

**TOWN OF POUGHKEEPSIE
COMMITTEE OF THE WHOLE MEETING
NOVEMBER 8, 2017
7:00 P.M.
SUMMARY**

CALL TO ORDER
SALUTE TO THE FLAG
ROLL CALL OF TOWN BOARD:

PRESENT: Supervisor Baisley
Councilman Renihan
Councilman Carlos
Councilman Conte
Councilman Cifone
Councilman Lepore
Councilwoman Shershin
Town Clerk Salvatore
Town Attorney Nelson

11:08COW-01 DISCUSSION Excavation Law
(COUNCILMAN *Councilman Carlos presented*
CARLOS) *the board with a draft of what*
will be presented in the Excavation Law and there was
some discussion by the Board to perhaps change one
part in relation to an amount of bond needed, but was
essentially left as written- to be determined by the
Highway Supervisor. To follow the whole presentation
you may view on our You Tube Channel

**COMMITTEE REPORTS
2017**

1. FINANCE Lepore, Cifone, Conte
NOTHING TO REPORT

2. FIRE ADVISORY Renihan, Conte, Splain &
Fire Officials (Arlington, New
Hamburg, Fairview)
A MEETING WAS HELD ABOUT
INSPECTIONS REQUIRED ONLY ½ DONE SO FAR- THEY ARE LOOKING INTO
HOW TO GET THE REST ACOMPLISHED

3. GOVERNMENT OPERATIONS Shershin, Carlos, Cifone
NOTHING TO REPORT

4. LAND USE & PLANNING Cifone, Shershin, Renihan
(Including Cell Tower & Comp. Plan) **NOTHING TO REPORT**

- | | | |
|----|---|--|
| 5. | PERSONNEL | Cifone, Conte, Renihan
MIKE THANKS ANN,
SUPERVISOR AND TARYN FOR THEIR HELP IN GOING THROUGH
APPLICATIONS FOR COURT PERSONNEL - HIRING AND TRAINING WILL START
IN A FEW WEEKS |
| 6. | RECREATION/ SENIOR CITIZENS
(Including Town Day) | Lepore, Shershin, Renihan
NOTHING TO REPORT- MEETING
TOMORROW MORNING |
| 7. | TECHNOLOGY & EQUIPMENT | Carlos, Cifone, Lepore
NOTHING TO REPORT |
| 8. | WATER, SEWER, HIGHWAY
(INFRASTRUCTURE) | Carlos, Lepore, Shershin
BILL STATES HIS
PRESENTATION WAS THE
REPORT |

TOWN BOARD ENTERED ONTO EXECUTIVE SESSION AT 7:16 P.M.

- | | | |
|----------|---------------------------------|--|
| 11:08-ES | ADJOURN TO
EXECUTIVE SESSION | To Enter Executive Session To
Consider Following Matters: |
| | | A. Confidential Communication
Between Attorney And His Client,
The Town Board, Based On
Attorney/Client Privilege |

*Jay invited attorney David Cooper into executive session

TOWN BOARD RETURNED FROM EXECUTIVE SESSION AT 8:24 P.M.

TOWN BOARD MEETING ADJOURNED AT 8:25 P.M.

~~DRAFT~~ Final

§ 174-21 Definitions

The following terms used in this Article shall have the following meanings:

EXCAVATION – Shall mean any work, process, or construction that touches, impacts, disturbs or alters the surface or subsurface of any Highway, including, but not limited to, pavement cuts and culvert installations, and also including road surface work and paving.

EXCAVATION PERMIT – Shall mean any permit required under or pursuant to this Article.

HIGHWAY – “Highway” shall mean all Town owned public places and all public streets, sidewalks, roads, alleys, curbs, gutters and highways within the Town of Poughkeepsie, whether established by use, dedication or otherwise, including all paved or finished surfaces, shoulders, signage, ditches, culverts, drains and drainage, utility and similar structures, appurtenances, improvements, and land within the bounds of the Town Highway rights-of-way.

