervisor Horr will respond to American Tower.

Winter in the Village: The Dansville Area Chamber of Commerce is asking the Town to sponsor an ice sculpture for the annual Winter in the Village. A motion by Councilperson Bacon and a second by Colella to sponsor a sculpture at the Blizzard level of \$275.00. All in favor. **MOTION CARRIED.**

A motion by Councilperson Colella and a second by Bacon to allow the Fire Department Auxiliary to hold a bake sale at the Town Hall on election day November 7, 2023. All in favor. **MOTION CARRIED.**

Kimberly Coleman of Highway Cigar and Smoke Shop presented her Notification to Municipality (OCM-06009) letter to the Town on 10/3/2023. The Town Board can express

opinions to the OCM by responding to the letter within 30 days. A motion by Councilperson Bacon and second by Infantino to respond to the letter.

Roll Call Vote: AYES: Councilperson Bacon, Luce, Infantino, Supervisor Horr

NOES: NONE

ABSTAINED: Councilperson Colella

MOTION CARRIED 4 to 0

A motion by Councilperson Bacon and a second by Luce to pay all bills as audited, general account vouchers #200- #225 incl., totaling \$61,911.18, highway account vouchers #62- #70 incl., totaling \$8,143.96. All in favor. MOTION CARRIED.

A motion by Councilperson Colella, and a second by Bacon to adjourn. All in favor. MOTION CARRIED

Meeting adjourned at 8:12 PM.

Respectfully submitted,

Lori Tyler  
Town Clerk/Tax Collector