HIGHWAY SUPERINTENDENT – The elected Highway Superintendent of the Town of Poughkeepsie and the Deputy Highway Superintendent..

REQUIRED INSURANCE – Those insurance coverages from time to time specified by the Highway Superintendant for Excavation Permits.

SECURITY – Security shall mean a Guarantee of Performance, Maintenance, and Indemnity executed by the Applicant for the benefit of the Town in form acceptable to the Highway Superintendent together with: (1) a cash deposit; or (2) an unconditional letter of credit approved by the Town of Poughkeepsie; or (3) a performance surtey bond approved by the Town of Poughkeepsie; or (4) a Certificate of Deposit irrevocably assigned to the Town of Poughkeepsie; or (5) any other form of undertaking as approved by the Town of Poughkeepsie; or (6) any combination of the foregoing approved by the Town of Poughkeepsie, all in an amount and form consistent with this Article and approved by the Highway Superintendent.

§ 174-22 Legislative authority

This Article is enacted pursuant to N.Y. Town Law § 130, Subdivision 7 and NY Municipal Home Rule Law §§10(1)(i) and (10)(ii)(a)(6) and (9-a), (11) and (12), to regulate the manner in which Excavations may be made in or under the streets, Highways, sidewalks and public places in the Town of Poughkeepsie to protect the health, safety and welfare of the public during Excavations and to ensure the quality, safety and longevity of Town thoroughfares and public places.

§ 174-23 Excavation permits required.

No person, firm, corporation or other legal entity shall open or cause or allow any Highway to be opened or disturbed by cutting, Excavating, patching, paving, installing or placing anything upon or against the surface, soil or subsurface of any Town Highway or Town owned public place without first obtaining an Excavation Permit.

§ 174-24 Permit application.

An application for an Excavation Permit, together with the fee therefore as specified in Town Code Chapter 105, or as otherwise specified by the Town Board by Resolution or Local Law, shall be made to the Highway Superintendent upon a form(s) to be provided by the Superintendent. The application shall require the name and address of the Applicant (alternatively herein, "Contractor") and shall identify all person(s) and entity(ies) performing the work for the Applicant; the person or entity on whose behalf the work is to be performed by the Applicant; the location of the Excavation; the size and purpose of the Excavation; the beginning and end dates when the work is to be performed; the type of pavement or surface to be disturbed; proof of the Required Insurance and Security called for by this Article; and the materials proposed to be used in replacement; together with sketches and such additional documentation and information as the Highway Superintendent may require, including but not limited to:

- A. Drawings, specifications, surveys and plans sealed by a New York State licensed engineer, architect or surveyor.
- B. If work will be performed upon or under, or will impact any lands outside of the Highway or public place, the written consent of the owner(s) of such lands, which consent shall recite that such owner(s) has reviewed the documents submitted with the application.
- C. Whenever required, a completed Environmental Assessment Form ("EAF") pursuant to the New York State Environmental Quality Review Act ("SEQRA") shall be submitted. No Permit may be issued until any required SEQRA review process has been completed.

D. All other permits, easements and consents which are required for the performance of the Excavation and related work.

§ 174-25 Insurance, Guarantee, Security, Deposit.

Except as otherwise provided herein, no Excavation Permit shall be issued unless the Applicant shall have delivered to the Highway Superintendent and filed with the Town Clerk proof of the Required Insurance and Security called for by this Article.

1. Required Insurance. The Applicant shall provide proof of all of the Required Insurance specified by the Highway Superintendant which shall be endorsed to eliminate the exclusion of underground damage and shall provide for broad form property damage coverage.
2. Security. Applicant shall execute and deliver a Guarantee of Performance, Maintenance and Indemnity (the "Guarantee"; see subsection 2(a) below) for the benefit of the Town, together with a performance bond or other Security therefore (as defined above) in form acceptable to the Attorney to the Town. The Security shall be in an amount determined by the Highway Superintendent to cover the full cost of the Excavation, whether completed by the applicant or, in the event of default, by the Town, including the cost to correct deficiencies and restore the areas in and adjacent to the Excavation. The amount of Security required may be increased by the Highway Superintendant in the event that the anticipated cost increases.
 - (a) The Guarantee shall provide that the Applicant assumes sole responsibility for the Excavation and adjacent areas, and assumes all responsibility for injury and damage resulting from any Excavation or

related work. The Applicant, to the fullest extent permitted by law, shall indemnify and hold the Town of Poughkeepsie, its officers, employees and agents, harmless from all loss, cost, expense, suits, claims and demands (together, "Claims") including but not limited to all reasonable expert, consultant and attorneys' fees and expenses arising from or in relation to any Claim.

(b) The Guarantee and the Security therefore shall provide that all work shall be performed in accordance with the conditions of the Permit and all codes, laws, rules and regulations applicable thereto.

(c) All surety bonds shall be issued by a company authorized to do business in the State of New York.

3. The Guarantee, Security and Required Insurances shall be approved by the Town Attorney for conformity with the provisions of this Article. They shall not be deemed to limit the Applicant's legal liability for matters arising out of or in relation to the Permit.
4. Each Guarantee and the Security for it shall specifically provide coverage to the Town for all actions, inactions and events occurring during the period from when any Excavation work has begun until six months after it is completed and accepted by the Highway Superintendent. The Required Insurance shall be maintained for the same period.
5. .

§ 174-26 Public service corporations; Security and Required Insurance.



A. In addition to the Guarantees of Performance, Maintenance and Indemnity, all Public Service Corporations shall file and keep on file with the Town an undertaking of \$25,000 ??? approved as to form and sufficiency of surety by the Town Attorney. The bond or undertaking shall be retained as security for the faithful performance by the Applicant of all requirements of this Article and the terms and conditions of any Permit issued to it.

B. A Public Service Corporation may, in lieu of the Guarantee of Performance, Maintenance and Indemnity for each required Permit, but not in lieu of the Required Insurance, Security???? or required Permit, file and keep on file with the Town Clerk a general guarantee of Performance, Maintenance and Indemnity approved as to form by the Town Attorney.

C. In an emergency, which shall be deemed to exist when in the Highway Superintendent's judgment, failure to take prompt action may result in danger to life or public or private property, Excavations may be made by a Public Service Corporation prior to obtaining a Permit; provided, however, that the Public Service Corporation shall have filed a general or job specific Guarantee of Performance, Maintenance and Indemnity and the Required Insurances as specified in this Article, and provided further that the Public Service Corporation shall provide notice to the Highway Superintendent as soon as practicable of the emergency and shall also make application for the necessary Permit within 24 hours, Saturdays, Sundays and holidays not included, after it becomes aware of the emergency.

§ 174-27 Performance of the work.

In performing such work and Excavation, the Contractor shall:

A. Preserve and protect the Highway and adjoining areas from damage.

- B. Commence and complete the work as one continuous operation.
- C. Complete the work and Excavation by the completion date in the Permit.
- D. Restore and repair all affected areas to current requirements.
- E. Maintain at all times all safety devices, structures and procedures required by the Permit and all codes, laws and regulations, and as required in the exercise of diligent care, all until the Excavation work has been accepted by the Highway Superintendent.
- F. Maintain at all times the Security and Required Insurance coverage(s) during the course of the work and for a six (6) month period from acceptance of it by the Highway Superintendent.
- G. Perform the work so as not to interfere with or minimize any obstructions to the safe flow of traffic.
- H. Perform all backfilling and tamping with materials specified by the Highway Superintendent, (See Road Utility Trench Detail at Exhibit A) which materials shall be free from clay, loam or silt, and which materials shall be moistened and mechanically tamped until thoroughly compacted.
- I. For all work that will impair the provision of any public utility, water supply, or effect any closure or partial closure of any Highway, give such notice to those that may be effected as the Highway Superintendant may direct.
- J. Notify the Highway Superintendent by the next business day after of the completion of the work under any Permit.. The Applicant shall remain responsible to maintain barricades, warning lights and other required warning devices until

the Superintendent has accepted the Excavation work or has completed the repair of the Excavation.

K. Prior to Excavation, provide to the Highway Superintendent proof that it has fully complied with all Public Service Commission and other "Call Before You Dig" regulations for the protection of underground facilities.

L. During Excavations, whenever practicable, a serviceable portion of all Highways shall be kept open for travel and the Applicant shall, upon the direction of the Highway Superintendent, provide one or more flagpersons to direct the flow of traffic. The Highway Superintendent may require and for good cause may allow a detour to be established and maintained by the Contractor.

M. Excavations shall not be performed between November 1 and April 1, except in the event of an emergency as defined in §174-27C above. Except in emergency situations, no work shall be commence on a Friday or the day before a legal holiday unless written permission is obtained from the Highway Superintendent.

N. The Highway Superintendent may furnish and charge the Applicant for inspections while the work is in progress, solely to verify compliance with the Permit conditions and this Article. No inspection will be made for the purpose of reviewing, recommending, or verifying applicants safety procedures. The cost for each such inspection shall be the Town's reasonable expense for the inspection services, to be paid by the Applicant by deposit in advance.

§ 174-28 Safeguards and barriers; reasonable conditions to be imposed.

Upon the issuance of a Permit, the Contractor shall properly barricade the area of proposed Excavation and shall place and maintain windproof lights and such signs and warning devices as are reasonably necessary to protect the public. The Highway Superintendent shall have the power to impose such additional terms and conditions as will provide for the public health, safety and welfare under the particular circumstances of each Permit. If the Applicant/Contractor fails to comply with the provisions of this article, any conditions attached to its permit and/or the directions of the Highway Superintendent, the Highway Superintendent may, as the agent of the Applicant/Contractor, install such devices and take such action as he or she deems necessary. The Applicant/Contractor shall be liable for any expenses incurred by the Town under such circumstances.

§ 174-29 Revocation of Permit.

The Highway Superintendent may, after twenty four hours notice to cure, or such lesser notice period as may be necessary in an emergency, revoke any Permit if the Applicant has failed to correct any violations thereof or any violation of the provisions of this Article or any other applicable code, law, rule or regulation during the Excavation, as follows:

- A. Written notice of violation shall be given to the Applicant or its agent engaged in the Excavation. The notice shall contain a brief statement of the violation and a demand that it be cured within twenty four hours.
- B. Notice may be given either by personal delivery thereof to the Applicant/Contractor or to the site of the Excavation, or by email, facsimile or text to the Applicant/Contractor or its place of business.
- C. The failure of an

Applicant to cure any violation within twenty four hours shall entitle the Town of Poughkeepsie to collect and utilize any Security for any purpose related to the Applicant's Permit, including, but not limited to, the repair of any damage, the completion of the project, or the hiring of a third party to complete the project. No default, nor the completion of the project by any third party or the Town of Poughkeepsie shall relieve the Applicant of any obligation or expense imposed under this Article, or as may otherwise be imposed by any other law or regulation.

D. Whenever the Highway Superintendent believes that there is an emergency condition at an Excavation which endangers the public health, safety or welfare, he/she may issue a "stop work" order. Immediately upon receipt of the same, delivered as provided in Subsection B above, the Applicant shall cease work, secure the worksite, immediately adhere to the directions of the Superintendent and comply with all safety inspections and procedures as may be required by law, regulation, or the terms of the Permit and "stop work" order. Work may only recommence upon the written revocation of the "stop work" order, and the cost of all work performed by or for the Highway Superintendent shall be charged against the deposit and Security.

§ 174-30 Enforcement, Penalties for offenses.

- A. The Highway Superintendent is authorized and directed to enforce the provisions of this Article.
- B. Any person who shall violate any provision of this Article shall be guilty of an offense and shall be subject to a fine of \$500 to \$2,000 or to imprisonment for not more than 15 days, or both. Every violation of any provision of this article shall be a separate

and distinct violation, and in the case of a continuing violation, every day's continuance thereof shall be a separate and distinct offense.

C. In addition to any other remedies set forth herein authorizing the Town to enforce the provisions of this chapter, establishing penalties, and setting forth additional remedies, the Highway Superintendant may apply for injunctive relief, and may impose a civil penalty or agree to a civil penalty of \$100.00 to \$500.00 for a first violation, and of \$500.00 to \$1,000.00 for any subsequent violations not to exceed \$1,000 per day for each day of the violation.

§ 174-31 Appeals.

Any aggrieved person or entity may appeal any action or determination of the Highway Superintendent to the Town Board of the Town of Poughkeepsie by filing a written statement setting forth the reasons for such appeal. Such statement shall be filed with the Town Clerk within 5 days of the delivery or filing of any action or determination from which the appeal is taken, time being of the essence.

§ 174-32 Restoration, acceptance, maintenance.

A. After performance and/or completion of any Excavation work, the Highway and all affected areas shall be repaired and restored in a permanent manner satisfactory to the Superintendent and in accord with Permit requirements and the Road Utility Trench Detail at Exhibit A hereto. To the extent possible, any repair or restoration must match

the original Highway and affected areas as to type, color, structure, materials, grade, and texture, in compliance with then current applicable specifications therefore.

B. Upon completion of the work and the restoration pursuant to the terms of this Article and the Permit, and their acceptance of same by the Superintendent, the Security shall be retained by the Superintendent for six months as security for the maintenance of the Excavation work in the same condition as required by this Article and the Permit on the date of acceptance.

§ 174-33 Waivers.

Where the Highway Superintendent finds that special circumstances exist, a waiver of any one or more requirements of this Article may be granted for good cause shown provided that the Highway Superintendent finds in writing that:

1. Granting the waiver would be keeping with the intent and spirit of this Article and is in the best interests of the community.
2. There is no adverse effect upon the Highway or any surrounding area.
3. There is no adverse impact upon the ability to safely travel upon such Highway.
4. There are special circumstances involved in the particular case.
5. Denying the waiver would result in undue hardship which has not been self imposed, provided that such hardship has not been self-imposed.
6. The waiver represents the minimum necessary to achieve the desired result.

§ 174-34 Winter Work.

During the "winter work season," which is hereby defined as November 1 through April 1, annually, Permits will be issued only for emergency work. In the event that a winter work Permit is issued, the following remediation requirements apply:

- A. All Highway work shall require additional materials and compaction as determined by the Highway Superintendent.
- B. Temporary pavement and road surface restorations may be permitted by the placement and compaction of a minimum of two layers of dust-bound crushed stone, each of a compacted thickness of four inches on the prepared sub grade, followed by a layer of bituminous concrete, winter mix, six inches in compacted thickness, on top.
- C. No frozen material shall be placed in the excavation areas.
- D. As early as spring weather permits, after notice to and with the consent of the Highway Superintendent, the Excavation area shall be inspected and reconstructed in accord with normal Excavation restoration specifications.
- E. Without in any way limiting its responsibility as otherwise provided herein or at law, notwithstanding anything which may appear to the contrary in the Permit or this Article, until the restoration has been finally accepted by the Highway Superintendent, the Contractor assumes all responsibility for the safe maintenance of the subject Excavation site.

§ 174-35 Repealer.

This Article shall supersede and replace the existing Town Code §§174-21 through 174-35, which are hereby repealed.